

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

>> Mayor Reed: We have no labor update this morning, there's no one here to speak, so we're going into closed session. Be back at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon, I'd like to call the San José city council meeting to order for August 28th, 2012. I'd like to start with the invocation. Vice Mayor Nguyen will introduce the invocator.

>> Vice Mayor Nguyen: Thank you, mayor. I'd like to introduce reverend Steven Brown from St. Maria Goretti church here with us today. Reverend Brown has been a priest of the Catholic diocese since 1981. He has served in many neighborhoods throughout San José including Alviso, the Eastside communities of St. John Vianne and Alum Rock. Reverend Brown works very closely with our community on a whole host of issues including education, health, public safety and much more. I wanted to thank the reverend for his continued service and welcome him today.

>> Just quiet ourselves for a moment. Let go of whatever thoughts we had in our heads before we came here, kind of focus on this moment. Relax your bodies, breathe in deeply. Focus on that breath, that spirit within. Let that life force spread throughout your body as we call to mind the people of San José. If you would picture some of the individuals that you've met, some that have voted for you. Some that have voted against you. Remember our promise to serve them all and that's difficult. How faithful have we been in that? If we need to, in our hearts, ask for forgiveness or extend forgiveness before we do anything else today. And if you would call to mind the business of this meeting, as we pray. Good and gracious God. We ask for your guidance and direction as we come together to meet this afternoon. Empower us for our work for the common good. Grant us the strength to manage the challenges ahead and the wisdom to identify these as opportunities. As we strive to serve all the citizens of San José. Give us understanding of how to utilize our gifts effectively, and collaboratively. So we may fulfill our calling to serve our community. Creator God we ask you to release in all of us your creative spirit for the good of all. We ask for open minds and open hearts that we might be clever and inventive in identifying solutions to complex problems in our community. We ask for your wisdom and the perseverance necessary to develop significant, life-changing ideas. We ask for help and strength to carry on with respect and dignity, even when we are tired and frustrated. Release all the creativity you have placed within us enabling us to draw others near as we endeavor to live and to work together in solidarity. We give thanks for the mixture of our cultures, blending us into this unique city community of San José. We give thanks for life. For the freedom to enjoy it. And all the other blessings we receive from you, and especially for gift of companionship that we do not have to make our journeys

alone. We also lift up in prayer those less fortunate than ourselves. Victims of poverty and racism, all those who suffer from forms of political or economic oppression. And please finally help us recognize our diversity as a blessing and unity as our strength. Amen.

>> Mayor Reed: Thank you, father Brown. We'll now have the pledge of allegiance. Please stand. [pledge of allegiance]

>> Mayor Reed: First item of business are the orders of the day. I have one change to the printed agenda. We need to add a ceremonial item, a presentation of a proclamation of August 26th as women's equality day. Any other changes to the printed agenda?

>> Vice Mayor Nguyen: Mayor.

>> Mayor Reed: Vice Mayor.

>> Vice Mayor Nguyen: I would like to request to move 2.16, the Team San José to the regular agenda. We didn't get chance to take action on this item at the committee meeting it will be good. I know the CEO Bill Sherry is here to do a brief presentation.

>> Second.

>> Mayor Reed: Okay, motion to approve the orders with those changes. On the motion, all in favor. Opposed. None opposed. As noted, this meeting will be adjourned in memory of San José fire department captain José Martínez who passed away on August 10, 2012, at the age of 41. Councilmembers Kalra and Pyle have some additional comments. Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. It was certainly tragic to our community, certainly our fire department. The news and the rapid decline in health of captain José Martínez. You know, it's always tough

whenever we lose anyone that's part of our city family. But I think the loss of captain Martinez, who I knew, and I'm sure many of us up here, and certainly many in the community knew, was particularly difficult, not just because of what a wonderful public servant he was. But the circumstances under which this happened. For those that don't know, captain Martinez was diagnosed with a rather aggressive form of sarcoma that was just diagnosed in mid June. In less than two months he had passed away. During that two-month period, his wife had given birth to twins. He had an eight-year-old son. He was 41 years old. If -- I don't know if there are friends and family that are here. I didn't get a chance to go out in the audience, that are here. We certainly see some of the brothers and sisters of the fire department that are here. You know, our sorrow is with you. I just hope that first of all, that his children will know what a great public servant he was. And that he served like all the men and women of the fire department serve. That he served with great honor and he did it because he gave his life to service. He didn't do it for any other reason. And I think that given the onset of this rare and aggressive disease, we can think at least assume that his life of service, that he certainly did sacrifice his life to service, to the residents of this city. And that I hope that we can use this tragic passing of a young man who is in the prime of his career, I hope we can use to it remind ourselves that when we talk about public employees, we talk about those that serve, with the badge of the City of San José, on their chests or on their business cards or on their work badge, no matter where it is, that these are individuals that are human beings, they're not line items on budgets, they're not numbers for staffing purposes. These are persons who have chosen to serve. Although like captain Martinez, given the talents that he had he could have done many things with his life. Monetarily could have been -- or otherwise could have been drawn to serve in so many ways that could have been pointed more to self-service. But he chose a life that was of great honor and dignity, and I just pray for his family, certainly his children, so that they know that we certainly appreciate his service. And that is not forgotten on us. The sacrifice that he gave to our community. To our city and to our nation.

>> Councilmember Pyle: And I'd just like to say that despite the fact that he could have gone to the hospital for super-aggressive therapy and work, he chose to be with his family instead. And he spent his last days making sure that he got to know his twin daughters a little better and that he was there for the rest of his family, as well. So I think his choices were absolutely stellar. And that he was certainly a person that made all of us proud to have known him. Thank you.

>> Mayor Reed: Thank you, councilmembers Kalra and Pyle. Next item is the closed session report. City Attorney.

>> City Attorney Doyle: Mr. Mayor, there is no report.

>> Mayor Reed: We'll start with our ceremonial items. I'd like to begin by inviting Councilmember Kalra and sparky Harlan to join me at the podium. Today we're recognizing sparky Harlan, CEO of the Bill Wilson center for being recognized as a champion of change in honor of her work in addressing homelessness for children in our community. Those of you who know sparky know she has been involved here for a very long time. She's been the CEO of Bill Wilson center since 1983. The Bill Wilson center has, under her leadership, built connections for youth and families to housing, education, employment, emotional well-being. She has a lot of experience in working with runaway and homeless youth, our foster kids, youth involved with the juvenile justice system. She has recruited other nonprofit, community and corporate leaders to work together in a countywide initiative focusing on ending youth and family homelessness by 2020. She's a nationally recognized leader in more than one occasion on youth services, received the executive leadership award of excellence from the national network for youth, the outstanding agency administrator award from national safe place. And on July 12th, the White House honored Sparky Harlan and other leaders in the way their communities combat homeless among children and youth as a champion of change. So our local champion, nationally recognized, Sparky, congratulations.

>> Thank you.

>> Thank you, mayor and city council members. This is truly an honor. Especially because it acknowledges that San José is, again, a leader on issues affecting young people. There's another champion in change for the gang prevention task force. So there's actually two from that group. So I think I'm the third or fourth from San José. So I'm proud to be from this city. We really are a leader in trying to deal with homeless youth issues in this community and I invite you all to join in an effort we're looking at in November, November is national run away and homeless youth prevention month. And communities across the United States do what's called the green-light

project. Things like lighting up the empire state building and bring awareness to the issue. And away we hope to do in San José is bring green light and art and young people together to do a special sort of high-tech light event. To educate people on the issue of homeless youth in the Downtown San José area. So with the city and other people I hope you will join me in educating the community on what we can do to end this problem of homelessness in our community. Thank you, and I'm proud to accept this award. [applause]

>> Mayor Reed: Now Councilmember Pyle will join me as we invite the South valley YMCA to join us at the podium. As we commend the south valley YMCA for its commitment to providing continued summer programming emphasizing health, nutrition, and summer learning loss prevention. Councilmember Pyle has some more details.

>> Councilmember Pyle: I do, Mr. Mayor and I'd like everybody to meet the south valley YMCA. That has hundreds of family members. This family is a nonprofit organization committed to strengthening and enriching the development of individuals and families through quality programs and services that emphasize youth development, healthy living and social responsibility. The south valley YMCA has become a thriving organization that focuses on meeting the needs of its community through youth and family programs such as sports, swim lessons, childcare and school programs, health and fitness programs and summer programs that address hunger and summer learning loss. The south valley YMCA believes that through community partnerships and collaboration, communities can have a greater positive impact. And Mayor Reed I'll ask you to give the commendation and a second, and while he is doing that, I would like to introduce the attendees here. If you would just hold up your hand. Where's Rick? Oh, you should be -- Rick, you should be down here. And Jorge as well. Is Jorge here? Oh, okay. So as you see, Rick Valdez, the executive director, is walking over. Julie Griswold is right here. Jorge Herrera could not make it today. Anna Antonio, Teresa Pimentel, Christina Ogle, and Lovedeep Sahoda, who is a child care site director for Oakridge elementary. And with that, I understand that Liz Gonzales, the program director, will speak.

>> Well, on behalf of the south valley YMCA we really want to thank you for this recognition. We know that we have a short time up here, but one of the things that we really wanted to share with you guys is that what got us here was the composition that Michelle Obama let's move campaign, video competition, we recently got a

recognition from the White House for our health living and helping our youth be healthy in our community. That video was just essentially a glimpse of what a YMCA does for our community. From youth sports to health and fitness, summer camps, social services such as food security, closing the achievement gap and helping cancer patients recover. We really believe it is possible to have a thriving community and a healthy community by meeting our community needs. We want to share that, hopefully, today you know, embark the beginning of our strong collaboration between the YMCA and the city where we could team up and grow stronger together. Specifically with our south San José community. We have a group of passionate and skilled professionals who are serious about making a difference in our community and we challenge this collaboration in the future as the YMCA to be a top organization who helps our city initiatives and our neighborhood initiatives in make social change. So thank you so much. We're definitely humbled by this recognition, we welcome the community to take part in the YMCA family. Thank you. [applause]

>> Mayor Reed: I'd like to invite Councilmember Chu and Yuliana Ruiz to join me at the podium as we commend Yuliana Ruiz, a District 4 resident and Good Samaritan, for exemplary courage while performing CPR on a child prior to the arrival of the fire department personnel. Councilmember Chu has the details.

>> Councilmember Chu: Thank you, Mayor. Come on down and join us. I'd like thank my colleagues and the mayor for joining me this afternoon to recognize and commend Yuliana Ruiz for her courage while performing CPR on a ten-year-old child prior to the arrival of our Engine 29, led by Captain Doss. So I'm very happy that captain Doss is here. Definitely want to take this opportunity to thank those men and women in our San José fire department for your effort to save lives as well as our properties in the City of San José. Yuliana is a long time resident of district 4 who saved the life of Ishmael, Ishy for short, from drowning in the swimming pool at San José's west wind mobile home estate on Monday, July 23, 2012. Yuliana pulled Ishy out of the water and immediately performed CPR on him for five minutes. I know if anybody knows how difficult it is to do CPR consistently for five minutes. But just a tremendous effort there. Until the arrival of our Engine 29. As a wife and mother of two young children, I believe that her family is here with us today. And she has always been attentive and quick to action when needed. Most importantly, Yuliana is a CPR trained and certified. I believe that CPR saves lives which is why I have worked with San José fire department as well as the Red Cross, to hold many

classes in my district, to -- either free or reduce fee to the residents. And I have seen firsthand positive comment and the feedback from the community. There are many CPR classes available at the reduced fee. And or free. And I encourage everyone to take advantage of that opportunity. I will be holding another training class in November. So please, be on the outlook, the lookout, since classes fill up very quickly. Yuliana's action and CPR skill showcase her bravery and heroism. She demonstrate what it means to be a responsible community member who took initiatives when needed. And here today to accept this commendation, of course Yuliana Ruiz who is here with all her family members and we also have the lucky Ishmael, Ishy, and his family in attendance today, as well as our captain Ross. Captain Gutierrez and also our fire chief McDonald here today. So mayor, would you please do the honor of presenting the commendation to Yuliana.

>> I just would like to say thank you to my family for being here, always supporting me. And the mayor and all of you guys that make this possible. And I'm just happy that he is okay. He's alive here. By my side. You know, and I just thank God, for sending me here, to this planet. And I'm happy to be here with him. That's all I can say. Thank you. [applause]

>> Mayor Reed: I'd like to invite Councilmember Herrera, Vice Mayor Nguyen, Councilmember Pyle and the Latina coalition of Silicon Valley to join me at the podium as we declare August 26th as women's equality day in the City of San José. Councilmember Herrera has some of the details.

>> Councilmember Herrera: Thank you, mayor, and I want to acknowledge my colleagues, Vice Mayor Madison Nguyen and Councilmember Nancy Pyle, and along with us helping us proclaim this important day are representatives of the Latina coalition of Silicon Valley, and I'm going to mention some of their names. Jackie Guzman, who is the treasurer, Lenisa Gutierrez, Elisa Orona, Maria Valle, Abdulia Bunueles Esparsa, Janine Ramirez and Alma Garcia. We welcome all of them today. We are recognizing August 26th as women's equality day, it was a couple of days ago but we are recognizing it today. It was a very important day. We celebrate the 92nd anniversary of the passage of the 19th amendment to the U.S. constitution. After a long struggle for women's rights and suffrage in our country, beginning at the first women's rights convention in Seneca Falls, New York, in 1848, August 26th, 1920, marked the day the suffrage battle was finally won and women had the right to

vote. I'm honored to proclaim August 26th as women's equality day to celebrate the anniversary of the first women's equality day which was proclaimed in 1971 by Congress and championed by Bella Abzug, a leader and pioneer of the women's rights movement. Today we celebrate the courageous women who fought to uphold a fundamental principle within our constitution, the right to vote. And as we recognize as the sacrifices that women have made to allow the basic rights and choice is which we freely exercise today, we still must Rick that there is a lot of work to be done and this includes the concern many of us have about the number of women who are still elected in leadership positions. If we look at our legislature nationally, we rank 78th in the world. Countries like Afghanistan and Iraq are ahead of us. 18% of Congress are women. So it remains a very big concern, where the women are in elected office. Another interesting comparison is Los Angeles. Second largest city in the country, first largest in our state, and there are one -- there is one woman on that council. In that city. So we remain concerned about that. But we have made great strides and we must continue to work for full equality, working together, helping each other. And that brings me to the Latina coalition of Silicon Valley. We want to recognize their efforts to ensure that the voices of Latinas in our community are heard on critical issues, like health care, the economy education and the environment. This coalition was formed in 1999 to educate and prepare Latinas to be civically engaged leaders of Silicon Valley. This coalition is now comprised of business, government, and nonprofit leaders. They host lectures, luncheons, workshops, trainings, hands-on leadership training and the engaged Latina leadership activist program, the ELLA. That means "she" in Spanish. This innovative program is now five years old, and 80 young leaders age 18 to 26, have graduated from the program. The program hosts a retreat, a Latina action day, guided civic policy projects and network events. I recently attended their graduation, I was really impressed, one of the graduates who was there to celebrate the new graduates told me how inspired she'd been about the program and her goal is to become the first Latina president of the United States. I found that very inspiring. And I think that's what we're looking for is the next generation. Because of their tremendous commitment to training the next generation of women civic leaders we are proud to have a Latina coalition with us today to celebrate women's equality day. I'm proud and honored, along with my colleagues Mayor Reed, Vice Mayor Nguyen, Councilmember Pyle, to proclaim women's equality day in the City of San José. And at this time I'd like to ask Mayor Reed to present the proclamation to Jackie Guzman, treasurer of the Latina coalition, and she'll say a few words after we get a photo.

>> On behalf of the Latina coalition of Silicon Valley I'd like to thank the council and Mayor Reed for this recognition on women's equality day. In honor of women getting the right to vote and suffragists who helped pave the way for our successes. We have come a long way since August 26th, 1920. But we still have a long way to go to ensure that our decision makers reflect the diversity of our community. The Latina coalition is at the forefront of this issue. We're an all volunteer working board made up of Latina professionals dedicated to civic engagement and leadership development as a means of cultivating Latina women of influence in Silicon Valley. And with the goal of making Latinas a voice in the decision making table. Standing here are current members and one of our ELLAs, Maria Valle, who went through a nine-month intensive leadership training and is now ready to tackle the pressing issues impacting Latinas in the Silicon Valley. We're very grateful for the support we've received from the council and hope that they continue to support our efforts and thank you for this honor. [applause]

>> Mayor Reed: Next we'll take up the consent calendar. We've already moved 2.16 off the consent. We'll take that up in a few minutes. I have a few requests to speak on the consent calendar. We'll take that now, Mr. Wall.

>> 2.13 and 2.19. Special focus on the 2.19, cap and trade guiding principles. It is my belief Mr. Mayor, I think this council should have taken time to warn everybody in this room and everybody in this city what this cap and trade program really is. It is from the voters. The voters voted it in to save the planet with this cap and trade greenhouse gas emission program. Where I have problems with it is the following: Transportation fuel natural gas and other fuel sectors will be subject to the cap starting in 2015. Period close quote. That means everybody that turns on a light in their homes, cooks their food, takes a hot shower or bath are going to be taxed at every level. Electricity, natural gas and of course gasoline. These taxes, the money derived from this, a revenue stream a vast one approximately \$15 billion for the first go-round, is governed by the California air resources board. There are no restrictions on how this money is to be used. With one proviso. "the assembly and senate budget subcommittees have each adopted language that would dedicate at least \$500 million of the November auction proceeds towards eligible General Fund expects in order to help reduce the state's budget deficit period. Uses for the remainder of the proceeds have not yet been identified, close quotes. This is a tax-and-spend scam that's going to affect everybody in the state of California with no guarantee how this money is to be spent. And I think that you should

have at least agendized this Mr. Mayor to warn people to talk to their elected officials whether or not this meets their requirements. May I continue with the other items?

>> Mayor Reed: You have two minutes. You can use it however you wish. You've got about 15 seconds left.

>> Okay.

>> Mayor Reed: Something else comes off the agenda can you speak --

>> 2.8, deals with budget surpluses in the parks department for Districts 1, 4, 5, 6, 8, and 9. I am concerned that there are such large balances and whether or not there are some liquidated damages issues that might arise from these construction projects not being completed, sir. Thank you.

>> Mayor Reed: Jim Piazza.

>> I'm Jim Piazza with green earth management. I'm talking on behalf of 2.2 on B. I would like you guys to really consider not consenting to this issue. I've -- we have retained environmental lawyer the last three weeks and we find some disturbing information that needs to come out before you guys make a ruling on all this and stuff. I have children and I know you all have children, too and we all want to leave the planet a little bit better than what we got it. And so this is a main, a very big issue, with the City of San José, is backing all these big conglomerates and stuff but are we all on the same set of rules, and that is what I ask? Are we all really on the same set of rules, I debate that, good day.

>> Mayor Reed: That concludes the public testimony on the consent calendar. Are there other items councilmembers would like to pull for discussion? Councilmember Campos.

>> Councilmember Campos: Thank you mayor, 2.7.

>> Mayor Reed: We'll take up 2.17 when we're done with the consent calendar. Councilmember Rocha.

>> Councilmember Rocha: 2.11 and 2.19, please.

>> Mayor Reed: Any others, is there a motion? Motion to approve the balance of the consent calendar. All in favor, opposed, none opposed, so we will start with 2.11, Councilmember Rocha.

>> Councilmember Rocha: Thank you. If Department of Transportation would come down I have a question just generally on safe routes to school grant and how we're approaching this going forward. I had the opportunity to spend some time with D.O.T. on this issue. Couple of potential candidates in my district and I'm sure there's plenty citywide. So I was interested in how this plays into the citywide approach and also I was under the impression that we couldn't use this for land acquisition or property acquisition.

>> Hans Larsen: So Councilmember Rocha, we do, in terms of candidate projects for future grants, we're happy to receive input directly from the council, the community, phone calls that come into our staff. We maintain a list of candidate projects for this program. It is a competitive program. One of the criteria is that we have to already have the property acquired for it so it's generally for design and construction for the project. So that has been one of the limiting factors with this program is the lack of acquisition. I think one of the two projects that we're recommending for the grant, there was an effort with the council, Councilmember Constant working with the community to actually facilitate donation of the land that would allow -- that allowed us to get grant funds for the construction. Happy to answer any other questions you have.

>> Councilmember Rocha: No, that covers it, thank you.

>> Mayor Reed: Anybody else? Is there a motion?

>> Councilmember Rocha: Move to approve.

>> Mayor Reed: We have a motion to approve. On the motion, all in favor, opposed, none opposed, that's approved. 2.17, Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just a comment and if staff can answer a question. Regarding the selection of board members for the WIB. One of the things that the WIB is to do is to give direction on where we should be finding folks to work in our workforce and hopefully connecting them. And one of the things I've noticed while going through the board, the current board list is that we really should be looking at trying to fill board slots with you know some of the industries that are emerging, you know clean tech, hopefully we you know we get manufacturing back. Even in the construction field, not on the -- not on the -- on the labor side but on the you know the builder's side, you know the construction trades are actually a way for youth that might not want to go the route of a four-year college. But you could certainly earn a very, very good living in that industry. So is there an effort to try and diversity the board?

>> Yes, there is. We have 43 members on our board of directors and 19 of those members are mandated by the federal regulations which require that we have members of labor on there, community colleges, community based organizations. So the balance are private sector matters. They do include members from Cisco, from Safeway, target, staples. There's always an ongoing recruitment effort as board members come, and board members go. We're very interested in still recruiting members more from I would say the higher tech sectors, clean tech sector, obviously, and would be open to entertaining those options.

>> Councilmember Campos: The other comment I just have is, you know, Walmart has actually had some pretty high-profile discrimination cases before the recent. And it concerns me that, one, you know, there are a lot of employees -- of businesses that are out there that have actually been good corporate citizens and have been good to the folks that come work for them. And you know, it concerns me that we're bringing over you know this is a pretty influential board and a board that shows -- that's supposed to and actually shows good corporate citizenship. And it concerns me that we're bringing forward, you know, someone that -- or a representative from a company that has a less-than-stellar record, you know, when it comes to that. I'm -- so I don't know if you can respond to that. Was there any thought into that?

>> Well, I think we have done various recruitments for Walmart over the years going back five or six years we've done recruitments for their superstore down in Gilroy, for their store down in Morgan Hill. We've done recruitments for their store here. So we have a standing relationship with them that goes back four or five years. They were hiring our clients, and I know you are, Councilmember Campos, very aware that our board has always taken a lot of pride in serving people from underserved communities with multiple barriers to employment. So Walmart has been one of the options that we are able to offer to those clients. So it has been an engagement that we have had from long standing.

>> Councilmember Campos: Okay. Well, I'm hoping that that's behind the Walmart corporation. And you know could show at least in our area that you know they oar good corporate citizen and they, you know, treat, you know, the -- those populations, the populations that one, you know I have the population in my district and they're, you know -- treat them well so anyway those are my comments.

>> Mayor Reed: Let me just add to that, since I'm the chief local elected official. I'm the one who has to make the nominations to the board for the council to consider. And Walmart's one of the world's largest employers and they have a lot of jobs. And so I think it's appropriate for them to join the board as one of 43 members. We have certainly placed a lot of people with them. So that's why I'm comfortable with this nomination. If they have issues in other cities you know a lot of companies have issues elsewhere, and it's really how they behave in our community. And I think they've been a good employer and have served us well, and I think this particular person Fabiolo Czech, brings some expertise to the job that will be helpful to people who need jobs. And that's why I'm making the nomination. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I do appreciate the process that asked for you to put forward a nomination. I don't support putting a representative from Walmart. Just because someone is from a large employer and has a lot of employees doesn't mean they're a good employer. The practices -- their business practices that are throughout their corporation are not one that I think should be reflective on a Silicon Valley workforce investment board. I've looked at the other board members. We do have already a diverse set, including

retailers and large retailers there. It's just ironic on a day in which we honor women and we have the Silicon Valley Latina coalition that we're going to put someone from Walmart there that's traditionally not been a good employer for women and certainly in this valley and in San José I think in regards to Latina women especially as I'm sure they're preparing to defeat our minimum wage initiative which is the number 1 thing we can do in this city to improve the quality of life for Latinas and for women, far majority of minimum wage workers are women and Walmart's business plan relies on paying the absolute lowest wages possible to their workforce. And so I won't support -- I respect the mayor's authority to put forward an individual but I won't support this motion.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. How many board members are you looking to get to, ultimately? You mentioned there's 43 I think.

>> Under our bylaws we have 45. We do reserve a couple open slots for the other communities that we serve in Santa Clara County which is required under our regulation.

>> Councilmember Rocha: Those are basically from South County?

>> Yes. We serve eight cities in Santa Clara County.

>> Councilmember Rocha: And what does this fault under, is this the south county rep?

>> No, this would be -- well, it's -- the person whose nomination we're putting forward oversees multiple sites, 2700 employees from around the county.

>> Councilmember Rocha: Okay, thank you. I've been struggling this since I saw this on the agenda as well, and whether it's union or nonunion shop has nothing to do with that. Whether it's a union shop and their track record how they treat employees are things we should be consider in make appointments like this. It sounds like you did

give that thought, or maybe you didn't, but I got the impression that you did, so I'm left with the decision whether or not to support this action. I understand the mayor's position and whether they have a proven record here in San José or not, or whether they're shown to be a good corporate citizen here, I'm still looking at the overall big picture and honestly I'm still stuck on how to handle this issue for myself personally. I too, I think the irony stands clear for us in terms of good employers and how they treat all their employees and you know these are not just well publicized, they're documented issues. And honestly, I -- I'm struggling with this. So I'm going to leave it at that. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Regardless of my view of them as a corporation, they are just a behemoth employing 1.4 million people in the United States, looking at Wikipedia here. And obviously, they provide entry-level opportunities for those who don't have the skill set to work at Cisco systems and be a network protocol engineer. So with that said, I'll be supporting this, and I think there is a variety of folks that could have been here, but I certainly don't want to discourage anyone from volunteering to be on a commission. Thank you.

>> Mayor Reed: I think we need a motion on that. We have a motion to approve. On the motion, all in favor? Opposed? I count one two three four opposed, Kalra, Campos, Pyle and Rocha opposed, motion passes on a 6-4 vote. 2.19, Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I don't know if it's -- I guess it's Hans again. This is just a short question. Looking at the memo, and the actions and the guiding principles that are all listed in here and the work that came from the T&E committee I want to thank staff for putting this together, whoever worked on this I'm sure Kerrie did put some time on it. What other departments helped?

>> Hans Larsen: I'm sorry?

>> Councilmember Rocha: What other departments helped put the staff report together?

>> Hans Larsen: This is very -- so the memo is from the Department of Transportation, Housing, Environmental services and --

>> Councilmember Rocha: OED as well?

>> Hans Larsen: Worked with office of economic development and Planning, Building and Code Enforcement, and of course with Betsy Shotwell and Roxann Miller.

>> Councilmember Rocha: So I was looking at the outcomes and the next steps, and it looked at the end of the day, what I felt like it got to a point where we were going to look at legislation. But we were also going to maybe advocate for some of our guiding principles. I'm looking for a big picture issue here in terms of where are we going with these guiding principles outside of that? Is that the end of our efforts as we move forward or are we going to wait to see how the legislation plays out, what legislation comes out of it and then reassess how we're going to see if we get those guiding principles implemented in any potential legislation. So I may have answered the question I asked myself.

>> Hans Larsen: I think it was pretty close, yes. It is certainly very much a new and uncertain process on how these revenues are going to be spent. So I think the actions that we're recommending here is for the city to be proactive and participate early in the formation of this. So I think there's -- we have some general guiding principles that support city policy goals that are laid out in Green Vision, envision 2040 and other strategies that we have. And so generally we'll want to get our fair share or more than our fair share to meet some of our objectives that we have. So I think we're starting very generally. In terms of capturing the best benefit for the city. But we want to be flexible, given that there's a very kind of uncertain legislative environment. So I think the key thing is what's the legislature going to do in this session. And that will provide a little more clarity as we go forward, and you know staff would recommend once we have more clarity, come back to the council and the various committees to get more feedback on -- as the program goes forward.

>> Councilmember Rocha: And just a curious question as far as the agenda and having it on consent as opposed to a discussion item. Or presentation from staff.

>> Hans Larsen: Well, I think there -- I think a lot of this was kind of vetted pretty well with the T&E committee. We met with the Rules Committee last week. And so I think from you know our purposes of the general guidance, which is pulling together existing council policy direction, we thought this is consistent with things that council's already directed us. We've just pulled them together in a framing document. And once we know more certain about the dollar amounts and the process then we think we can engage the council in a more detailed discussion on the topic.

>> Councilmember Rocha: Thank you. A great report and I understand it a lot better now in terms of your verbal description of how you're going to approach the issue and why you put it on consent so thank you very much. I'll move approval.

>> Mayor Reed: We have a motion to approve. On the motion, all in favor, opposed, none opposed, that's approved. We will -- I guess that concludes the consent calendar because we pulled 2.16 off. We'll take up item 2.16 now, that's the Team San José quarterly performance and incentive measure report. We have a presentation from staff and Team San José.

>> Good afternoon, Mr. Mayor, city council, thank you very much for having us. My name is Michael Mulcahy. I'm the newly installed chair of the board of Team San José. I'm very happy to be there. I was a founding board member of Team San José, took a little bit of a respite, and am back, and very happy to be leading the organization along with very, very capable management. I'm a big proponent of downtown San José. A lifelong supporter and I'm reenergized by all of the things that we're doing at Team San José and all that we can achieve. I'm here today to report to you very good news on the results of our 2011-2012 year. And I think it's good news for San José's hotel business, convention business, and visitor business. For the second consecutive year, Team San José outperformed all of its -- all but a few of its performance measures and we'll talk about that in a few moments. We see the success as a continuing trend for downtown and the T.O.T. and we certainly hope for

San José in general. No doubt we've managed through some very challenging times at Team San José. But we want to assure you today that we stand here on very solid ground. We're focused on business activation. We think about that as heads in beds, butts in seats, and feet on the streets. We're committed to a very healthy city relationship. Full disclosure, honest dialogue. We have a renewed industry presence, you've probably seen some of the positive national press that we've received. But we're also welcomed back into many areas of this country as we travel East. Bill can attest that the reception we get is so much better than it was a few months back. We have strengthened leadership. CEO, COO, CFO board membership. And we have an engaged board of directors. 15 members. Four committees. An annual goal-setting. We know where we're going, we know what we want to accomplish. Our ongoing commitment to you the City of San José, mayor and council, is threefold: Transparency, results, partnership. And none of these are achieved without a hand-in-hand relationship with you and the many departments that we interface with and it starts with our City Manager Deb Figone, and it extends to Ed Shikada, Kim Walesh, and who we like to call our beat cop, Lee Wilcox. The budget office, Jennifer Maguire and Eric DeLamoria, finance, Grace Martinez and Julia Cooper, and of course you, the mayor and council, for your wisdom and trust in our efforts. A special thanks to our stalwart supporter who no doubt is watching us on TV right now, councilmember Pete Constant. But we have a recipe for success as you need to have. We have a focus plan, working hard, we've stayed entrepreneurial, we got a little bit lucky, and we've had good timing. And we want to talk openly about what this means in this particular year that we've just passed. We have an improving economy and that helped drive an increase in year-over-year convention business. Overall corporate business roared back, conference events had stronger attendance and food and beverage outperformed. Renovation and expansion of the convention center if you recall was delayed. By eight months. Which created lots of dates and lots of time on the calendar. Our budget had projected this, of 30% decline in overall revenue down to 12.1 million. Now, the challenge we saw was, we have all these dates. So those are opportunities, right? But our book of business is about an 18 to 36-month lead time. So our team had to quickly change course, to find short-term business to fill a very open dance card. The sales team killed it. We had huge revenue growth over plan and it came with a higher-than-normal cost, it's a little bit costlier to do that short term business. But the bottom line is that in a uniquely challenging year we blew past our planned revenue by over 60%. Now we outperformed our measures in many ways. And we're very proud of that. We want to tell you more specifically how we did on each of the measures. We've exceeded seven of nine performance measures. We'll address the two we

missed. Revenue grew \$7.24 million over the adopted budget, to \$19.4 million in total revenue. Our gross operating profit, our budget goal was \$4.6 million loss and again, remember, that's taken care of or supported by the T.O.T. not the General Fund. But we actually ended up with a gross operating profit of a negative \$3.4 million. That \$1.2 million swing is a very, very favorable balance that we hope to continue. Customer service continues to be strong. We maintain a rating of 98%. And 6.1 million went into fund 536, \$1 million more than we had projected in the budget. So where did we miss? Two measures. We continue to be vexed by the theater performances and occupied dates on our report card. We refer to this as theater activation. One of the reasons is, the San José civic and the Montgomery theater renovations which were Tied together in a few different areas were delayed. Null 2 the delay of the CPA fire system upgrade continues to impact our ability to book the venue. Our resident arts partners, the opera the ballet and the symphony all saw cuts to their performance schedules. Here's what we're doing about it. We've hired a new sales and marketing director dedicated solely to the theaters, to drive more dates, more occupied dates, more performance dates at all theaters. Performances and occupied days will now be reported by what Team San José is generating, as opposed to what is contributed or not, by the resident arts partners so we can really understand the new business that we're driving as an organization. The San José civic which was largely inactive is now fully renovated and we celebrate its relaunch this coming fall. Our contract with Niederlander concerts has been reconstituted as you all very well know and they continue to increase the booking pace. We have shows Fiona Apple. Chicago, Crosby, Stills and Nash are upcoming. Butts in seats. It is not just incremental revenue. We truly believe the arts and concerts business in San José not only reflects positively the reputation of our city, but it also contributes in a very, very significant way to the economic vitality of both our downtown and the greater draw that San José is and will continue to become. Bill Sherry has been standing at my right, and he is here today as our CEO. Dave Costain is sitting back behind me with several other members of our senior team. I would also like to recognize Robert Thomas, one of our board members from the Marriott he hotel, John Southwell from the Hilton and Hyatt and as well, Bill Fairweather from the theater and stage hands union. So we're here to answer questions. But before we do that, we want to put open just a very short show for you. We have a great promotional video that we've put together for the civic auditorium. We'd really like you to enjoy that. ∂∂ ∂∂ ∂∂

>> Hi, I'm Greg denham, welcome to the San José Civic. What a great place. Some of the legends that have graced this stage since 1936 include the Duke Ellington orchestra, (inaudible) Buddy Holly, Chuck Berry, Barbra Streisand, the Beach Boys, the Rolling Stones, Bob Dylan, the Who, AC-DC, Frank Sinatra, the Grateful Dead, Santana, Motley Crue, the Cure, Kelly Clarkson, Interpol. ∂∂ ∂∂ ∂∂ ∂∂ ∂∂

>> Thank you. And did I mention that the convention center is under construction? We're here to answer any questions.

>> Mayor Reed: Let see if there are any questions. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. Thanks Michael for that really uplifting presentation. And thank you, Bill, for all your great work and for everybody on the team, Dave and everyone. I wanted to certainly pass along 1.1 million thank yous for the increase in T.O.T. to the fund 536 this year. I think that's certainly great news. I know that we had expectations before for a drop in revenues. And I think Michael said 30%, somewhere else in the report said 20% was what the previous, recognizing we're now under construction, that's what the projection roughly a 20 to 30% drop, or the current year, based on the challenges of construction, or do we expect the number to be deeper or higher than that?

>> Bill Sherry: Yes, Councilmember Liccardo, Bill Sherry CEO of Team San José. Yes roughly it is. The challenge was in FY 12 we had reduced revenues by -- I think it was 20%. In anticipation of the construction which obviously did not occur. So the challenge to the team was, we have to fill that space. That was only part of the challenge. The other part of the challenge is in FY 13, we did not anticipate construction. And we obviously are under construction. So we now have roughly 41 events that are going to be impacted. So we recognize that we're going to lose some business. And that's factored into the budget. Also, in order to keep events, we're going to have to mitigate to try to offset the construction impacts. Which means our expenses will go up. So it's going to be a challenging year. But nonetheless I think we're going to do well. The only performance measurement in the coming year that I'm a bit concerned about, I think all of the economic measures we can achieve. We have high expectations on customer service in the budget. I think the Office of Economic Development wanted to keep the

pressure on us. And so they have. And we will do everything we can to achieve that. But that's the one that I'm concerned about. But other than that I think we're going to do fine. But we have, to answer your specific question, factored in a reduction in this coming year's budget.

>> Councilmember Liccardo: Thanks Bill. And I appreciate that noise and dust will create complaints. I want to pass along how remarkable it's been. We've actually had very few plains from residents nearby about the pile driving and everything else. Everything seems to be well managed with regard to communication and everything with the residents so I appreciate that. I wanted to ask a quick question about the civic. It looks fantastic on the video, I think it looks great at night with the lights. It's a wonderful venue. I know there's a challenge around air conditioning, or lack thereof. Is there likely to have something coming to council, say in the next few months, around how we might finance a capital improvement there, or is there any room on ticket prices? Is there anything out there that we can look toward if we were to try to get something in the civic before the next summer season?

>> Bill Sherry: Councilmember Liccardo, you're exactly right. Just for everyone's information, the good news, bad news. The good news is, we're booking the venue. The bad news is, we're booking it during the summer, and that facility doesn't have air conditioning. We have offset that with bringing in temporary air. But that's very expensive. \$7,000 a day. Which more than offsets the revenue that we receive on the facility. So it is a challenge. Fund 536 is the fund that will care, not only for operating expenses, but also capital expenses of the center and the theaters. And right now, fund 536, even though we're contributing more than budget, is very stressed in terms of trying to get more money out of that. So I don't have an answer for you. Hopefully, we can address this issue, and have an answer and have it implemented by next summer. But currently right now I don't have an answer for you.

>> Councilmember Liccardo: Understood. I recognize that you guys are operating under very tight constraints. So anyway, thank you. I continue to be really impressed by the rejuvenation of all the facilities, and it's been a great help to the downtown during tough times. So thank you.

>> Mayor Reed: Vice Mayor.

>> Vice Mayor Nguyen: Thank you. I actually had a question about the air conditioning thing, too, but it seems like there's not much we can do right now, we're just waiting to see what you guys can come up with in terms of your creativity. But I just want to thank you, Michael Mulcahy, for taking on the helm in the role of the new chairman and thank the board and of course Bill Sherry for all the wonderful work you've done. We didn't have a chance to hear this at the Public Safety, Finance and Strategic Support committee, but I was looking forward to hearing it because it really, truly has been a great transformation than what we have seen in previous years, so congratulations and keep up the good work.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'm so pleased at what's happened, and what this is going to do for tourism is amazing. I wondered at this point, do you have benchmarks for the tourism that has been created or any kind of stats at this point?

>> Bill Sherry: Yes, councilmember. As a matter of fact I'll be coming before the CED committee I believe it's in November with the economic performance. Obviously when we invested \$120 million, we did so expecting economic results from that investment. I can tell you that we are currently not only on track to achieve those economic benefits, but we're actually tracking two years ahead of schedule. We had figured that it would be a seven-year ramp up before the facility was fully occupied and fully leased and really achieving all the economic results. We're now forecasting it's going to be five years and I think we can even beat on that.

>> Councilmember Pyle: And I wondered too in reference to the air conditioning, we have a few months to work on that since fall is approaching. So I wondered if companies who do air conditioning might want to participate, if they knew they were going to get some very healthy wonderful advertising out of all of their efforts? Is that a possibility?

>> Bill Sherry: Well we certainly for those listening we will certainly grain bartering. One of the things that we did is that in order to really accelerate the activation of the civic we kind of low balled the rent and the fees that are charged to the tenants in order to really try to get that activated quickly. So on a sold-out event, we would receive roughly about \$3,000 in rental and about \$2,000 in concession revenue. So our intake would be \$5,000 a day. But when we have to throw that temporary air in, it's \$7,000 a day. So obviously that doesn't make sense. The total cost to do the project, we don't have detailed estimates. But is in the order of magnitude of about \$1.5 million. And so that's really where the stress comes in. But if anybody's got ideas or air conditioning companies we're certainly entertaining their thoughts.

>> Councilmember Pyle: I don't know about the heater system and I don't know if you have a situation where in my home for example if you want air you go to that section. If you go to heat you -- but it's the same machine so I don't know if that's something that can be done in this case or not.

>> Bill Sherry: The facility does have heating. It has boilers. And during the renovation, that system was upgraded and renovated. So we're good on heat. It's just during those summer months, and it's totally separate air. While we can still use the same duct system we have to inject a new HVAC system for the mechanical system. So that's --

>> Councilmember Pyle: That's the rub?

>> Bill Sherry: That's the rub.

>> Councilmember Pyle: Thank you for your work, I really appreciate it.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Thanks for the trip down memory lane at the civic. I didn't see the holiday pageant I was in back in the 1960s, but for those watching that remember that, there used to be a

wonderful holiday pageant at the civic. But anyway, it's beautiful, wonderful to see it restored. Thank you so much for the work both of you have done on this and for exceeding expectations in delivering results. In terms of the air conditioning are there companies out there that may have some new twist on air conditioning, is there a new technology that may be waiting in the wings, no pun intended, we could possibly take advantage of in terms of a pilot project? That's the only thing I could think of right now.

>> Bill Sherry: The answer is yes. But that also drives the cost. I think the newer, more efficient systems are more on the capital side or the outlay side, but then they make up the cost in the operation. So it's really -- the challenge before us, the staff, is to try to find that \$1.5 million.

>> Councilmember Herrera: I guess I was thinking there might be grants or some other funding available if there were goals that achieved our Green Vision goals.

>> Bill Sherry: We can certainly look into it.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I just wanted to say thank you and impressive. Looking at these numbers is fantastic, and I think if you had told a lot of folks this is where you're going to be at so quickly, we might not have believed you. But at the end of the day, this is impressive as heck. So thank you. And to everyone else who is working on this.

>> Mayor Reed: Just want to thank Michael Mulcahy for taking over as the new board chair and to congratulate Bill Sherry, Chuck Toeniskoetter and the rest of the Team San José board including Michael for all the work that's been done with the hoteliers and the staff and everybody to grow their revenues and increase that fund 536 number because not long going that number was shrinking and shrinking rapidly. And so we have a lot of city staff that worked on it. You mentioned councilmember Constant who has been the board liaison, and Lee Wilcox, we've got right here, and Eric Bilimoria from our budget office, a big team effort to turn this around. And I'm really

pleased to see that. It is not that we're completely free of worry, because we do have this gigantic construction project underway while we're still trying to run the facility. I know that will be a challenge, but we've got a good team in place to do that. So my congratulations on that and I'm looking forward to setting the bar even higher on all your performance measures. That's what happens, right? Just get better and better and better. So I think we will do that. Any other questions or comments from the council? I have one request from the public to speak I'll take that now, Mr. Wall.

>> First of all the lion's share of this success is to go to the council. Not many people remember when Team San José, who was not managed very well or observed very well under the office of the City Manager basically collapsed. If it wasn't for the rock-hard leadership of Councilmember Constant and the rest of, well, not some of the newer folks but the rest of the council, sitting council, you're the ones that are responsible for this. And you should also be thanked since most of the time you do not get thanked. Also, I don't think that the renovations are the fault of Team San José. I think this is outside the scope of their abilities. And I don't think even though that they were exemplary in accepting blame for this item, it was not under their real control. So I don't think they're at fault at that at all. Upon theater performances I would like to hold out the only councilmember I know that has made personal donations out of his own pocket, Councilmember Liccardo. In reference to city lights theater. You made a personal donation along with his former honor, councilmember Fiscalini. I think this city is long overdue with having a municipally funded recording studio. This might be a great facility with Team San José with all their different bands and whatnot to create a venue for these musicians to record with a certain percentage to be owned by the city for future revenue from selling it off the cloud, so to speak. I would like to thank the Team San José folks for the great job that they've done, and in reference to the February 27th Community and Economic Development meeting, please make certain that you adequately fund for new air conditioning, and a new kitchen within the convention without delay. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. On the motion, all in favor? Opposed, none opposed, motion is approved. Item 3.1, would be our next item. City Manager's report.

>> Debra Figone: Thank you very much, Mr. Mayor, members of the council. I have one good news report and that is that the library has received a \$250,000 grant from the David and Lucille Packard foundation for the smart start San José program which as you know is the City's early-care and education initiative. Most of the Packard grant will focus on bridge funding and sustainability planning for the family childcare program that is part of smart start. For the past 12 years this program has offered a ten month business startup and retention program for low to moderate income residents to support them in opening and retaining a licensed home based childcare business. The family childcare training program was previously funded with CDBG funds. These funds were eliminated in the currently fiscal year budget and so the Packard grant is very valuable at this point in time as we make the move to find stable sources for this effort. We'll have a fuller report in the City Manager's weekly. But these funds will go towards a retention services component to the 11-12 graduates of the program. We will bring on a consultant to help us with a long range plan and there will be some training moneys available for early educators and childcare professionals. In closing I just wanted to thank Kim Walesh in the Office of Economic Development for her role in connecting the Packard foundation with the library, to our library staff, led by Carey bloom and Don Perry for submitting a very strong application in a very, very short deadline and of course to the Packard foundation for their support of San José's early care and education program. Thank you all for a great job.

>> Mayor Reed: Our next item is 3.3, it's response to Santa Clara County civil grand jury report entitled an analysis of pension and other post-employment benefits.

>> Debra Figone: Mayor I'll just make a few comments, and then we're here for questions. As you know, cities are periodically audited by the grand jury, and this particular grand jury report covered all cities in Santa Clara County. So from the standpoint of the City of San José's response, which what is before you is our recommended response from the council to the grand jury. So from San José's perspective, through measure B and the second tier of retirement benefits for Federated employees, the recommendations are in the process of being implemented or have been implemented. And as with outside audits and reviews, we do appreciate the third party look at our retirement costs, and the confirmation that our costs are high, as we know, and that we're doing something about these costs. And we also appreciate the recognition of the importance of doing projections which

of course the City of San José does. So that concludes our comments. If you have any questions about our recommended response, we're here to answer them.

>> Mayor Reed: I'd just like to make note of one section in this report that the response doesn't directly comment on because it's not in a finding. But the grand jury did have a section called why such variance with estimated future benefit costs which I think is interesting reading in light of some of the controversy we've had about projections. But there is one paragraph I want to make sure is in the record and I'm going to read that, page 24 just above the conclusions. And the grand jury says, the \$650 million per-year cost estimate is not a worst-case number. Pension experts the grand jury interviewed stated that other actuarial assumption changes within reason and easily justified would result in ARC costs, that's annual required contribution costs, even higher than \$650 million per year. Grand jury understands that exploring these actuarial assumptions is justified. To help bring attention to the severity of the benefits crisis and abate the trend of pushing financial problems to future generations of taxpayers. I think that's a useful thing to keep in mind. And in one other thing to add is that as we were preparing for this meeting the governor did release a statement that the governor and the legislative leadership have arrived at an agreement on a series of pension reform matters, we don't have the legislation yet, it's supposed to be out by 5:00 today so we'll know specifically what they're dealing with but it certainly does address some of the items referenced in the grand jury report and some of the previous recommendations from the grand jury are being covered in that legislation. My earlier review very brief review of it was, it's a significant accomplishment for the governor. And as the governor said in his press conference earlier today, but more work needs to be done but I think it's a positive step. And good news coming out of California legislature is always welcome. I have no requests from the public to speak on this. We have a motion to approve the recommendations transmitted over to the grand jury. On the motion, all in favor? Opposed? None opposed, that is approved. Item 3.4. Special operations premium pay pilot program for San José firefighters, IAFF local 230.

>> Debra Figone: Again staff is here to respond to questions. This item is recommending approval of an agreement with San José firefighters to provide premium pay related to hit and USAR units, essentially that premium pay is currently in place. But what we're bringing before you is the recommendation to add two engine companies, negligence companies 5 and 25 that are used as backup companies for this service. This issue was

raised as part of our discussion with local 230 on the squad pilot program which has already implemented and again we're here to respond to questions.

>> Mayor Reed: I have a request to speak, David Wall.

>> This plan is an admonition that you have decided to quit from your sinful ways and to start realizing how valuable our firefighters are. With reference to your prior conduct, it was quite sinful in nature. You are first admitting now that this type of operation is abnormally dangerous and hazardous activities. Well, firefighters and police officers do that in the course and scope of their normal days but let's focus on this specific issue. This is even more abnormally dangerous and hazardous activities. And yet this act which I firmly support is only a kiss through a screen door because it fails to address what is really needed is to make certain that there are payments made to their retirements and to disability retirements, with no restrictions, as has been done with measure B. I make this statement because of the fact the instant of hesitation that a firefighter will take if I do this type of activity, will I jeopardize the life of my family at home? And you have put restrictions upon our firefighters to think like this now. Normally they would never think like this. But because of your sinful activities, and conduct, you now have inculcated this institutionalized hesitation that may result in severe and permanent injury and/or death. So this step albeit welcomed as a first step on the path to administrative salvation, is still lacking because you failed to address retirement and disability retirement issues that arise from this type of activity. Thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I appreciate the City Manager's clarification because I just wanted to understand the context. I recognize that this is part of the negotiation so we could move forward with was I think an important pilot, the squad pilot program that I think will make our department much more efficient and effective. But we already have premium pays for existing hit and USAR companies is that right?

>> Debra Figone: Yes, it is and the chief can expand upon why now engines 5 and 25.

>> Councilmember Liccardo: Thanks and chief I appreciate you coming down. I was hoping you could address both that and do we have historical need of backup USAR and hit squads, is that what's going on here?

>> Mayor, members of the council, Councilmember Liccardo, that term probably doesn't best describe the purpose of this program. Both the hit team and the USAR team have, over the years, developed themselves as such that they can handle the most difficult and complex types of emergencies that they may respond to, and they've in fact received the highest level of training that's possible through the California emergency management association. Part of that, though, or in terms and total of being able to be a type 1 team both in terms of USAR and haz-mat is that you have to have the right equipment, the right apparatus and the right number of people. And in both cases on-duty personnel that are necessary to perform even moderate to the more complex types of incidents, hazardous materials incidents and USAR rescues and responses takes a minimum of seven people to perform and fill in on all the positions that are necessary by the standards in the regulations to perform these types of rest accuse and emergencies. And so in terms of the level of training, and responsibility and skill level, that our members have to have and not on a part-time basis but on an all the time basis it's important that all our folks that would be involved in these types of emergencies have that training at the same level all the time.

>> Councilmember Liccardo: Okay, so what you're saying is company 5 and 25 --

>> Are part of the -- they are parts of those teams, they have been training, we have increased their training and responsibility. We keep them to the same requirements in terms of regional training that they have to attend as well as the certifications that they have to have, and so yes, they are members of the team.

>> Councilmember Liccardo: Got it, thank you. Motion to approve.

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

>> Councilmember Pyle: Thank you. I have a question. This was brought about through a grant.

>> Well --

>> Councilmember Pyle: \$107,000 total.

>> Councilmember Pyle, our -- both of our teams have been -- the benefits actually, our community has been the benefit of several grants that have allowed us to improve and enhance the level of our team, both in terms of purchasing equipment, receiving training and other additional type opportunities. This particular program, though, or what we're doing today is not a grant-related. It's assisted through some other activities that we're doing on the department but it's not grant-related.

>> Councilmember Pyle: Okay, so I read somewhere that in June 2013, there was an expiration of something -- maybe I --

>> That marks the end of our current memorandum of agreement.

>> Councilmember Pyle: The special.

>> Uh-huh.

>> Councilmember Pyle: So what happens after that?

>> It is my hope and intention that we would continue the program as we will with the squad program, squad's also a pilot program but it's proving to be the things that we had hoped it would be and it's providing a very good level of service to our community. Some improvements will be made over the course of time as we likely will do with our haz-mat team and our USAR team. And I might mention one of the things that's not clear in terms of the discussion and the thought process around the special operations teams is the added ability for us to provide swift water rescue that we haven't had in the past. And the training goes along with that and the number of personnel

that are needed. So all of these things are I think I believe for our community our size our hazards and type of activity that we have I believe those are basic services that this department should provide.

>> Councilmember Pyle: So once those services are in place and once the training has happened is it a situation where incoming firefighters can be trained by their fellow firefighters to accomplish those ends?

>> We meet our current training starts through a variety of ways, some of the benefit of this team, and the support that's necessary for the most complex of the types of calls come from the regional training and the relationship that our folks have with neighboring area fire departments. And so if we had a very large call, let's say we had an incident here about a year ago, where a diesel tank was stuck. The float was stuck, in a diesel tank on top of one of our high rises here. And it's pumped diesel fuel out the overflow vent onto Almaden boulevard.

>> Councilmember Pyle: Not good.

>> Yeah, for hours. That created all kinds of complexities for us. We used our entire team and we called in some assistance from other teams. And the relationship that they have through the training that they do on a regional basis, as well as the standardization of some of the policies and procedures that we have, creates the ability for those folks to work in a very confident way with each other. So some of the regional training is done on a quarterly basis. We do some internally. But some of it we have to go to other places like we've got some training in the next couple of weeks for our team that we have to go to other places to have that done, here locally.

>> Councilmember Pyle: Thank you, I appreciate that in-depth explanation. Thank you.

>> Mayor Reed: I think that's it. Is there a motion on this one? There is a motion. We have the motion on the floor. On the motion, all in favor, opposed -- one opposed that would be Oliverio. Okay.

>> Thank you.

>> Mayor Reed: Motion carries.

>> Mayor Reed: Our next item is 3.5, approval of conduit financing for rocketship seven Alma academy elementary school TEFRA hearing. This is a statutory required hearing, people can speak on this even though there are no city dollars. I do have some requests to speak, I don't believe there is a presentation to kick this off. I do have some requests to speak. Vice Mayor Nguyen would you like to speak first?

>> Vice Mayor Nguyen: Sure, I just wanted to say that every chance I get to speak about Rocketship, I do. And I take that opportunity. This has a charter school that has really a great model, and it is being recognized here at the local level, the state level and national level for their unique educational approaches to helping students from low-income families, particularly in low-income neighborhoods, to achieve academically and socially and anything that you can think of, to create a model child. And so I just -- it just makes me feel really happy and delighted to have rocketship again, you know, started in our district. This is the second school in council district 7 and I'm glad that they're here and they're here to stay and I hope that they will continue to build more rocketships throughout our city. So I believe we have some speakers but I would love to make a motion after the speakers speak, thank you.

>> Mayor Reed: Okay, let me just restate what it is I referred to a TEFRA hearing. That is the tax equity and fiscal responsibility act hearing. It's federal law. For the issuance of \$12 million of tax exempt 501(c)3 revenue bonds by the California Municipal Finance Authority, so we're not issuing the bonds, but we're holding the hearing. I do have some requests from the public to speak, we'll take that now. Aurelia Sanchez and David Wall.

>> Hello. I'd first like to start by thanking the late father Matteo and John Daynor for bringing rocketship to San José. Having said that I also would like to remind the council of a few things that concern me. Foundations and corporations that get involved in education demand the public schools and teachers be held accountable for performances. If their plans fail, no sanctions are levied against them. Markets have winners and losers. I'd like to remind the council, that launch pad is a corporation. Schools are not a business. They are a public good. Before relinquishing control of public policy to private interest, public officials should understand the full implication of

private strategies. Examples, zoning laws should be waived only in a few cases. When you waive the zoning laws for rocketship they are going to be traffic concerns and other of these concerns that are going to have to be dealt later when you're not all around no matter what. Park land given up will never be given back and that's the situation where we have with one site of the rocketship. Schools will not improve if we continue to focus only on reading and math and test scores. Not everything that matters can be quantified. Our schools will not improve if we continue to close neighborhood schools in the name of reform and that's one of the reasons why I'm here. You all know that you know that rocketship is competing with the public schools and sometimes I don't think they work hand in hand. You know schools are not -- children are not customers to be stolen away from one school to another. So we are having a cluster of rocketships in District 3. Unfortunately our councilmember, Sam Liccardo is not able to speak on behalf of the residents. So you know, I think rocketship was good but I want the council to remember: It is a corporation. And publicly schools shouldn't be treated like that.

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

>> Thank you.

>> Mayor Reed: David Wall.

>> I would like to thoroughly thank and hold up for public accolade the previous speaker, for what she has said is very on point with reference to the funding for public schools and the intrusion of corporate education entities for their own corporate behest at tax free status. This tax free status cuts as a multi-edge sword. It cuts public funding for schools because of lack of students. It cuts confidence within the school system. It provides possible discriminatory aspects on who actually gets to participate in these rocketship type schools. With reference to the eloquent speaker, previous speaker, the issue of zoning and parks should not be underestimated. These rocketship schools look very good. But they could be nothing more than a virus that acts to destroy education than actually enhancing it by providing opportunities for a select few. Again, in closing, I would like to thank the previous speaker, and I think she needs to run for public office.

>> Mayor Reed: That concludes the public testimony. I'd like to make a couple of comments before we get a motion. I'll turn to Vice Mayor for that. One of the things we've tried to do with the San José 2020 plan, SJ 2020 is to close the achievement gap. Unfortunately, we have probably 40,000 kids in our public schools that aren't performing at grade level. And we collectively as a community have decided that we're not going to accept the fact that 60% of our Latinos and 60% of our African American kids are not performing at grade level. So we launched the SJ 2020 effort. Throughout that effort I've always been wanting to know what works. Let's figure out what works, and then let's figure out how to make it possible for every child in every classroom to benefit from what works. There aren't many things that at this point that I can point to that I can say with confidence works. But I do know that some of our charter schools which are public schools, that some of our charter schools have figured out how to close the achievement gap. And we've seen that with rocketship and we've seen that with some of the other charters. And they are taking kids from very difficult circumstances and doing an excellent job with them. It's not to say that every charter school is perfect or every charter school is good. But we've had a great deal of success. Where we can help charter schools we're helping our kids because these are our children that go to these schools. I'm supportive of this particular application. We've had quite a few hearings on this site and although we are not doing any zoning discussions, this is just a financing step for the other people's money to be used to help build the school in our city, I think it's important for us to support it. And approve the action which is one of the items that we need to do by resolution. Vice Mayor.

>> Vice Mayor Nguyen: Thank you, mayor. I'd like to move for approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve the actions recommended by staff. The two actions. On the motion, all in favor? Opposed? None opposed, that's approved. Next item is 3.6 an ordinance, I'm sorry that was approved but we had Councilmember Constant absent and Councilmember Liccardo was abstaining. So it was a 9-0-1-1 vote. Is that the way City Clerk counts it? Okay. Item 3.6 an ordinance regarding the role of the Federated and Police and Fire retirement boards in personnel matters.

>> Debra Figone: Thank you, Mr. Mayor and members of the council. Rick and I can play some tag team on this ordinance. This is an ordinance which actually I'm recommending you to approve to allow me and my designees to continue to work collaboratively with our retirement boards on matters that are confidential, confidential personnel matters associated with the important work ahead of us of hiring a retirement director and a chief investment officer. And then once somebody is on board, to give me the ability to, and the board the ability, to go into a closed session in order to discuss confidential personnel matters. So the ordinance before you works from our perspective under the current structure that we have in place in San José, which under the charter has the City Manager as the appointing authority for department heads, subject to council confirmation. And yet we are working in an environment where we have two boards who have very important responsibilities and fiduciary responsibilities in the management of our plans. And so clearly they have a stake in who we bring on board. And they have an interest in the quality of that staff. And they have an important role in the management of our plans. Currently they do not have the ability to go into closed session on these matters because they are not the appointing authority. And so until something changes, in the governance structure and as you know you have been on a path for a while to improve the governance structure of those plans. I think those changes have really paid off with bringing on more independent members. I think that the -- we all know that the boards would like to have complete responsibility for the staff some day. That will require a charter change. And so that is too longer-term prospect. In the meantime, to really meet the needs of the city and the boards, I do recommend that you approve this ordinance. And at the same time, I do think it is important and clearly I'd want council direction in this regard, as we move forward. But to seriously look at what further changes to the governance structure might be in the best interests of the city, and if necessary, go forward with the charter change if amendments can be made without a charter change, and those would be clear at that point in time. So for the present time, the recommendation is to approve the recommended ordinance.

>> Motion to approve.

>> Mayor Reed: We have a motion to approve. I want the City Attorney to have a chance to explain why we are doing this by an ordinance. I know it seems an overly complicated way of doing something simple but there's reason for it. City Attorney.

>> City Attorney Doyle: Thank you, mayor. As the City Manager indicated she is the appointing authority under the city charter. And we wanted to find a way to get the retirement boards engaged in the appointing process. And not just the appointing process but evaluation, discipline and termination if necessary process for the appointee. My view is, we need a statutory basis to have that and that's the purpose of the ordinance. The -- I did want to note that there are some minor changes to the draft ordinance that was in your packet. I wanted to read those into the record. And I'll just read them outright. The first is on page 1. It's the third recital where it says whereas the City Manager believes it is appropriate to seek the advice and consent of the board of administration for the hiring, evaluation, discipline, termination of the director of retirement services and the assistant director of retirement services. So there's some minor language change there. And then similarly in sections on page 2, 3.28115, and we have added the -- and in the subsequent sections, 3.36325, we've added discipline to appointment evaluation, termination so now it reads appointment evaluation discipline or termination, it's to make sure the boards are engaged in the entire process. And with that I think we are just here to answer questions.

>> Mayor Reed: We have a motion on the floor to approve this. I had a question for the City Manager, I guess a comment as well as a question. This doesn't answer all the questions people might have about when it's prompt to have an executive session. This is the framework to begin it and ultimately the City Manager will need to work with our retirement boards and figure exactly how we implement it. There's certainly a variety of circumstances in which this might be appropriate but this is not an attempt to define everything. It's just to create the statutory basis to do it.

>> City Attorney Doyle: That's correct. And I would note that in the memo, the staff memo it mentions that the board will only meet with the City Manager present. I think that's sort of an overstatement that doesn't encompass all the situations, it may well be that the board would have to meet individually with themselves to caucus to talk about the issues. But the important point is the City Manager will always be present when there is a candidate or an employee in the room.

>> Debra Figone: That's correct. And we to the mayor's point will certainly follow up with the boards and establish some protocol.

>> Mayor Reed: And I would just like to add that there has been a lot of work that has been going on between the City Manager's office and our retirement boards and their personnel subcommittee and because we are in the process of trying to fill two key positions there. And that work has -- is well underway, and is I think going well and will continue. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. So just to be clear, Deb so this would mean all department issues not just any issues with director or assistant director would be able to be discussed in a closed session with the board?

>> Debra Figone: You know, that's right now I don't anticipate other non-personnel issues beyond the director and the assistant director. You know, we have to keep in mind that we have a civil service workforce in the retirement department. They are -- they have rights and we have a responsibility as the employer, you know, ultimately as the City Manager to ensure those rights are upheld. And so this is really more around the performance of the director and by extension, the assistant director. Now, to the degree the employees are contributing to a performance issue, that the director is responsible for, I would imagine that could surface in the closed session discussion. But I don't want to convey here now that, you know, every personnel matter is going to go into those closed sessions. That is not the case.

>> Councilmember Campos: So Rick, does this, in terms of liability, because ultimately the manager is responsible for her hires. And we as a council are responsible for our employees. And this is a volunteer board. Is there any liability if someone disputes some of the outcomes that the board comes up with? Or recommendations to the manager?

>> City Attorney Doyle: No, because at the end of the day, the manager makes the call. And so specifically if there's a termination, there's a wrongful termination suit that follows it was the City Manager's call. The board may have provided advice and consent but it is again the buck stops with the City Manager.

>> Councilmember Campos: Okay.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Did read this memo last night and glanced through it again briefly and maybe I missed it or maybe in your comments it was mentioned. But the -- any discussion with the retirement boards on this document exactly?

>> Debra Figone: The whole concept of a way to get into closed session with them has been pretty well vetted with their personnel committee. And our attorney has spoken extensively with their attorney. In fact that has led to some of the comments today in terms of the tweaking that Rick has recommended.

>> City Attorney Doyle: And councilmember, if I can add to it, excuse me. The -- this isn't the end of it. We will be forwarding the ordinance to the retirement boards. I expect that they will want to be engaged, and any comments they have back, we'll relay back to you. To the entire council.

>> Councilmember Rocha: That's where I was going with this, so I'm good. Thank you.

>> Debra Figone: And in that regard, councilmember, because that is a good question. The sense of urgency here, in fact why we walked it on to Rules in order to have it here today, is we're in the middle of a recruitment right now. And so there's a great sense of urgency to have the ability to engage the boards on that hiring process.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: And there's been additional discussion with the chair of the joint personnel committee who has talked to City Manager, my office and the City Attorney, so there has been a lot of conversation on it. But we're kind of compressing the time period due to the fact that we need to make the decisions and the boards are very interested about the decisions we make around the key personnel things so we're trying to get this in place promptly. We have a motion to approve. I have no requests to speak. On the motion, all in favor? Opposed? None opposed, that's approved. Do we have a date on the second reading of that? I know that --

>> City Attorney Doyle: It will be the September 11th. Since we don't have a meeting next week.

>> Mayor Reed: Okay, but in the meantime the manager will carry on as she has been doing working with the boards on these issues. Item 4.1 response to Santa Clara County civil grand jury report entitled veterans memorial restoration preserving history and restoring pride.

>> Debra Figone: Again, a response to the grand jury, and staff is here to answer any questions.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, Mayor. First of all, I would like to thank Kerry Adams Hafner and Barbara Goldstein, the Office of Cultural Affairs, for their response and to address the maintenance concern at the veterans memorial. One of the grand jury findings is that there needed to be more communication with the public regarding the status of the restoration project and I would offer that one of the ways we're also getting the word out is through the recently formed ad hoc committee on the San José Silicon Valley veterans memorial. And I guess I would just say that more communications probably good and I think that you detailed on there that you are keeping us informed and so I think it's great to have this connection with the veterans community because they are concerned, very concerned, about the status of the memorial. As a veteran I'm proud to be a part of that committee and support its work and grateful for the emphasis that the City's administration has placed on restoring the memorial. Again, I want to thank Barbara Goldstein for their work and the creative work in partnering

with Adobe to continue to provide security video monitoring of the site. And I did want to ask a couple of questions. So Barbara or Kerry, if you could come down.

>> Good afternoon, councilmembers, Kerrie Adams Hafner, director of culturally affairs, I'm here with Barbara Goldstein, public art director, and we're going to tag-team with any responses to your questions this afternoon.

>> Councilmember Herrera: Great. I wanted to know -- I think it's great we're working with Adobe, and they are monitoring with their security video. Are they actually providing us input, or we have someone reviewing those tapes, or how is that working? How does the city interface with that video monitoring?

>> Barbara Goldstein. Councilmember, when we hear of problems with the memorial, we now have a direct line to Adobe. And we've been able to go and review the tapes. They keep all of the tapes. They're spectacularly clear, I'd say that. And they've been very helpful, and we actually will be having a meeting with them, and the parks department, to discuss the protocols that we'll use in keeping track of things that happen.

>> Councilmember Herrera: So they are recording, they're not sitting there watching the video, they don't have someone visually looking at it but they are recording and then we can go and review it later.

>> Exactly.

>> Councilmember Herrera: If there's an incident and discover what's on that video?

>> Yes.

>> Councilmember Herrera: Great. At the most recent ad hoc committee there was a discussion about directional signage to direct people to the memorial. It's often difficult, I think there's some perception it's difficult to find the memorial. I think it's a -- I think this is a great idea and I wanted to get your feedback on that.

>> We think it's a great idea too and there are two different kinds of signs that we're hoping to be able to put up for the vets memorial. One is signage that's street signage and the other is to create a typical park sign at the site. And so we will be working with both parks and the Department of Transportation to see how we can do that. I think that the vet that suggested this is hoping that there will be some kind of sign on the highway. And we'll have to investigate how to do that. Because I'm not quite sure that's not really within the City's control.

>> Councilmember Herrera: And the other thing I've heard from some veterans who have difficulty with mobility and some disabled vets that it's just hard to get to the site. I wondered if you had any comment on that.

>> There is a parking problem there, although you can park briefly in front of it. The -- one of the things we're looking at is the potential for putting additional benches on the site.

>> Councilmember Herrera: I think that would be a great idea.

>> Yeah.

>> Councilmember Herrera: Okay well I'm very excited about getting these -- that we've had them restored and we have a way to keep it in good shape, making sure we aren't going to have some of the problems we've had in the past. I want to make a motion but I just wanted to mention one more thing. We have Veterans Day coming up and I don't think it's too early to mention that we have Veterans Day on November 11th and there will be a parade. As always the traditional on Veterans Day, it's the 11th hour on the 11th day of the 11th month. And that's in honor of the 1918 armistice ending World War I. So mark your calendars, 11:00 o'clock on Sunday, the 11th, for veterans day parade. And with that I'd like to move approval of the report to direct staff to explore options to approve this. And I would like to also add, to explore options for directional signage for the memorial.

>> Councilmember Liccardo: Second.

>> Mayor Reed: All right, we have a motion, Councilmember Pyle.

>> Thank you. I just wanted to thank you so much for the attention that you did in reference to the details. The original piece was built in 1990, I think it was.

>> '97.

>> Councilmember Pyle: The technology then was significantly different than it is now, and so were the safety issues, as well.

>> Yes.

>> Councilmember Pyle: So what my concern is, and by the way you saved a lot of money when you found a different material to do that with. Is the future safety of the whole thing. And I just wanted to talk a little bit about the issues unique to this location. Which you didn't pick. It was chosen for you. There are not a lot of people around at night, but then there's some people that along the Guadalupe river park that are a problem. And this apparently happened after music in the park.

>> One of the breakages happened after music in the park.

>> Councilmember Pyle: Very interesting. And so with Adobe, the use of their video, and cutting -- who cut back the trees to improve the site? Was that done by the city?

>> The parks department did.

>> Councilmember Pyle: Parks department. And so better lighting is going to be installed?

>> Yes, we've done a number of improvements to secure the site and to deter future damage so that includes the replacement of all the panels with a more durable glass. We've trimmed the trees and we've also partnered with

Adobe as we mentioned, we also worked with the police department, we've filed reports when needed, increased the monitoring of the site when necessary and we're also looking at improving the nighttime lighting as well.

>> Councilmember Pyle: Because this is not just a problem indigenous to this one particular, this is something we need to be concerned about throughout the entire city I would imagine. Have you had other instances with other pieces of art?

>> I wouldn't is a that -- I would say this is a unique situation with this particular piece. Other works at other centers or different public sites, there -- you know they're equally as vulnerable as the facilities themselves. So as with all public facilities we also always look at materials and the ways in which we install the work to secure it.

>> Councilmember Pyle: Well thank you for all the good work that you do and I would like to join with Councilmember Herrera to say yes, on 11-11-11 and I will be there as well. So thank you so much for all of your hard work.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Yes, mayor. I just wanted to thank and acknowledge Andrew Bales for his work in helping to fund-raise, make this happen. His generosity is much appreciated, particularly when he's fund raising to keep the symphony and everyone else going. Also to thanks Vick Tacaloni, I know he donated some services as well. A lot of the people in the community stepped in, and I appreciate it. I just had a quick question about our use of 1% money. I recognize it can't be used for quote unquote maintenance but could it be used for capital replacement in this as I, can it be used for lights cameras other things that can help including signage that can enhance the existing public art as well as preserve and protect it, can it be used for those type of capital expenditures.

>> If it's available.

>> Councilmember Liccardo: Right.

>> That's the answer.

>> Councilmember Liccardo: Okay, I appreciate that because I know that there's been some rumors I'm sorry go ahead.

>> Let me just add, we do have a public art maintenance fund within the OCA's nonpersonal which is -- the source of that is the transient occupancy tax.

>> Councilmember Liccardo: Right. Okay, thank you.

>> Mayor Reed: We have a motion to approve, as with the additions from Councilmember Herrera. On the motion all in favor? Opposed? None opposed, motion is approved. 4.2, actions related to the issuance of tax exempt multifamily housing revenue bonds for the La Moraga apartments. I have one request to speak, Mr. Wall.

>> I don't think people understand the gravity of this type of housing development. This type of housing development is for 55 years. I believe, well, hopefully, 55 years won't see the demise of everybody who sits before me. But it is pretty much a given that that's the case. And at \$52,440,000 for the loan, to a corporate entity. Now they're making money off this and that's fine. But I also don't like entitlement programs. Especially 55 years of entitlements. But I'm in the minority here today, because you will pass this. But before this is built, let us consider sewage flow meters for every apartment. Now, the sewer service and use charge is going to come up later in today's show. And it's very relevant to this particular project. As a matter of fact, every residential and industrial project from now on, with reference to proposition 218, and how, for the last 30 years, the City of San José has basically raped and pillaged all ratepayers on estimates of people living in a specific housing unit. This testimony today serves as official legal notice on this particular property and all properties to follow about the necessity for people to pay for their flow of sewage from their property on actual flows, not based on

estimates. With reference to proposition 218, which amended the constitution of the state of California. Estimates are not within the purview of the constitution. Thank you.

>> Mayor Reed: That concludes the public testimony. Just like to note that there was a supplemental memorandum adding a fifth item to the recommendations from the staff. So we have five items that are recommended to be approved today. We have a motion to approve the staff recommendations. On the motion, all in favor, opposed, none opposed, motion is approved. Item 4.3, predevelopment loan for the Donner lofts apartment project. We have a motion to approve. One request to speak, Mr. Wall.

>> Again, we notice the benevolence of the city council of the City of San José. For making sure that elements that cannot afford to live here can be in our midst. We look at this housing project, 102 units, very low-income households. I for one would advocate since your benevolence is such and that I obviously don't agree with it, that you find the money to purchase me a five-acre vineyard in Los Altos hills because I don't want to live in this slum anymore. And I think what's good for the goose is good for the gander, and you should find the money to purchase this five acre vineyard for me in Los Altos hills.

>> Councilmember Rocha: Would you still come to council meetings though?

>> Only if you are still elected sir. With all alacrity aside, notice is hereby given about the necessity for sewage flow meters on this residential project as well. With reference to proposition 218, and the sewer service and use charge. It will be very hard, if not impossible for council or for learned attorneys to argue the fact that notice was not given and the project is constructed, and some judge somewhere sees it fit that sewage is to be calculated by flow, and not by the mysterious conduct of Karnak, the all knowledgeable with reference to estimates. We will talk about this again coming up, I believe, at 7.1 open today's show, broadcast.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve the recommendations. On the motion, all in favor? Opposed, none opposed, motion is approved. Item 4.4 is an administrative hearing and

consideration of an appeal of the Planning Commission's decision to deny a conditional use permit to allow the off-sale of alcohol and 24 hour use of existing gas station. And I don't know if we have --

>> Councilmember Rocha: Move for approval.

>> Mayor Reed: -- the appellant or the applicant or any of the participants here. I don't have any cards on that. We have Joe Horwedel, of course. Since this is an appeal, we give the applicant the first opportunity to speak. And we did this already. And this is back with the changes that we wanted. Because we didn't have in front of us to do that. So that's why this is here. So I'm not going to ask the applicant to speak again. Councilmember Rocha.

>> Councilmember Rocha: I'll move the staff recommendation.

>> Mayor Reed: Motion is to approve the staff recommendation. I have one request to speak. Mr. Wall.

>> Not wanting to reach down into the bowels of district 9, however. This business with alcohol use at existing gas stations basically started during the hammer administration. And with reference to district 3. Councilmember Liccardo had nothing to do with this type of explosion of these alcohol sales at gas stations. Which is an oxymoron since it almost encourages people to drink and drive. I support what the Planning Commission has found. And I would also recommend that you should look through the city, specifically in districts -- at least in District 3 anyway. Of these gas stations that just sell enormous amounts of alcohol, to people that are filling up. I don't think that that's the avenue for that. I didn't think it was proper during the hammer administration. But that's where the beginning of this problem started. And I'm thankful to our District 9 person for applying the necessary pressure to ensure that it doesn't happen in your district, sir.

>> Councilmember Rocha: Mayor, we need to do a clarification. If I can defer to the planning director. We had deferred this item to allow for a resolution to clearly reflect the new recommendation. I'm looking at the old memo here. How would the recommendation go forward?

>> Joe Horwedel: So the resolution that's before the council today denies the offsale of alcohol, it approves the 24 hour use and it allows the expansion of the retail use in the building.

>> Councilmember Rocha: Then I would recommend the approval of the resolution as modified.

>> Mayor Reed: All right so we have a motion to approve the modified resolution. On the resolution, all in favor, opposed, none opposed, that's approved. 6.1. Actions related to the 2012 street resurfacing program. I think we'll have a presentation from Hans Larsen.

>> Hans Larsen: Mr. Mayor, members of council, I'm Hans Larsen director of transportation. I just have a few brief remarks. Just want to draw your attention to the supplemental memo of August 22nd and read into the record our recommendation here for you today. It's recommended that the city council award the contract for the 2012 street resurfacing project to the low bidder O'Grady paving incorporated in the amount of \$4,091,860.80 and approval of a 10% contingency in the amount of \$409,186.08. Wanted to also direct your attention to a second supplemental memo of August 27th, that has information on a bid protest and staff's response. In reviewing the protest with the Public Works department and the attorney's office we deem the protest to have no merit and should be rejected. We've communicated this our findings to the protesting party in writing and by phone and our understanding is they are not here today to continue to pursue this. Lastly I just wanted to highlight. Little bit of the significance of this particular contract, it's the fifth of five pavement maintenance contracts that the city council has approved for this calendar year. And collectively, we're doing street maintenance work on 66 miles of streets on the adopted 400 mile priority street network. And we have projects in every council district. The other item of significance is that this is our first expenditure of funds from the new vehicle registration fee that voters in San José and county wide approved in November 2010. These funds are managed by the VTA and were first made available to us this July, and so I'm pleased that within two months we've got a contract ready to put these locally supported pavement maintenance funds out to work in benefiting the streets in our community. Just as an overall perspective, this is about \$5 million. It's about 25% of the total pavement maintenance funds that we have entirely for the city. So this is very significant. City council approved, as part of this year's budget, an increase in local

pavement maintenance funding, up to \$3 million. But our traditional sources of funding from state and federal gas taxes are certainly not keeping up pace with the needs and we find ourselves with about \$20 million annually against a \$100 million annual need. So this continues to be a significant challenge for the city. It's one that we will be reporting to the transportation and environment committee at their meeting in December with an update in terms of where we are in terms of our pavement conditions our needs and any financing strategies to help address this issue. That completes my report.

>> Mayor Reed: We have a motion to approve. On the motion, all in favor? I'm sorry, Councilmember Herrera.

>> Councilmember Herrera: Just a quick question, Hans. And I appreciate that there's projects in every district. I know Quimby road and Ocala are up for resurfacing October and they were on a previous project list. Is that going to be accomplished before we do the bike lanes then, is that contemplating working with that project because we have bike lane improvements going along there and the resurfacing, as I drive along there it's in pretty bad shape. I would want to see that done before we have bike lanes or at the same time.

>> Hans Larsen: Yes, so the action the council took recently regarding Ocala and there was also a related action on Hedding street, in installing bike lanes those are going to be built together with the pavement maintenance project. So we'll do the pavement maintenance work and then add the new bike lanes in both of those corridors.

>> Councilmember Herrera: Great, thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. You did mention and Councilmember Herrera just repeated about projects throughout the city in every district. I'm looking at the original memo on page 2 and it has the following table contains a list of streets to be resurfaced. Am I correct this is in the supplemental or am I reading this incorrectly?

>> Hans Larsen: Councilmember Rocha our prior staff reports that related to other pavement maintenance contracts included the list of projects.

>> Councilmember Rocha: Okay.

>> Hans Larsen: And streets located there. I'd be happy to just let --

>> Councilmember Rocha: So the table I'm looking on page 2, it lists North First Street Almaden, Capitol, Poughkeepsie, Santa Clara, Tully Road.

>> Hans Larsen: That is for this particular contract that's up for council action here today. So it was the last of five, so we have got four other projects that have included other streets.

>> Councilmember Rocha: Great, and that wasn't dependent on my vote, I was just curious so I understood these things. So thank you.

>> Mayor Reed: We have a motion to approve.

>> Councilmember Liccardo: A Point of order. Rick, do I need to make a motion with regard to the bid challenge?

>> City Attorney Doyle: No, I think that's encompassed in the entire motion.

>> Councilmember Liccardo: Great thanks.

>> Mayor Reed: We have a motion noting the revision on the actions that Hans Larsen gave us at the beginning. On that motion all in favor? Opposed, none opposed, that is approved. Item 8.1, response to Santa Clara County civil grand jury report entitled continuity in fire service delivery.

>> Debra Figone: Again here to respond to questions.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Sharon, I know it's not fair of me to ask you to come -- oh I'm sorry we're on E party or --

>> Mayor Reed: Not quite there.

>> Councilmember Liccardo: Sorry I'm going to wait until we get to that item.

>> Mayor Reed: It would be unfair I guess to ask her but I'm sure she could give us a learned comment if we want it.

>> Councilmember Liccardo: We've got too many reports, thank you very much.

>> Mayor Reed: Mr. Wall did you want to speak on this one, this is the fire service delivery item.

>> Despite what has happened to you're fire services at your hands certainly it is not my fault and fault has to be clearly assigned. And outside of the office of the City Attorney, fault lies upon the majority of your shoulders for any type of interference with the fire department for delivery of fire services. And to the most of it, you should be horribly ashamed and not even show your faces in public. I am very disheartened because of the issue of institutionalized hesitation that is now incorporated into fire services and police services with reference to the hesitation that the firefighter or police officer has to save one of our lives be it just or retched, because of the fact that they may not be qualified for a disability to take care of their family members. And this should be clearly delineated with any type of report, and also funded in its entirety by learned council. Sadly, it is not. And each more sadly, is that you really don't care. I'm not interested in little cajolities on the dias as I speak, nor am I

interested in patronizing comments about how you support fire and police services. For I'm a veteran of these walls here and I know that conduct speaks for itself. And the next time you see a firefighter or police officer please afford me one consideration. Lower your heads in shame and beg for forgiveness.

>> Mayor Reed: That concludes the public testimony on 8.1. We have a motion. We have a motion to approve the response. On the motion, all in favor, opposed, none opposed, response is approved. Before we take up 7.1 we're going to convene the joint city financing authority to take care of one matter which is the authorization of investment of moneys in local agency investment fund.

>> Debra Figone: No presentation, mayor.

>> Mayor Reed: That's where we use for city moneys, et cetera, this is also known as LAIF. Any questions or comments? I have no requests. I need a motion. Motion is to approve the recommendation. On the motion, all in favor? Opposed? None opposed, that's approved. Now we'll turn to item 7.1 the environmental services department audit. Sharon Erickson is here. To present her audit. Sharon.

>> Sharon Erickson: Mayor and members of the city council. In June of 2011, the city council directed the City Auditor's office to conduct a broad staffing and management audit of ESD with a special focus on how ratepayer funds are used. The council also asked that the audit include a review of the San José Santa Clara water pollution control plant rehabilitation project for opportunities to reduce costs and expedite the project and create savings for ratepayers. A report is formatted in five chapters. I apologize for its length. But it's virtually five reports in one. So consider that you'll get five reports out of this. This presentation will summarize our findings and recommendations. Our first finding which begins on page 21 of the report was that ESD is confronting troubling staffing trends and vacancy levels at the water pollution control plant. The water pollution control plant is a critical component of the South Bay sewage infrastructure. A failure at the plant could endanger Public Health and safety and the varietal and expose the city to substantial risk of violating its wastewater treatment permit. Unfortunately, the plant has experienced significant workforce losses in its operations and maintenance work sections. Glow separations including retirements and resignations have resulted in falling experience levels and increasing

overtime hours at the plant. As a result, fewer people with less experience are working more hours to operate and maintain the plant. The administration has begun addressing these issues, and last week the council approved contracting for temporary labor where necessary to keep the plant operational. These are complicated issues, because all employees in the city took a 10% pay cut, in large part to help address ballooning retirement costs. In addressing the specific staffing challenge at the plant is a challenge in part because of me too clauses in union agreements. Nonetheless me and my staff recommend that in addition to the steps the city has already taken that is targeted reclassifications of employees at the plant, and the use of temporary labor, that the city also consider offering time-specific, skill-specific, I'm sorry time limited retention bonuses to retain targeted critical plant operations and maintenance staff in the near term. And in the longer term, conducting foremost salary surveys for critical plant operations and maintenance work sections and for the plant engineering staff to address perceived pay disparities, that could prevent the plant from attracting and retaining sufficient experienced staff to actually run the plant. Our second finding is that successful plant master planning implementation will require strong oversight and reporting systems. The plant is in need of significant rehabilitation and repair. The current master plan for the plant consists of an estimated \$2 billion in long term wastewater projects. Because of staffing and retention issues, and its capital planning team ESD has not been successful in completing even its current annual capital improvement program. In addition because of the scope and technical complexity of the master plan projects ESD will be relying heavily on consultants and other experts. The city will need to utilize all the best contracting practices currently employed by the Department of Public Works, and by other jurisdictions, to ensure successful completion of this \$2 billion rebuild. In addition, implementation of such a large-scale rehabilitate project will require coordination with, and involvement of, plant operations and maintenance staff. ESD has already begun to address perceived communication and coordination issues in this area. In terms of cost, current sewer rates are expected to cover some but by no means all of the master plan as currently proposed. Bond financing will be needed for the projects not covered on a pay-as-you-go basis. ESD has had preliminary discussions with the finance department about potential timing. My office recommends that ESD evaluate and present to the city council and the treatment plant advisory committee which represents the other ratepayers in the tributary area, that those bodies present the potential rate impacts of the master plan, once the EIR process is complete. Furthermore because the projects included in the master plan are either in the study or feasibility stage, these cost estimates are expected to change and they could change dramatically. As such, ESD will need to

periodically reevaluate, re-prioritize master plan projects, in response to cost changes, regulatory changes, technological changes, or other economic changes, implementation and financing challenges. The City Auditor's office will continue to be involved in this area, in the coming year, will be particularly focused on the plant's asset management system. The third finding in our report is that the city raised sewer rates in anticipation of increased spending that did not materialize. San José's utility rates for sanitary sewers, storm drain, garbage and recycling and potable water services increased significantly over the last five years. Those rates rose between 41 and 89%, during a period when inflation rose only 15%. Increases in those -- in sanitary and storm drain rates were mostly driven by capital improvement planning and anticipated regulatory requirements. Garbage rate increases were driven by residential waste hauler cost increases, and Muni water increases driven by the cost of wholesale water. I want to remind the council that although these recent rate increases have been large the rates are still mid range compared to other local utilities. However, what we found was over the past few years the city has accumulated large balances in ratepayer funds. Totalling \$280 million by the end of 2010-11. Those balances have since dropped. These large balances are especially concerning for the sewer funds where \$220 million is being held in operating capital funds for the sanitary sewer and plant, almost entirely from sanitary sewer charges, it represents approximately two years of annual sanitary sewer revenue collections. Slower than expected capital spending is the main factor. Other budget savings resulted from staffing vacancies. In addition to more realistically budgeting for capital expenditures, we recommend ESD address these balances by developing capital reserve policies and by freezing sewer and storm water rates until the rate fund balances are reduced to reasonable reserve targets. Our fourth finding was that expanded environmental enforcement programs need a greater emphasis on outcomes and the efficient and effective use of program resources. It has been widely noted that authorized staffing increased in ESD during a time when citywide staffing fell by almost 25%. We found staffing growth was concentrated in three areas. Plant planning and development, to implement the programs that I described earlier, and in anticipation of stricter regulatory enforcement, staff was added to the fat soils and greases source control program, commonly known as the fog program, that was seven full time equivalent to employees and to the storm water protection program approximately 16 full time equivalent to employees. With regard to the staffing resources added to the fog control program, we recommend that the focus on food services establishments be reevaluated, in light of data that sewer overflows are actually a greater problem in residential areas, where the pipes are smaller, than in commercial areas, where restaurants are commonly

located. Furthermore, we found that other jurisdictions are able to meet their permit requirements while conducting far fewer fog inspections than in San José. And with regards the increased resources added for storm water inspections, at the time of our audit ESD was already working to streamline its program by prescreening potential business locations and reducing the frequency of food service establishment inspections. We recommend the department consider further reductions to food service inspections, we were started to find that 43% of all storm water inspections in the city are of food service establishments. We also recommend scaling back on construction inspections that go beyond regulatory requirements, particularly during the summer months. And reexamining opportunities to leverage the inspections that are already performed by other departments and jurisdictions. Overall, we recommend that the environmental enforcement programs be evaluated, using an outcome based approach to ensure that the City's efforts are focused not just on permit compliance or the number of inspections completed, but also, in the most efficient and effective use of program resources. Our fifth finding concerns rates. The city has a responsibility to improve the allocation and efficiency of rates and costs. The California constitution as amended by voters in 1996 when they passed prop 218, requires that no fee for property related services, charged to the city, exceed the cost to provide the service to that property owner. In accordance with this requirement the rates charged by ESD are meant to cover only the cost of providing the services that we -- those services that we've provided. Rates are generally reviewed annually. However, we found that some sewer rates, the City's largest source of taxpayer -- of ratepayer revenue, some of those rates were based on some 30-year-old assumptions regarding household sizes and flows. These assumptions need to be updated and ESD should establish a policy to periodically evaluate the assumptions that underlie customer rates. To provide savings to ratepayers we recommend the city explore alternatives, for eliminating duplicative recycle plus! billing and customer service. The customer call center cost the city almost \$12 million a year. It is my understanding an ESD memo is forthcoming regarding options on garbage and recycling billing. To minimize cost to sanitary sewer ratepayers who currently subsidize the cost of South Bay water recycling operations, we recommend the city explore opportunities to increase revenues or reduce costs to achieve closer to full cost recovery for South Bay water operations. South Bay water annually costs about \$6 million to operate, costs about \$11 million in debt service, but only currently brings in about \$2.5 million in revenue. Sewer ratepayers, subsidize the difference. In addition, we recommend the city review the \$2.9 million in public art allocations that are scheduled to be funded over the next five years from ratepayer funds. It's unclear,

and the details are in our report, how some of the projects meet the criteria for inclusion in the public art allocation. Finally, we recommend the city should adopt guiding principles for evaluating ratepayer costs and future rate increases for fairness and appropriateness and for balancing priorities such as safe and reliable services, cost efficiency, ratepayer impacts and environmental incomes. Our report includes a total of 22 recommendations. The administration has reviewed the information in the report, and their response is shown in the attached yellow pages. Before I turn it over to Kerrie to respond I do want to thank the environmental services department for their time and cooperation during the audit process. As we said in the title of the report we believe this department is at a critical juncture. Although we have pointed out several significant areas for improvement my staff would like to personally thank the department for the work they do every day and for their determination to ensure safe clean reliability services for the City of San José.

>> Kerrie Romanow: Thank you, Kerrie Romanow, acting director of environmental services. Actually I want to start out by thanking Sharon and her team. I'm not sure I would say it was an enjoyable experience but we did learn a lot and we think the report is very fair and objective, so thank you for bringing many of these points to our attention. I wanted to start by saying that over the last year ESD has made significant strategic changes since this audit began in June of 2011. We focused our team on ensuring that we're mitigating rate increases, improving effectiveness and efficiencies, as well as improving collaboration with external stakeholders. As a result we've reduced staffing by 8 FTE across several programs, and recommended no rate increases for sanitary sewer, storm sewer, recycle plus!. There was a rate increase as we -- for Muni water as we passed along the wholesale cost of water. I have a couple of brief comments for each of the findings and then we'll be available for your questions. So finding one clearly we agree that staffing needs to be addressed. So that the plant can continue to operate and facilitate the rebuilding. We need to retain our current talented workforce and fill vacancies. We simply cannot rebuild the plant without adequate operations and maintenance staff or engineers. Now as you know this facility operates continuously and cannot be turned off. ESD has been closely tracking these trends for some time now. For most hard to fill positions plant operators we amended the job operator specs in February from a single classification to two to three level classifications. In June we lowered the minimum qualifications for plant operators to attract a larger pool of potential candidates. This also resulted in compensation adjustments for existing plant operators. As you know we've worked to identify and secure temporary staffing resources as a

contingency plan should our are attrition and hiring plans continue in the same direction. In addition to operators the other classes we are experiencing difficulty about filling include plant mechanics, electricians, instrumentation technicians and engineers. And we agree that this is a critical issue that requires attention and will continue to continue to look with the office of employee relations and human resources to identify solutions or combinations of solutions to to remedy these staffing trends. For finding 2 successful plant master plan implementation, ESD and Public Works have established a partnership and have been building upon our strengths for the last several years in preparation to implement the plant master plan project. ESD leads the wastewater-specific technical side of the CIP program, and public works has been leading the construction management and inspection as well as procurement segments. In early 2012 we established a plant CIP steering committee and this team is comprised of ESD Public Works finance and the City Manager's office leaders and meter two weeks. As we move forward with establishing a robust structure of checks balances and reporting ESD and Public Works are committed to not only following city-established best management practices but also building upon them so that we achieve the same success that we did with the delivery of the decade of investment. We've been planning to use outsources resources for much of the designed and design-build activities, and again, playing to the strengths of the internal and external resources. We will report in the fall and spring on plant CIP progress to transportation and environment committee and have added the plant CIP program to the citywide annual CIP report. Clearly, addressing the engineering vacancies will unable the CIP to be up and running whether the EIR is cleared this coming spring. We agree we need to continue to focus on managing rate impacts as well as ensuring delivery of much needed capital improvements. Missed a page. For finding 3, I lost that page. All right. Findings 3 is -- again, it's being able to spend the money that we have acquired requires us to fill our vacancies and we're continuing to work in that regard and we believe that if we can remedy our staffing issues, we will be on path to spend that money and we do believe that we will continue to rebuild the plant in an appropriate manner. In regard to finding 4, expanded environmental enforcement focusing on outcomes we have been working over the last six to eight months to improve the effectiveness and efficiency of the watershed protection division. It is important to note though that the pretreatment program which includes fog remains under an open administrative order issued by EPA in 2005. That program's focus is to protect the collection system from corrosion, clogging as well as to ensure liquids that make their way to the plant do not adversely affect plant process or pass through to the bay because of our limited treatment capability. Lastly this also ensures our city workers that maintain the collection

and treatment system are safe. We will continue to leverage the data we collect in our environmental enforcement data management system to make database decisions and will continue to review those effectiveness and efficiencies on a routine basis. As for finding 5 rates, we wholeheartedly agree that we need a formal review time line for -- to ensure our business practices and how we set rates are reviewed. We agree that 1975 census data is outdated and needs to be updated. We're committed to working with Santa Clara and our trib agencies to do a flow study and ensure that data is also updated, and then do a rate study to ensure that San José rates are set appropriately. For South Bay water recycling we recognize this well before the audit report was issued. As you recall, in the fall we implemented a note ratepayer base funded expansion policy. We've also reduced staffing in South Bay water recycling and the master planning effort is underway to make the best use of that already established asset and bring it to cost recovery. As for recycle plus! billing as Sharon noted we're bringing a report to T&E to talk about ways to reduce the cost and improve the efficiency of that billing system. And in regards to the public art program, we will continue to work with OCA and look for opportunities to best use wastewater treatment funding related to public art. And with that we're available for questions.

>> Mayor Reed: Thank you. Had a couple of comments and questions to start with. First I want to thank Kerrie Romanow for being willing to step into this as an acting director. Because over a year ago we realized that our ESD operations and particular our water pollution control plant operations were entering an era that was going to be difficult and complicated because not only do we need to manage and operate the plant without fail 24-7, 365 days a year we need to rebuild it. And so there are a lot of things that have to be done and it's not always easy to manage through that as an acting director but you've done an excellent job of doing that. And part of the reasons that we wanted to have this audit was knowing that it was going into a difficult complicated time. That we wanted to try to bring in as much help as we could through the auditor's office with these recommendations to identify the areas where we need to do things to help the department. Because the plant rebuild is too big to be handled by a department alone. Obviously you have to have a team effort on the city and we've proven in the past when we get the team focused on the effort we'll do a tremendous job. I'm glad to hear that you're focused on working with Public Works. This plant rebuild is not an ESD project, it's a city project, and we want to make sure that you get the assistance that we've seen deployed so well with projects like the airport and other big projects, as well as work using the expertise of outsiders which we've also proved on our big contracts to be very successful. So while

I know it's taken a lot of time, effort and energy of people in the department to go through this audit process I think we've got a good product here that will be very helpful. And of course I want to thank the employees of ESD and employees who run the treatment plant. Because they're working harder than ever before. And they can't stop. Because that's not an option in this particular job. So they've done a great job being understaffed and they're really handling it very well. I had one question for Sharon regarding the recommendation on the money part of this. At one point you said we're going to have to issue bonds to raise money for our big capital project but then you have a recommendation that says we have too much money in our reserve for capital projects. So I don't know why it's necessarily better to work that reserve down, instead of working it up so when we get to the point of issuing bonds maybe we have to borrow less. Could you just explain that a little bit?

>> Sharon Erickson: Yes, our concern quite honestly was sitting for too long on ratepayer money. So the goal of any capital project, and it's my understanding of our rates, is to ensure that the current ratepayers get the benefit of the rates that they're paying. So we want to line up as closely as we can those rates. So under no circumstances would I recommend a refund of rates, for example. So we have \$200 million in the bank. That's \$200 million towards a \$2 billion project. So there's a long ways to go. And there is some sense that we should be ramping up rates, so that it doesn't hit people too -- too hard in the pocketbook. So that kind of gentle ramping-up is important. But it has been a pretty rapid increase. And what we found was, the rates were increased in anticipation of capital spending that wasn't happening. So the capital projects weren't being delivered for a variety of reasons that we've talked about. And we were concerned that that could continue to happen. And as those balances get too high, you begin to worry that people who had paid the money to begin with, will no longer be in the system. We need to make sure those numbers come close together. But there will be financing costs going forward. We're quite certain of that depending on the scope of this. But in the meantime, I think that there is some space to ramp up capital spending, before we would increase rates again.

>> Mayor Reed: I'm thinking back to discussion we had that I thought we didn't have an answer to which is how are we going to finance this \$2 billion project. And I know that we talked about, well, we might borrow money and Milpitas had an idea to do something and Santa Clara had an idea to do something and they've got their share to pay for. But I didn't think we had decided how we were going to finance it. And if we haven't made that decision

I'm reluctant to dial back on anything if one of the options might be we need to continue raising rates over a ten year period or a 20 year period or whatever it is. So I'm not sure I want to say stop on that until we've had a chance to put together the entire \$2 billion package and figure out how we fund all the elements of it.

>> Kerrie Romanow: The present plan we're working under is we've extracted the two very large projects and our intent was to bond-finance those. It helps our Santa Clara and our tributary partners but it also spreads the cost of building those over a generation that will use them. And then do pay as you go for the ongoing capital improvement projects that would happen in the 40 to \$80 million a year from now for the next 20 years.

>> Mayor Reed: Well, I think I would ask that before we make a decision about the rates the next time -- I don't know when we make another decision, it's later in the process, in the budgeting process, is that we look at the entire package and say okay, we don't want to raise the rates because we will have enough money for whatever it is we have dollars for versus the financing cost. So that's not taking issue with your recommendation, it's just before we make the decision I'd like to have a discussion of how the package fits together so we make sure we have enough money when we need it. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Mayor, I think you've raised an area that's of concern to me, and I know I raised this with Sharon when we met. I agree with 95% of whatever Sharon concludes, but I actually did have a concern with how this was presented, because I believe it lacked important context. And the context that was relevant to me was when I came into office in 2007 I can remember the very first couple of ESD meetings -- or I'm sorry transportation and environment meetings, and we were being told, look, over the last decade and a half or two decades, council has not increased rates, and we've got these enormous capital replacement and capital expenditures coming down the pike. And because nobody's had the courage to increase rates we're going to face a situation where we've got to hike rates you know 30% or whatever a year to somehow catch up to what is an enormous capital problem. And at the time our rates were way behind other cities. Now we're around parity in most cases and mostly focused on the sanitary sewer and storm sewer. And so what I didn't see presented anywhere in the audit was the context about what was happening over the prior really 15 years or so. Where I really felt like, what we should have been doing like we would do with any capital project in the private sector is

you create a sinking fund and create a fund that anticipates whatever capital expenditures coming down the pike believing you're not going to raise all the money at once unless of course you're going out for bonds and financing it, hoping somebody will pay for it in the future. So when the concern about intergenerational equity was concerned, I don't have that concern, because frankly, right now we're using these assets on borrowed time. That is, these assets have exceeded their useful life. We're keeping them together with Band-Aids and chewing gum. To continue to allow them to operate. We all agree we should have started on this capital rebuild sooner. If we had had obviously staffing issues in other challenges hadn't arisen. I just don't think you know of all the challenges we've got this is one we should be focusing on. I think we ought to be keeping the balances. I have no problem shifting. If the recommendation is just continue to shift them to capital funds and leave them in reserve for when we've got to start the building I'd say great. But it seems to me that we shouldn't be taking the approach that because we're concerned about prop 218, that we decide we're not going to try to build a critical reserve that we need for what we know is going to be an enormous capital challenge going forward. And I guess, you know, on page 67, there's a suggestion that the goal should be avoiding the accumulation of large capital fund balances. And I just don't think that's our goal, if we know we have a large capital expenditure that's imminent. And I think the fact that these projects have been deferred doesn't mean they go away. And we all know they don't go away. They're right on us. So I guess that would be my point and Sharon, if you would like to respond Sharon --

>> Sharon Erickson: Yes, we did have prop 218 concerns, to be blunt. The other thing is that perhaps the emphasis in the report certainly needs to be on where -- and this is what we heard from plant maintenance and operations staff. We've got a ton of money in the bank but we're not able to execute those fixes at the plant that we need. So that the comments you hear from plant staff are things like, "I know you're sitting on hundreds of millions of dollars. But I can't get a part for a pump."

>> Councilmember Liccardo: Right.

>> Sharon Erickson: Now there's other reasons why they can't get the part for the pump. There's a whole other audit in that subject.

>> Councilmember Liccardo: That is the problem.

>> Sharon Erickson: But that has been the frustration. So -- and at the same time we were looking at ratepayers where we've raised rates significantly during a time of recession, and we're sitting on the money because we can't execute the capital program. So I think that the emphasis needs to be on executing that program. Kerrie and her staff are moving forward where that. The EIR is out, it will be coming back in the spring. There are a variety of projects that could begin happening now in the maintenance arena. If Kerrie had the staff to be able to do that. That's why we're recommending that we find a way to hire the right engineers that we need to -- that we need to design these things and get them underway. And that's the intent that we mean by spending those, down those balances. I think the recommendations all come together in a puzzle and I don't mean to say that one is more important than another. We need the staff to spend the money so that we don't have the large balances so that we're not just hitting ratepayers later on with huge increases. Because we've deferred so much maintenance. So I think all of these things do roll together. I apologize if it felt like one was being emphasized more than the other. It is a monkey puzzle put together.

>> Councilmember Liccardo: I guess my criticism isn't that one was being emphasized over the other. It was that this was being emphasized at all, honestly. Because it seems to me the problem is that we can't get repair parts, and we can't implement repairs. The problem isn't that we have a fund with a lot of money in it, when we know we've got to be spending it very soon on repairs and capital replacement. In fact, we should have spent it already, because we've got a plant that's completely falling apart. I just feel as if it were the case that our rates were significantly in excess of other cities or districts, then I think we should have serious conversations around reducing those rates. But clearly the other agencies presumably recognize a need to build capital reserves precisely because these things are expensive and we know we have a \$2 billion elephant we've got to swallow and we're not going to do it all in one bite.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. Thank you for this report. As shocking as it was, it was absolutely I thought very thorough and certainly very needed. So many questions that I have. But first of all, how much money exactly are we sitting on? You said \$200 million out of \$2 billion was that correct?

>> Sharon Erickson: Roughly, yes.

>> Councilmember Pyle: My question first of all is, do we need to do all of the repairs all at the same time? And we can begin by doing some part of the renovation? I would think if you have a 56-year-old building or plant, you're going to have some problems. Especially since that plant has not been under ordinary circumstances, it's been 24 hours a day, every day, putting out substantially more, I would imagine, MGD stands for million gallons a day. When you compare the East Bay, it's substantially -- we do substantially more than the East Bay. It was just absolutely -- for example the plant serves 1.4 million residents. They serve -- well they don't -- 650,000, big big difference and about 17,000 businesses and they do 650 residents period end of story. So the difference is we have 110 million gallons a day. They do 70 million gallons a day. I don't know what their conditions are otherwise. But because we need to keep this plant going, because there's no conversation about whether to do it or not from my perspective, we need to find a way to make that happen. And if we need to take the 200 and take care of the emergency situations first and that includes employee retention, we need to do it. Because we can't -- we just can't operate without employees in place. As you well know and as you said baling wire and scotch tape doesn't do the trick and that seems to be what's keeping this together and I finally now have some understanding of what Mr. Wall has been talking about all these years. It's too bad you didn't have this sooner. At any rate, rather than ramble on I wanted to make sure of that that we could begin doing X amount now. Now we haven't raised our business taxes since 1985. We tend not to do that. So how current are we now, in reference to a fair assessment? I think you -- what I heard is that we're about where we should be, or are we below where we should be? In reference to the giant job that needs to be done there in bringing the plant up to acceptable standards?

>> Kerrie Romanow: We're clearly behind in our capital improvement program. We've lost several years and we're working to fast-track that.

>> Councilmember Pyle: But are we behind what we charge residents and or businesses? In other words, are they paying a fair rate? It was just changed but was it changed enough?

>> Sharon Erickson: Yes. Once we've implemented the recommendations, from my perspective, once we've implemented the recommendations to make the rates more fair --

>> Councilmember Pyle: Got it, I misunderstood.

>> Sharon Erickson: I mean San José's rates as shown in the report are comparable to other jurisdictions. There is an expectation that those rates will increase some more. We're recommending that once the EIR is complete, we have a better handle on what the rest of the project, the master plan, looks like, and what that bond financing package would look like. That's the piece that could potentially raise rates again from my perspective. So once we get there, then I think we'll be fair. I mean, it -- the rates are fair in the sense of we are charging ratepayers. But we have a plant that's in -- in need of significant repair. And we've got some issues. We've got to address all of those issues together. And then we'll be sure that they're fair. Does that make sense?

>> Councilmember Pyle: It does. And I'm thinking of Santa Clara with their PG&E or their plant, their power plant. Sorry about the slip. But at any rate, they can make a profit with that. I would hope that one of our goals would be at one point to get this, maybe in ten years or so, to a point where there is enough of a profit margin to continue the -- whatever needs to be done in order to keep the plant at maximum condition.

>> Kerrie Romanow: So our current strategy is to do exactly that. To ensure that in forward years we have a steady, you know, 40 to \$80 million CIP so that the plant is never in this position again. But I also want to assure you that when we believe the facility needs more money we will bring rate increases forward. So we're not shying away from that when we need the money. We're continuing to look at the stability of systems, and moving things forward and backward in our timing scheme, to ensure that we're getting the most urgent needs done quickly.

>> Councilmember Pyle: Thank you, that's -- you've clarified the things that I was concerned about. Thank you very much.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: I just -- I do want to clarify under prop 218, you can't establish rates to create a profit. Not to exceed the cost of the program.

>> Councilmember Pyle: You're talking the program I'm talking about keeping up with expenses.

>> City Attorney Doyle: I understand -- the word, I just wanted to make sure that we're using talking the same language.

>> Councilmember Pyle: Yes, we won't use the P word.

>> Mayor Reed: However, there are utilities that can make a profit. Power plants is one of those. Unfortunately we don't have a power plant.

>> Councilmember Pyle: The things I have learned on this council, it's amazing. Because this is -- well, I don't -- can we do grants? Is there something innovative enough that would be possible? I don't know what that would look like.

>> Kerrie Romanow: We're exploring a lot of options to meet our end goal of having a safe reliable plant with the appropriate staffing.

>> Councilmember Pyle: I was thinking in terms of something that is fairly innovative. That would be something that would intrigue waste treatment, that would be futuristic thinking. In other words, guess I'm trying to say, is

there anything that we could do that would make people stand up and take notice and we could perhaps get grant money for that?

>> Kerrie Romanow: We'd like people to notice us today. But we're really focused on installing reliable technology and we'd really like to ensure that what we put in place with our limited resources and our ratepayer dollars that we're certain it's going to work at our facility. And then when we're in a stronger position in terms of the functionality of the facility and our staffing levels we'll be more open to trying new things that may or may not work, and that may or may not require additional optional staff time.

>> Councilmember Pyle: So about ten or 20 years ahead?

>> Kerrie Romanow: I don't think it's going to be that far but not today.

>> Councilmember Pyle: All right, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I like Councilmember Liccardo remember these very intense discussions that were almost jaw-dropping about the kinds of projects we needed to do out at the plant. I remember sitting through many sessions on that, as a new councilmember and especially the first two years hearing about these projects and the amount of money it was going to cost. And at first when I was listening to this and as I had read it I was waiting for us to say if we had done something incorrect in collecting these fees, we should return money to ratepayers. That would be if we had done this in a haphazard way, in a way that shouldn't be done? If we were not planning, if there wasn't some need that we were looking to, to meet. But I remember this being very, very critical, the need to fix the infrastructure. And my tours of the plant out there I've been very impressed with the people that work at the plant, the management of our plant. But I also was led to some places with equipment that was beyond belief. I thought I was in a museum. World War II vintage type of equipment. So you know, I've seen it firsthand and I've heard of the meetings of how serious this is. So I too am a little bit

concerned about the emphasis of this report that we have a lot of money in this fund when I think we should be concerned about making sure we're spending that to make the project underway. I know we are but I'm just concerned about perception. The other part of this on page 24 I think we look at what happens if we don't get this done when we talk about the cautionary tale from Los Angeles and the amount of money they had to be spent to get these projects underway get them done and how much more they had to spend because they weren't able to do them in an effective way on time. So that concerns me a great deal. And I'm sure ratepayers of course are concerned about seeing rates increase more quickly than they anticipated. But I am also sure that they're not going to like if we ended up having to spend like La did and certainly smaller than this, but we had to fund infrastructure projects to the amount of \$1 billion and it would have been comparative, one of them they said there was a failure in the Northwest area that incurred a cost of \$17 million. Had they done that project when they should have, it was \$2 million. So those are the numbers I'm concerned about, as well as rates. So if we feel the ratepayers have been unfairly charged we should be refunding the money, simple as that. So I think that we do need to be concerned about getting these projects done. And I'm very interested in how we get those done. I have a -- I just have another just I guess question or observation here when we're looking at these funds on page 63. When I look at the various funds when I look at the Muni water fund 515 there's relatively little change from 6-7 all the way to 12-13 in most categories of this fund. It looks like the increase was wholesale water pretty much would you agree?

>> Kerrie Romanow: Yes.

>> Councilmember Herrera: I think that's important because initially we talked about these large fund balances, I think we have to be careful not to lump them into one category. That is not true for Muni water; is that right?

>> Sharon Erickson: Correct.

>> Councilmember Herrera: If I note on page 64, ratepayer fund balances in millions from year end 2006-7 to 2010-11, again I see very small changes across the board there for fund 515, Muni water operations around also 500 Muni water capital, am I reading that correctly?

>> Sharon Erickson: Yes.

>> Councilmember Herrera: All right so I just wanted to make that point. Thank you.

>> Mayor Reed: We have one request to speak on this item, Mr. Wall.

>> The testimony that I've heard today by council, mayor and the acting director of administrative or environmental services is nothing more than a material misrepresentation of the facts. And Mr. Mayor, you're hereby cautioned: Don't ever thank an incompetent administrator in public again. You know, sir, with my attention to detail, with reference to the treatment plant advisory committee, I have more hours on that committee as a citizen, than everybody in this room combined. With that knowledge, sir, I look at the issues that I've raised over the years. As recent, follow your public record documents for the last couple of weeks on water pollution control. This acting director, Mr. Mayor, is a catastrophic embarrassment and is directing the water pollution control plant into failure. What is not talked about today is the status of your engines, the ability to have power, electrical power to the pumps and aeration functions at the plant. What's not talked about today too is the administrative responsibilities of this acting ESD director with reference to the capital improvement budget in which you had no idea how much money was in there until I started writing memos and giving testimony about it. This goes directly to how the offices of City Manager is grossly incompetent with reference to water pollution control plant issues. We will be discussing this in length, Mr. Mayor my recommendation is, that you terminate from employment the City Manager, the assistant City Manager, and the acting director of ESD today.

>> Mayor Reed: That concludes the public testimony. City Manager.

>> Debra Figone: Mr. Mayor, I would seldom do this. But I just must protest at this outburst at Ms. Romanow. She is a fantastic acting director. Mr. Wall can take his anger out on me. But I will not tolerate that sort of anger being directed at any department head and so I just needed to put that out there on the record. Thank you.

>> Mayor Reed: Thank you, and I agree. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. There were two questions that I had raised and I was trying to find in my notes those two questions when we had a chance to go over in a brief meeting. One was the obligation on the debt and how long we would be paying on that. And there was another question and I can't for the life of me remember what it was. Maybe you or your staff might have wrote it down, I'm hoping.

>> Sharon Erickson: I'm remembering the first one which was South Bay water recycling. The loans, the remaining balance on the loans for South Bay water recycling so these were the capital loans is \$84 million. The maturity dates range from 2016 to 2020. So they will be paid off at some point.

>> Councilmember Rocha: And the second question I can't remember for the life of me. I can always drop you a line after, thank you very much.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just want to thank Kerrie for stepping into an incredibly difficult situation and managing very well with a very difficult set of in terms of resources and constraints, so thank you very much, Kerrie.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I second or third, I think I'm the third one to say that. I think you stepped into a very difficult job, and you've done an incredible job managing it, and looking to solutions, looking to make changes that over the next three years we'll see lots of new things happening out at the plant. It's a tough time and I appreciate that you're willing to stay in there and work through it.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I agree. And I think the inheritance of the mess that you've got and the way you've gone about trying to solve all the problems and being up-front with us which is something refreshing that we hadn't had in many years is really something to be commended. And I want to thank you for your service and hanging in there and trying to come up with some solutions. Thank you.

>> Mayor Reed: I don't think we have a motion on this. I need to get one. Motion to approve the audit and the recommendations, responses, et cetera. On the motion, all in favor? Opposed? None opposed, that motion is approved. Last item on the agenda is the open forum. I'll take testimony at this time. Greg Karekes. Mark Trout. David Wall. Come on down. Go ahead Mr. Trout, you can go first.

>> Thank you sir. As we all know we're coming up to 9/11, the 11th anniversary of 9/11. And this will be the 911th day into the sabbatical cycle, the origin 9/11 was 2001 days into the sabbatical cycle. You remember mayor many years ago I finally got my wife down here. I bought her a van and I had been begging her to come down and testify, that a month before 9/11 I had said that on that day the sixth trumpet would sound. And she speaks very glorious things about Christ, but she doesn't obey me very well, and so I had to kind of bribe her, you know, with the van, but she did testify that. And as we get old and we're married a long time, we don't listen very well, you know, to each other. And you know, but if it had been reversed and she had told me that on 9/11, the sixth trumpet would sound and thousands of people would die, and then it happened I would say, hey you know I don't listen to you very well. I'm going to sit down at your feet and listen to you. How did you come to this conclusion, that the sixth trumpet would sound, on September 11th? And -- but you know, I really wish I had hours to go on and on, and I could on this subject. I do believe Jesus is coming back very soon. And the first coming of Christ was definitely based on the sabbatical cycle system. The angel Gabriel told the prophet Daniel that there would be 707s of years or 490 years that the lord Jesus Christ would come and be cut off for our sins. The Bible is the most unique book in the world, because it does give various predictions, for instance, the birthplace, for instance, being Bethlehem, him being cut off out of the land of the living for the transgressions of our people, his

resurrection before the decomposition of the body in psalm 16, David said thou wilt not leave my soul in the grave nor suffer the holy one to see corruption, which obviously means that --

>> Mayor Reed: Sorry, your time is up. Dave Karekas and David Wall.

>> Good afternoon, my name is Dave Karekas, and I'm a wildlife conservation photographer. I'm currently doing a documentary on the Guadalupe River, which almost runs entirely through the City of San José, from tract gray fox from the waterfalls in the Santa Cruz mountains to the mud flats in Alviso. I'm here today advocate for these little guys the western burrowing owl and the Guadalupe river is an important wildlife corridor and from Guadalupe park and gardens north to Alviso is some of the last remaining habitat for burrowing owls in our county and in our city. So we are -- I'm working with the Santa Clara Valley Audubon society and we're raising awareness with citizens of San José, and people employed, about the plight of the burrowing owl. And I just want to let you know that you should expect post cards to be coming in the mailboxes addressed to City Council and voicing concerns for the diminishing wildlife diversity of our city and our valley. And I just wanted to say that if San José is to achieve its Green Vision of environmental stewardship, sustainability, and ecological development, that HTP must be passed with the owls in inclusion, or the species and others will be gone from our valley. And so myself and other activists will be here in September and October when the HTP comes on the block and urging you to vote in support of the HTP and the natural legacy of our city. Thank you.

>> Mayor Reed: David Wall.

>> I note the lack luster chastisement I just received. Lackluster because of the fact I speak the truth. I speak the truth in water pollution control plant matters because I have a greater level of detail than every single councilmember, the mayor, and obviously, the City Manager combined. Because I'm the one that's warning you of a spill. Not a spill like I've seen in the early '90s but one that could last for days. Now I'm very concerned about that and that's why I take the tack I do take. Now, ask yourselves, since Councilmember Liccardo, Herrera and Pyle gave such glorious accounts to the previous or to the acting director of ESD, that's your opinion. Can the plant withstand 300 MGDs or greater during heavy wet-weather flow as I stand here today? What is the status of

your engines? Engine number 1 blew a crankshaft the other day. Were you made aware of that by the City Manager or were you made aware of that by a citizen? Engine number 3 was blown up a couple of years ago. Engine number 2 has a heart problem. They're Coopers, the only thing left, and what about Mr. Mayor your volted fuel cell? Your fuel cell can't even create enough energy to turn over one of the engines and yet at \$400,000 a year in maintenance or operation cost it was one of those Green Vision boondoggles going nowhere. So over the next few weeks I'm going to be holding all of you personally accountable through written speeches and the spoken word about the issues of water pollution control. I will not be generous, and I would end that that is what they call in the law an express warranty. Good afternoon.

>> Mayor Reed: That concludes our open forum, that concludes our agenda, we're adjourned.