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>> Mayor Reed: I'd like to call the meeting to order. This is Rules and Open Government Committee meeting for July 28th. I want to welcome everybody back. We haven't had a committee meeting for a while while we've been on council recess and everybody is delighted to be here I can assure you of that. First question is, whether or not there are any changes to the agenda order that we ought to take up now?

>> Mr. Mayor, we'd like to delete number H-3, a matter inadvertently included on today's agenda, the committee heard it on June 23rd.

>> Mayor Reed: That was the City Auditor's work plan which we did approve back in June. All right, then let us go through the rest of the agenda in order. First, item to review is the August 3rd council meeting agenda. And draft, and then we have some items under item H, that also deal with the August 3rd agenda. So we'll take those up as part of this August 3rd council agenda meeting. Those have to do with the ballot measures which are agenda item H-1 and H-2. I think those are all of the ones that would affect the -- that agenda. We'll take those up as part of this discussion. Okay, on the August 3rd agenda, anything on page 1? I'm sorry, one minute, I've lost my copy of the August 3rd agenda. Can I borrow one here? There's plenty to go around. It's not that it's been lost, it's just that I can't find it. All right, anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 or 9? And then page 10 is the financing authority agenda item. Any changes to any of those? Then let's turn to the other request to add, item H-1 and H-2 on the agenda. I had a request to agendize some ballot measure items for the August 3rd agenda and I've got a memo out on that, specifically dealing with, as the memo says, the city redevelopment agency participation in the downtown ballpark project, sales tax increase, marijuana tax, amendment to a repeal of charter section 1111 regarding binding arbitration and modifications to charter section 1504 and 1505, regarding minimum benefits and contributions, cost sharing of pensions based on Councilmember Oliverio's memo which is item H-2. So let's start with the first one on that list, and that has to do with the downtown ballpark project. I am going to modify my request. My memo asked two things. One was to place the matter on the agenda to approve ballot language, and the other was to direct the staff to draft a resolution of support, major league baseball moving to San José, and modify our negotiating principles by adding some detail to the ones that the council adopted last year. So after a conversation that I had with the president of major league baseball, Bob DuPuy, and Lew Wolff, the owner of the A's, the commissioner of major league

baseball has requested that we not have a ballot measure regarding baseball on in November, has offered to help pay for the cost of a special election in the spring, if that is the appropriate course of action. So I am recommending that we honor the commissioner's request, and that we not put this ballpark ballot measure on the council agenda for the 3rd but rather put on the agenda the request to do a resolution of support and modify the negotiating principles as a separate item, not a ballot measure item. So I'd like to open that up for any discussion the committee may have on that item.

>> Councilmember Chirco: We'd need a motion for that I think.

>> Mayor Reed: Yes a motion would be in order.

>> Councilmember Chirco: I would move what the mayor just outlined.

>> Councilmember Constant: Second.

>> Mayor Reed: We have a motion to do that with regard to the baseball ballot measure. Any additional questions?

>> City Attorney Doyle: Mr. Mayor, if we can ask for a sunshine waiver on the actual resolution, obviously we'll try to get it out by Friday. But it's all contained, the subject matter's contained in your memo but the actual resolution wouldn't be posted until at least Friday.

>> Mayor Reed: I think that's fine. Will that be included?

>> Councilmember Chirco: Yes it is.

>> Mayor Reed: The subject matter is contained in my memo that came out last week. All in favor, opposed none opposed, that's approved. Sales tax increase, there's a staff memorandum on that. Further discussion on

that? I don't support putting that on a ballot for a lot of reasons, I don't think we've done all the fiscal reforms that we need to do and taking care of our costs to be controlled in order to justify asking for more money. Secondly, I think based on the polling results we've seen it's highly unlikely to pass but it may be something that we want to put in front of the council and let the council have that discussion so I'm okay with having it on the council agenda for appropriate public discussion. But I'm not going to be supportive of it. Councilmember Constant.

>> Councilmember Constant: Thanks mayor. I, too, agree that this should not go on the ballot. And I understand the willingness or the wanting to have the entire council discussion but I think it would be a very poor choice for the city council to put this on the ballot. And I will oppose it when it comes to council. I'm going to vote against it just on principle here.

>> Mayor Reed: Okay. Further discussion? Is there a motion to add it to the agenda then?

>> So moved.

>> Councilmember Chirco: Second. I agree that council discussion, but the polling as I understand it, I'm disinclined to support it also. But I think that's the council's choice.

>> Mayor Reed: Okay, we have a motion to agendize this on the 3rd. Further discussion? All in favor? Opposed one opposed Councilmember Constant, so that's approved. The marijuana tax item. We have a staff item out on that matter with their recommendations. I think there's some people here that want to speak to that. I see Councilmember Oliverio. I don't know if he wants to speak on that one, no, then on the later one. So on the marijuana tax, whether or not that goes on the council agenda, again, I think the substantive discussion belongs at the council, it's not appropriate here today to have a substantive discussion on it so I'm going to support putting it on the council agenda. Councilmember Constant.

>> Councilmember Constant: I don't have a problem with this going to the council for discussion, I still think that there are some, for me I know there's some reconciliation that has to happen between some of the information

we've been given particularly on the differences between the collectives and the dispensaries and whether we can really tax or not. I know we have are differing opinions, and it's been a while since I read the one that the city attorney's office put out. So I think we need to have a thorough discussion on it. But I'm still not sure if it is something that I'm supportive of yet but I'll make a motion for it to be discussed at the council level.

>> Councilmember Chirco: Second.

>> Mayor Reed: Okay so we have a motion to get that on the council agenda for discussion on the 3rd. Anything else on that? No? All in favor? Opposed none opposed, that's approved. Next one is amendment to repeal of charter section 1111 regarding binding arbitration. I have a memorandum out on that recommending that we make some modification to limit the power of outside arbitrators and then one of the things that I wanted to have done as part of this item is to have the City Attorney give the council basically a red-line version of 1111 so that we would have that before the discussion. You can read through my memo and see the changes and additions but it's much easier if the lawyers do a red line version. So let's see if Rick thinks he will get that done before the council --

>> City Attorney Doyle: We're shooting for Friday as well, I'd ask for a sunshine waiver on that one also. We are in the process of putting together drafts and going through drafts and I'm 99% certain we'll have it out by Friday.

>> Mayor Reed: Good. It's not required but I think it's helpful for councilmembers to see the changes in a red line form even though we don't use red anymore, do we?

>> City Attorney Doyle: I can't guarantee it's red. It will be black probably.

>> Mayor Reed: By the time it's photocopied. It will be black, yeah. Further discussion on this item?

>> Councilmember Chirco: I would move approval to send this to council.

>> Councilmember Pyle: Second.

>> Mayor Reed: Agendize that, further discussion on that at this time? All in favor, opposed, none opposed, that's approved. Then include the sunshine waiver to the extent one is approved on the red lined, get that one out.

>> Councilmember Chirco: Yes.

>> Mayor Reed: And the next one is modifications to charter sections 1504 and 05, regarding minimum cost sharing for pensions. We have Councilmember Oliverio here he has a memorandum out on this topic I assume he wants to speak to it.

>> Councilmember Oliverio: Thank you mayor Rules committee, I have before you a memo with recommendation to go before full council for council discussion, regarding residents of San José to modify the city charter that would allow negotiations to occur on a second-tier pension, currently with the way the charter is written those negotiation will be very difficult because we -- the benefits are the 8 to 3 match is in the charter and you really can't get to it until you have that discussion. My memo does not dictate a second tier of what it will be. A second tier must be negotiated with our labor unions and it must be done with factual actuarial studies that let us know the pros and cons of the different options we have. We all know the dire straits our budget condition is and we all know that the pension is growing at an unsustainable pace. 138 million last year 200 million this year 250 billion next year. These are forcing us to make decisions of cutting city services to residents and laying off employees, allowing the council to have the option of flexibility to negotiate a second tier will allow us to maintained wages for our employees and maintain services to the residents. Otherwise we'd be looking at 25% wage cuts to make up for the difference in the pension growth. The pension growth is growing faster than revenues coming into the city and even if we were raised taxes significantly, we would not be able to keep up with the pace. It's also imperative that we do this now, as we have a large baby boomer population at the city that's retiring. We have approximately 35% of the city employees that will be retiring in the next three to four years. Delay of 2 to 4 years will cause us to lose that cost savings opportunity. In addition we're having people

retire early because of the wage cuts which also creates more retirements, even with a smaller city government we are still going to need to hire for those retirees and those vacancies. I would also like to make a verbal modification to my memo. Under the recommendation section I'd like to delete the words whose hiring date is after January 1st, 2011. It instead should be more the direction that, should the voters of City of San José vote to pass this measure that we and city management would then work on fast-track negotiation to get to a second tier as soon as possible versus dictating any employee after January 1, 2011 be part of that second tier. It allows the option to the council to adopt retirement benefits by ordinance which would not require a second election. This would only be a one election deal allowing the council who is elected to represent the city to have that option. And also, looking at the letter from the lobbyist for the labor union, I think there's a lot of are things where it's talking about requiring a second election. Again that wouldn't be necessary. And I can actually ask our City Attorney, if that is correct.

>> City Attorney Doyle: As you envision, the proposal which is just a giving the council the authority to adopt a second-tier plan, after being conferred, no, a second election would not be.

>> Councilmember Oliverio: Okay, and in addition it talks about some other things about having multiple tiers but we actually have multiple tiers today in reverse in that different benefits have increased over the years so different retirees are getting different benefits, 75%, 85%, 95%, we have multiple tiers already. The arguments presented were not legal arguments but ones of policy which I think the full council can discuss. Other than that I've laid out many of the numbers in the memorandum and again it provides the flexibility for the elected officials to negotiate and come up with a second tier. Otherwise we're going to be in a lot of dire straits fiscally.

>> Mayor Reed: Thank you. Councilmember Oliverio, I didn't realize we had cards of people wanted to speak on some of the previous items, we're going to have to circle back and do that and we have cards for people who want to speak on this one as well. But I think the question in front of us today in the Rules and Open Government Committee is getting it on the council agenda for Tuesday, not the substance of it. And whether or not this is the right policy direction, that's really I think correct council discussion on Tuesday. So I would urge people to talk about whether or not it should go on the agenda as opposed to the substantive issues. Because that's not in front

of us. Although I will support putting it on the council agenda, that doesn't necessarily mean I think this is right policy direction. We'll have that conversation on Tuesday. Councilmember Constant.

>> Councilmember Constant: One of the questions I have, Rick, and I don't know, perhaps you could provide us some more information by Tuesday, is kind of the pros and cons of in the charter, not in the charter, in the Muni code not in the Muni code. I don't know if there's any historical significance of why it was put in the charter versus put in an ordinance. I think we need to have that information so that when we make the decision we have all the information on the whys.

>> City Attorney Doyle: We'll do that.

>> Councilmember Constant: And I think that's it for now. I'll save most of my questions for when we discuss it at the council.

>> Mayor Reed: Any other comments or questions from the committee? I do want to take some public testimony on this. Vice Mayor.

>> Councilmember Chirco: Just a question to the attorney. Because I believe that Councilmember Constant called, asked for information. Do you think you'll have sufficient time to get that to council?

>> City Attorney Doyle: Yes, it won't be a treatise but we'll get the information to you. I think we're pretty well versed in this issue and prepared. We just haven't committed it to writing. So we'll get it out.

>> Councilmember Chirco: Okay, thank you.

>> Mayor Reed: Okay, I'm going to take -- I'm sorry, Councilmember Pyle.

>> Councilmember Pyle: Thank you. I was hoping that we'd have information, too, in reference to how many -- how widespread is this in the state, what are other instances of this happening, and then additionally I had a couple of questions about sections 1504 and 1505. In e-if the -- do they need to be removed from the city charter before we can have a two-tier system regarding retirement?

>> City Attorney Doyle: The short answer is no they don't need to be removed but you would have to still amend the charter. But we can have something prepared for the council, for the fuller discussion on Tuesday, if the Rules Committee wants to move it forward.

>> Councilmember Pyle: I'd really appreciate that. And then also the question, will each individual contract that we have need to address the issues every time a contract is about removed? For example, the age requirement and all of that, maybe altered from contract to contract. So the stability issue is the biggie for me. Anything relating to that. And then if they are defined by ordinance how do we guarantee our residents and employees that any increase or decrease to the city's obligations will not change on any given Tuesday by a vote of the council? Thank you.

>> Mayor Reed: Pete.

>> Councilmember Constant: So just to tie in my request to what Councilmember Pyle just said, because right now, we have pension requirements that are in the charter. But we have contract terms and pays that are in the ordinance that we do to the typical ordinance. I think just if you can expel out what we currently do and what the difference are as proposed and the whys I think that would help tie it all together. Since we kind of do both right now.

>> City Attorney Doyle: The charter contemplates the plans being adopted by ordinance already. The charter establishes minimum requirements. That's what we'll explain in much more fuller detail.

>> Mayor Reed: Okay, we have a lot of people who want to speak. I'm sorry didn't get started on this earlier. But we're going to limit testimony to one minute because we have quite a few cards and we want to get everybody a chance to speak. So we are right now taking up the pension reform voter approval as per Councilmember Oliverio's memo, and the discussion is whether or not to put that on the council agenda for August 3rd. That's a question in front of us. So if you would like to speak to that, now is the time. Randy Sakani and then Susan Bailey. Yes, Randy's here and then Susan. So ... Susan just wait 'til Randy gets up. You are close enough, you can just have a seat.

>> Thank you, Mr. Mayor and councilmembers, Randy Sakani San José firefighters. As with the resolution we have concerns with Councilmember Oliverio's proposal regarding creating two-tier pensions. This proposal is coming forth without any dialogue between city employees and the respective retirement boards regarding changing the city's pension structure. Further there's not any structure to the proposal in terms of what the voters are actually voting on. There is zero specifics in this proposal. Two-tiered pensions can be structured in multiple ways. As we stated in the past firefighters are open to discussing the concept of two tier systems. In fact we even put forward a proposal to the city that would create a second tier for new hires. However, this decision has decades long effect and we need to make sure if anything goes to the voters it should be structured in a way that provides the maximum protection to both the city and the employees. It would make more sense to get the best research and thoughts from stakeholders first rather than rushing to change the charter. What happens if we negotiate a system that saves more money for the city than the system that gets created between now and Tuesday.

>> Mayor Reed: Sorry your time is up.

>> We urge you to take time on this process and afford due process, thank you.

>> Mayor Reed: Susan Bailey and then Jerry Mungai.

>> It's quite clear that something needs to be done. I'm glad that Councilmember Oliverio has put this forward. It's just simple to me that the city is the employer, and they should set the wages that the city can afford. In 1978, the legislatures voted on this to unionize all workers and we have to pay for it. We can't afford it anymore. If the employees do not want to accept what the city can afford to offer them, then they are free to go elsewhere.

>> Mayor Reed: Jerry Mungai and then Yolanda Cruz.

>> Thank you, mayor. I guess I misunderstood. This is just to indicate whether we support you putting it on the calendar?

>> Mayor Reed: For Tuesday's meeting.

>> Okay, I agree with that. I just want to say I agree with Pierluigi here that we should reform the pension and we should go to a 401K plan that is more consistent with the private sector. These are the workers with whom we compete in the marketplace. The marketplace being here locally and it should be more consistent with what's found in the private sector. Thank you.

>> Mayor Reed: Yolanda Cruz and then Linda Didis.

>> My name is Yolanda Cruz and I'm the president of AFSCME MEF. I'm here to speak in opposition to Councilmember Oliverio's memo dated July 18th. It is are clear that you are determined to balance the budget shortfalls on the backs of city employees both current and future. The direction that was set for negotiation with bargaining units this past fiscal year were challenging for everyone. However the tactics the city management team chose to use were not only unrelenting but disingenuous to all impacted parties. The citizens of San José and the city employees that provide the services to on behalf of citizens are the ones who have lost in this political game of cat and mouse. As some of the councilmembers stated in the last few meetings of June the 11th hour negotiations made it very challenging for everyone. However none of this would have happened if your city team was willing to actually negotiate with each individual bargaining group to find the best way for each of us to help

resolve the financial challenges the city faces. Once again this ill-considered proposal directs the city towards projected outcomes which doesn't make sense. Let's not repeat the painstaking process that just completed a month ago.

>> Mayor Reed: Sorry your time is up. Linda Didis and then Bob Brownstein.

>> Good afternoon, my name is Linda Didis. I'm the business agent for AFSCME which represents two bargaining units in the city, which are MEF and CEO. Contrary to the tone of the proposal the fiscal risks associated with waiting until 2012 to have a charter change are minor. A charter change can only be revise pension minimum limits for new employees. In the midst of the budget shortfall the city will be hiring few new staff and replacing only essential personnel. I do the new employee orientation and we don't have people coming in the door. We have people leaving. And I'd like to say there's lots of positions for people to redeploy into but there were only something like 29 this pastime out. And a lot of the people that are being saved for this first year are all going to lose their jobs next year. So I don't see new employees being hired. AFSCME is willing to sit at the table and talk about this issue so we urge you not to put it on the agenda at this time. Thank you.

>> Mayor Reed: Bob Brownstein and then Tom Cochran.

>> Bob Brownstein: Mayor Reed members of the committee, this proposal is so thoughtless and amateurish that it does not warrant space on the council agenda. It can lead the council to only two outcomes. One outcome is to never have retirement language in the charter in the future. Which means the city's share of retirement costs would never have the protection of charter language. Each negotiation would have the city budget at risk for the city paying all of the costs of a pension. That kind of political vulnerability makes no sense. The other potential outcome is that we do decide to have language in the charter in the future. Which means we have a second ballot measure which means we pay \$750,000 again, because this ill-timed proposal was brought forward before we have any idea about what we actually want to have in the future as reformed pension system. We don't have \$750,000 to throw away for a publicity stunt. Thank you.

>> Mayor Reed: Tom Cochran and then Kay Denise McKenzie.

>> Thank you for having me here. Thank you mayor city council people and staff. I'm Tom Cochran. I'm senior financial consultant, vice president at bank of the West. I was a salary setting chair as you guys know for a long time. This issue is complex. There's a lot of stakeholders and we need to -- we need to do what we did for the salary setting commission and go out to the different districts, have meetings in the libraries, take your time, be proud of the process. You know I love the sunshine policy, this is like an eclipse policy, it's a lack of sunshine. It's an emotional response to a hot issue. Let's take our time and let's do the right thing. I'm not here for the unions or for the council, I'm here just as a homeowner in San José and I want to be proud of the process, thanks.

>> Mayor Reed: Kay Denise McKenzie followed by Nancy Ostrowsky.

>> Honorable mayor and rules committee members, my name is Kay Denise McKenzie, president of CAMP IFPTE local 21. This proposal is being rushed forward without adequate public participation and review and with no dialogue with labor groups who will represent the new employees that will be directly affected by the potential implementation of a two-tier retirement system. Changes to the charter are significant matters. They should have maximum coordination, stakeholder input and public review rather than to be rushed through the process for a vote by the electorate. A better approach is to create a thoughtful process that determines what the problems are, carefully evaluates all the options and selects the best alternative for the city followed by appropriate charter changes thereafter. Please do not support the addition of this item to necessary Tuesday's agenda. Thank you.

>> Mayor Reed: Nancy Ostrowsky followed by Henry Survein.

>> Good afternoon, Nancy Ostrowsky, from IFPTE's local 21 representing AEA and CAMP. We are also asking you not to move this forward today. We really do believe in the sunshine of being full disclosure, taking the time to talk to the community, taking time to talk to the stakeholders, taking time to talk to the bargaining units. We have proven that we could work as a coalition this past just a month ago. Give us an opportunity to talk and work through this. We ask you not to move this forward as city council in a rush-rush behavior. Thank you.

>> Mayor Reed: Henry Servene followed by George Beatty.

>> Thank you, mayor and members of the committee. My name is Henry Servene, San José resident and representing engineers and architects association. Certainly when I heard about the situation I took some personal time to come down here to let you know that I feel that this is ill considered. I think really ultimately as with you we are responsible to the public for the services we provide. Nevertheless there is a level of stability that needs to be examined in how we go with this. I'm asking that you take the time to do this right. As with other major important proposals of the city we are deferring them. I suggest that we take time to study them, again in public review and not put us in a situation where we may for example have to go and request a second charter amendment once we've decided what we want to do. So I mean each those cost \$750,000. Thank you for your consideration.

>> Mayor Reed: George Beatty the last card I have on this item.

>> Good afternoon, mayor, members of the committee, George Beatty San José Police Officers Association. I'm here to oppose Councilmember Oliverio's measure, because I think demonstrated by some of the testimony we heard today, apparently everybody doesn't know everything about our jobs. We have dangerous jobs but also we have a lot of responsibility that comes with it. And we are rushing something through that is parent to me that not everybody has had an opportunity to speak about. There has been no stakeholder involvement in this. Like I heard before, it seems more like sunset Steph sunshine. I ask that the council reach out to us and we'll reach out to you. We already have. We are willing to talk about two-tier and find a solution that has a, you know, favorable long term impacts to the community, to the city and to the Police Officers Association. Thank you.

>> Mayor Reed: I think there's some other people that put in cards, one card for multiple items I want to make sure we don't miss those people that want to speak on this one. Pat Saucedo, anybody else that wanted to speak on this item that I didn't call please come on down.

>> Mayor and committee Pat Saucedo for the San José chamber of commerce, appreciate in being here today. In line with asking for one mini would like to comment on the two tier pension reform and binding arbitration. The chamber believes and advocates that pension reform and also binding arbitration will be key foundations to long term fiscal stability for the City of San José. We fully support these going to council for full discussion. There's much in both of these proposals. At this point there is a little bit lack of clarity. We've heard the City Attorney say he's going to come in with additional language. We'd like that time between now and next Tuesday as well as council to see these final products so we can speak more fully to these proposals at Tuesday's council meeting. But absolutely believe they should go forward, should be agendized for the council meeting and circulate put on the ballot for November. Thank you.

>> Mayor Reed: Jim Eller, anybody else want to speak to this? We're coming back to binding arbitration. We have cards on that.

>> Good afternoon, well done on baseball, good job. With regard to binding arbitration, I very strongly urge you as chairman of chamber PAC to move this onto the council agenda. This is an issue that demands a consideration, demands council attention, and it should be discussed at council. If you are going to discuss a sales tax you should absolutely be discussing two-tier. This is an important issue in this community and it needs to be brought forward and I strongly hope you will do so.

>> Mayor Reed: Anybody else want to speak on pension reform? I don't think so. Did we yet have a motion? Vice Mayor?

>> Councilmember Chirco: I have a question. Mr. Brownstein spoke of if the city being unprotected, in this regard and that if at some time we should choose to have some consistency, that created a concern for me that the city would have an exposure where where we might wind up paying for all of it. Is that true?

>> City Attorney Doyle: Well, I think that's something we can address in a memo. I think currently what you have are minimum benefits to form employees and you have an 8-3 split in terms of proportionate share, city-

employee. If that's what he's referring to, that's the amount the city has to pay. Depending on how a charter amendment has crafted, if it's a blanket give the city authority to enact a second tier by ordinance then the council has authority to have instructed, a 50-50 split or some other kind of split. But it is subject to ordinance. It is how the charter language would be crafted, but without taking the committee's time, it's something that is best discussed at a lengthier meeting.

>> Councilmember Chirco: I would move approval to move this to council but that is a question I would be asking, because I will --

>> We'll address it.

>> Councilmember Chirco: I don't believe in keeping things from council.

>> Mayor Reed: Second?

>> Councilmember Pyle: I think it's absolutely necessary because of the complexity of the issue, because let's all remember why binding arbitration took place, and I believe it was in 1980, 30 years ago, and that was because there is no other way for any disagreement to happen with fire and police. It is an ultimate goal for them. I don't know how many times it has even been employed. I don't know how many times -- how successful it's been, I don't know the particulars on it. And if we don't do the research now we most certainly will do our research later, with the damage in place. So there are so many questions. What takes the place of binding arbitration, does something take the place? This is an extremely complex issue. So the proviso is that there be an allowance that this go before a study committee. I think it needs intensive study, all the questions answered. This absolutely cannot be straight-lined to an answer. We need to take the time and make sure that all of the -- the meat of the issue has been addressed. Because we're asking for the voters to vote on something that we haven't really addressed thoroughly. And we have to do our homework first.

>> Mayor Reed: I'm going to come back to the binding arbitration for public testimony, for those of you who want to speak on it. So the motion in front of us right now, for this consideration, is just the pension changes of 1504, 1505. So the motion is to put that on the council agenda for further discussion. Obviously, once it's on the council agenda, and we're going to come back to binding arbitration, and we'll discuss separately that after we get the testimony. Councilmember Constant.

>> Councilmember Constant: I just want to make sure we have a second on that. Because I know the motion was made on the second-tier but the second was made in relation to binding arbitration. So is that a second on the second?

>> Councilmember Pyle: A second on that, yes. It all applies. I would hope that we don't preclude the possibility of intensive study sessions in reference to this.

>> Councilmember Constant: I do think this is something that council definitely has to have a discussion about. Because we've bantered about the possibility of second tier but we've never really had the full discussion. I think that everybody knows some form of second tiers coming, but we need to have the discussion and start it somewhere. And whether that ends up with what we have here, or some other slightly modified version or something moving forward, I think it's important that we do get things moving. So I think the council should discuss this Tuesday.

>> Mayor Reed: Okay, well, I think the council should discuss it Tuesday and would support putting it on the agenda. But I have a question for Alex Gurza who was here before then, which was, the council last year sometime gave direction to staff to attempt to begin the negotiations with our bargaining units over second-tier. I just can't remember what the direction was and when it was.

>> Alex Gurza: Mayor, Alex Gurza, director of employee relations. That's correct, we did a receive direction --

>> Mayor Reed: Just tilt your microphone up just a little bit.

>> Alex Gurza: We did receive direction from council to begin negotiations on second tier. The direction wasn't specifically designed at a specific outcome as to what it was. Given the City's fiscal situation, and the focus on reducing payroll costs, we did not proceed with that and deferred it really until the next set of negotiations. So we have an opportunity in the coming year to negotiate with every single bargaining unit. I would say, with one exception, since we have not yet settled with the San José firefighters, a second tier is currently on the table and there is a proposal that the city has made to the firefighters on a second tier.

>> Mayor Reed: Okay, thank you. We have a motion to put this on the agenda for the 3rd. All in favor, opposed, none opposed, that goes on the agenda. I want to circle back on where I should have started, that's on the ballpark issue, take public testimony. Some people wanted to speak on that, they didn't get a chance. I'm sorry, I'm rusty, I haven't been here in a few weeks. So quickly I forget what I'm supposed to do. Michael Mulcahy, and then Blage Zoalich and David Wall.

>> Mr. Mayor and councilmembers, thank you very much, Michael Mulcahy, Baseball San José. Just want to say thank you to the mayor for great leadership on this baseball issue. It seems like every day there is a great headline for San José, and it's relentless pursuit of bringing major league baseball to San José. Even though we're able to ramp up for a November campaign we're not going to slow down. We have been given another three months or so to make sure we have a thoughtful well funded and aggressive campaign as we approach March so thank you again and we look forward to playing baseball in San José.

>> Mayor Reed: Blage Zoalich and David Wall.

>> Thank you, mayor. Committee members. On behalf of the Downtown Association and our members I too want to thank you for putting this on next week's council agenda and also let you know we support a campaign with major league baseball in the spring. We certainly are very excited about the possibility of a downtown ballpark and what that's going to bring to San José and to our core and we want to maximize the potential for success. We

are 100% in for a spring initiative and we look forward to playing ball in San José as Michael said so thank you very much.

>> Mayor Reed: David Wall.

>> David Wall: The purpose of this testimony is to bring to light possible defects in the memorandum, so put forth. One is the time line for the redevelopment agency's involvement in the purchase of the or the action of the ballpark. Currently, it's people would think that it starts at the conclusion of the vote. I'd like to know if it's made retroactive to allow for all the land purchases and the millions of dollars spent on acquiring the parcels to date. That needs to be clarified. Also in the formation of remedy with the giants itself as a function of who's going to compensate the giants for their territorial loss and the redevelopment money going to be used as part of that construct or taxpayer money being used as part of that construct or sales revenue in ticket sales if the baseball park goes through is that part of that remedy construct or in general does the City of San José at any point in time have any dealings whatsoever with the construct of that remedy with the giants?

>> Mayor Reed: Sorry your time is up. I believe our last speaker on the ballpark issue is Susan Bailey. Anybody else wanted to speak on that and I missed the card please come on forward. Tilt it down just a little bit.

>> Okay. Thank you. Okay. At a time when we are under such duress with all of the economic problems that we have, I do not think this is the time to be thinking about spending more money on a facility that is not necessary. The amount of money we put into the airport, and now airport travel is down because the economy is down, the rapid transit that we've dumped money into year after year after year, and how many people actually use that? So I think that we need to have some, pardon me, some restraint yeah in the best of all worlds it would be great to have a ballpark. But now is not the time.

>> Mayor Reed: One more speaker on the ballpark, Pat Saucedo.

>> Pat Saucedo, chamber of commerce. We fully support the resolution the mayor's requested to go to council. We see baseball as a major economic development tool for San José and fully support this discussion and, hopefully, adoption of council.

>> Mayor Reed: I think that ends the public testimony. Anybody want to reconsider the vote taken after hearing the public testimony? Seeing none, we'll move on to the next item that I messed up, sales tax increase. I do have some requests to speak on that item. Susan Bailey and Jerry Mungai.

>> We should not be having any increases in any kind of taxes. Just because you cannot control your wanting to spend money on things does not mean that the public last more and more money to give you to pay for all of it. And we know that a quarter percent is not going to be the end of it. You'll come back and you'll say we don't have enough we need more. It needs to stop. The spending needs to be curtailed. We need to live within our budget, which we do not seem to be able to do now. So absolutely, no sales tax increases.

>> Mayor Reed: Jerry Mungai and then Pat Saucedo.

>> Thank you, mayor we are going to go up to 9.5%, that is a pretty awesome A money. People do react. There are consequences. Just ask senator Carey people going to move to other parts of the county to do their shopping. I think it is counterproductive. Thank you.

>> Mayor Reed: Pat Saucedo. Anybody else who wishes to speak on sales tax, come on down.

>> Pat Saucedo, chamber of commerce. The chamber not only does not support an increase in the sale tax, we do not recommend it go to council for discussion. It needs to ends here, right now. All cities save Campbell have a 9.25% sales tax. For San José to increase to 9.5 they're just going to see our residents go to Milpitas and Santa Clara and Sunnyvale to do their major purchase shopping. A negative negative negative. Thank you.

>> Mayor Reed: That concludes the public testimony on the sales tax item. Anybody on the committee wish to reconsider the action previously taken? None. We'll move on to the marijuana tax, some request to speak on that. Paul Stewart, James Anthony.

>> Mayor Reed, members of the committee. The staff recommendation is for a 10% across the board tax that is untenable for patients added to the current sales tax plus a potential one quarter cent you're looking at would put it at a 19.25%, which would drive the patients underground. We would recommend committee option number 3 because it recognizes compassionate use. What would the tax rate be? One of your policy questions on medical use .5 to 3% sliding scale as Sacramento is considering. On nonmedical use at the council discretion, staff is recommending 10%. The other policy questions, tax rate at the same as nonmedical no, policy question what should the tax rate be? Answer, policy question applied to all cannabis businesses, the answer is yes, provided the two tier compassionate use system is adopted and recommended to council for full action. Thank you.

>> Mayor Reed: James Anthony. Followed by Clark Hugh, I think if I can read the handwriting correctly.

>> Good afternoon as Paul just mentioned this tax on the retail dispensaries is not tenable. It is possible to go higher with a centralized efficient scale cultivation regulation which has not been addressed yet by staff or committee. We need to look at that. Also what we're entering here is a competitive environment. In the last couple of weeks I've been before seven city councils on tax issues. Long Beach is at 5% on medical, 10% adult use; Oakland, which is currently at 1.8, is going to go at 5% medical, 10% adult use. Richmond, 5% medical. Sacramento, up to 4% medical, 10% adult use. Stockton, 2.5% medical. Berkeley, 2.5% medical, 10% adult use. We don't know yet where San José is or where San Francisco is but to make this tax actually work you have to have centralized efficient cultivation. That will keep San José competitive. Otherwise as Paul mentioned we're going to drive all of this activity underground were there is no regulation and no tax revenue. 10% of nothing the nothing. Thank you.

>> Mayor Reed: Your time is up. Kim Q, Dave Hodges.

>> Hello, my name is Kim Q. I'm a representative of americans for safe access also the 408 compassion center. Thank you for having this meeting. As an interface with the medical cannabis community, I will say that increasing the tax is not an efficient way to handle this situation. Patients simply cannot afford it. It is too much money now. We are talking about patients who are on Social Security, fixed income. They cannot afford 9.25% let alone another 10%. In terms of increasing the business tax we do not ask for anything more than 3%, 3% that's it. But more importantly going back to the 9.25% plus the quarter percent that you're requesting for is outlandish. That is simply not feasible and we request that you find another way in terms of taxing the medical cannabis community and the sick patients in your community.

>> Mayor Reed: Dave Hodges, Susan Bailey.

>> Hello, mayor and councilmembers.

>> Mayor Reed: I need to have you lift that up just a little bit.

>> Oh, sorry. Okay, I've gone through the proposed tax measure. There's some verbiage I'm really concerned about and again the 10% rate is pretty outrageous. I would suggest no more than 3% in some verbiage up to 3%. I've gone through the whole thing and highlighted in red the things that should be removed and in blue add some verbiage. I'd like to submit this as a public record. Thank you.

>> Mayor Reed: Thank you. The clerk will take that. Susan Bailey.

>> To me, this tax on marijuana is -- it's just government looking for another avenue to tap for more money that they haven't done before. I'm not an advocate of marijuana. But this is just one out of many different ways that the city may try to get more money. The latest other thing I heard was, a proposal to start charging five cents per alcoholic beverage sold in the state of California. It was a way of raising more money. I mean when will it ever end? We have a right to our private lives and the government does not have a right to tax everything we do.

>> Mayor Reed: I think that's the last testimony on the marijuana tax. Does the committee wish to reconsider its previous action? No, then we will move on to the binding arbitration matter, actuaries section 1111. We've got some people that wish to speak on that. Larry pigram, Nancy Ostrowsky.

>> Not supposed to stand on that.

>> Mayor Reed: You're a little tall. There is a handle there if you squeeze it it will slide up. There you go.

>> Got it. Mr. Mayor, as you know fiscal reform is absolutely imperative. I support your memorandum and I support the action the committee has taken, thank you.

>> Mayor Reed: Nancy Ostrowsky, Susan Bailey.

>> Nancy Ostrowsky, IFPTE 21, representing AEA and CAMP. We do not encourage you to go forward with this proposal. The citizens of San José have been almost completely excluded from a role in developing the measure. Again, it is a rush-rush. Take time. This is not something that should not be considered. You have to work with the stakeholders involved before you move something like this forward. Thank you.

>> Mayor Reed: Susan Bailey followed by Randy Sakani.

>> My opinion is that there needs to be reform, and that binding arbitration, I do not think should even play a part in the city and the negotiations with the people that work for the city. The unions are not elected by the people. Our council reps are. And you should run like if you were running a business you would look and you would see how much revenue you had and what jobs needed to be done, and what people you needed to hire in order to equal things out our wouldn't stay in business very long. And the city is experiencing this right now. We don't have enough money for the basic necessities that the city should be doing. So I don't think that binding arbitration should even exist. I think it should be a back-and-forth between employees and the employer, and to be worked out that way, not anything that's a binding arbitration.

>> Mayor Reed: Randy Sakani then Jerry Mungai.

>> Mr. Mayor, committee members, thank you. I'm here today to speak against putting this on the agenda. I think most important a discussion today is about process. At no point over the course of the last year with the discussions between the firefighters and the city has this ever been brought up. We think it's ill advised for the council to make a major overhaul of the City charter at the last moment and behind closed doors. All of the facts need to come out. We need to make sure there's stakeholder meetings for everybody to put out all the answers people have and get out all the answers to their questions. The council has stated they want well developed policies developed out in the open. This proposal is the antithesis of the spirit of that policy. It should not go to the council until it's received due process, so that will help the council make a good decision. Thank you.

>> Mayor Reed: Jerry Mungai. Followed by Jim Eller. I think Jim spoke about our binding arbitration earlier as part of his other comments.

>> If this is to go on to council I approve of it. However I don't think it goes far enough. We circulate get rid of binding arbitration completely and be more consistent with the private sector. Thank you.

>> Mayor Reed: Bob Brownstein, Henry Survene.

>> Bob Brownstein: Mayor Reed and members of the committee. This city council endorsed the principles of open government and sunshine. To rush this kind of complex crazy quilt proposal with untested elements forward, without public review, without budget analysis, without serious legal analysis, without the chance for full debate truly does not strain those principles, as the Mercury said, it tramples them underfoot. We are talking about amending the charter. A change that may affect residents of San José for decades. They're entitled to be fully a part of this process and we all know they aren't. This proposal cannot only have significant consequences for the people who work for San José, it can have dangerous implications for the people who live in San José. As a San

José resident I've been a victim of crime five times. I'm not looking for the sixth time because the council insists on rushing to judgment on an issue of this complexity. Thank you.

>> Mayor Reed: Henry Survene, followed by Pat Saucedo, I think she spoke earlier and then George Beatty.

>> Henry Survene. Arbitration has worked well in San José, most contracts are negotiate but are resolved by arbitration. Arbitrators are neutral and fair. Their responsibility is to award pay and benefits based on the city's ability to pay for any award of benefits by taking into consideration the City's fiscal condition in comparison to other firefighters or police officers' wages, benefits and, of course, comparison to the Consumer Price Index. It should be noted that since the inception of binding arbitration the raises granted through arbitration have been lower than the raises achieved through voluntary agreements. Thank you.

>> Mayor Reed: George Beatty, Mike Randolph.

>> Mayor Reed, members of the committee I think Bob Brownstein put it perfectly. I would just like to add that we spent six months of intense negotiations with the city, six months, not once was binding arbitration ever brought to our attention was it ever asked to be discussed and now all of a sudden we're close to closing the contract, we've reached a tentative agreement and now the subject comes up. It's like being attacked by a submarine in the middle of the ocean. You know I look at that the whole fairness of this as Bob has said, this is a complicated issue. We should have all the stakeholders involved and the last time I checked we are one of the stakeholders and in fact many of our residents, many of ours officers are residents in this city. I believe if we just move forward with this, it is just disingenuous and certainly unfair. Thank you.

>> Mayor Reed: Mike Randolph. Anybody else who wants to speak on this item whose card I missed please come on down.

>> Hi, my name is Michael Randolph. I've been a member of the San José fire department for over 22 years, and over the past few years I've lost some great coworkers, and the city's lost some great employees, because

local 230 is allowed to take a city firing to arbitration and have that person reinstated. The person I'm talking about committed a number of acts against my co-workers and one of my co-workers who was repeatedly battered and assaulted by this guy filed a police report, got taken by the D.A.'s office and there's recently an out of court settlement originally was going to be for sexual assault but the settlement was for battery maybe two counts I'm not positive. But the bottom line is my co-workers suffered significantly in large part because local 230 has been able to go to arbitration and get a crazy arbitration decision and allow an employee who should have been fired to stay on the job. I think it's a great risk to the public and it's a great risk to the City of San José city employees to allow crazy arbitration decisions to stay in place and represent a real threat to the city and to the public and I think the citizens of San José deserve much better and I want to strongly urge you to strengthen this arbitration agreement so these type actions cannot occur again, thank you.

>> Mayor Reed: I think that concludes the public testimony on the binding arbitration matter. Does the committee wish to reconsider actions previously taken? Nope, okay, then we'll move on. I believe that concludes almost everything on the August 3rd agenda. We have a couple of requests for additions.

>> City Manager Figone: And Mr. Mayor, I don't know if you've already thought about the agenda order, and if you would want to take the order as-is or preserve that as your prerogative for that day.

>> Mayor Reed: What I would like to do is put the baseball measure on early on after the report of the City Manager under strategic support services since that is not a ballot measure argument, it is a council resolution along the lines of what we have already done. I'd like to do that at that point. And I think taking up the ballot measure changes, you know, next in order before we do other things is probably the best way to go but I don't see what the committee thinks of that. Councilmember Constant.

>> Councilmember Constant: I was thinking developmentally opposite, take the ballot measures last, get the quick things along the way, that way city staff involved in the ballot measures doesn't have to hang around.

>> Mayor Reed: That is also a way to do it, last and we could say not before 3:00 I think would be reasonable to take up the ballot measures, if we do them last, not before 3:00. Saves some people time and effort, any other suggestions?

>> I would move approval for that.

>> Mayor Reed: Okay.

>> Councilmember Constant: And I think there was an add. Wasn't there? Yeah, one add.

>> Mayor Reed: Continuation agreement West Coast Online, dba netfile. Anythink else on that, other than to add that under the consent calendar items? Any other additions? We have a motion to approve as amended. All in favor, opposed, none opposed. That completes the August 3rd agenda.

>> Councilmember Constant: All right, we finished number 1 in an hour and ten minutes.

>> Mayor Reed: Number 1 on our agenda we got it done. Okay, the August 10th council meeting agenda. I need a copy of that agenda, please. Anything on page 1 on the administrative draft? Or page 2 or 3? Page 4 or 5? I thought I just saw item 4.2 the habitat conservation plan, are we moving that?

>> It was deferred.

>> Mayor Reed: All right, we're moving that. Anything else on 4 or 5? 6 or 7? This agenda is shorter, it's a good thing. Speaking of agendas, is National Night Out August 3rd? Okay, I know that we don't have evening agendas on National Night Out day.

>> Councilmember Constant: We might.

>> Mayor Reed: We might. We might run into the evening I suppose, that could always happen. Anything else on August 10th, any requests for additions? I have a travel request approval to add to the consent calendar. Any others?

>> Councilmember Constant: Motion to approve as amended with the adds.

>> Councilmember Chirco: Second.

>> Mayor Reed: We have a motion to approve as amended. All in favor, opposed, none opposed, that's approved. Redevelopment agency August 3rd.

>> Mr. Mayor, Gary Miskimon with the redevelopment agency. If I may we have no items scheduled for August 3rd and I'd recommend that the committee approve cancellation of our agenda with the exception of any closed session or any joint items that may come up on the City's agenda.

>> Excuse me mayor. We may want to reconsider the before 3:00 for the ballot measures. I'm not sure if we'll need to take a break. There aren't that many significant items before we get to this.

>> Mayor Reed: Not before 2:30?

>> That would be safer.

>> Mayor Reed: Is that all right with the committee? It would still be last but 2:30 is probably a safer time. We didn't have many ceremonials if I remember.

>> No.

>> Mayor Reed: Back to that. The August 3rd recommendation is to cancel the part of meeting, not the closed session or joint items but just the other business part.

>> Just the afternoon session.

>> Move approval.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. August 10th redevelopment agency agenda. Any changes to pages 1 or 2, or three? Short agenda.

>> Councilmember Chirco: Move approval.

>> Councilmember Constant: Second.

>> Mayor Reed: Page 4, sorry, I didn't get to 4.

>> Councilmember Constant: Oh, sorry I didn't see 4.

>> Mayor Reed: Fully items to discuss, any commissions?

>> Mr. Mayor, item 4, the strong neighborhoods initiative update, that item will be coming forward, we are contemplating a supplemental memo and hope to have that out by Friday also, simply clarifies the last items on the agenda.

>> Mayor Reed: I think we'll need to talk about how lengthy a presentation that's going to be and how you plan to do it and what else happens for the agenda on the 10th. Anything else on that agenda?

>> 92 other items.

>> Mayor Reed: I think we have a motion to approve. All in favor, opposed, none opposed that's approved. Our next item of business would be legislative update, we have nothing on the state, apparently. Federal update, Betsy Shotwell is here to deal with the status report of our city's federal advocacy firm of Patton Boggs.

>> Betsy Shotwell: Thank you, Mayor, members of the Committee. Betsy Shotwell, Director of Intergovernmental Relations. Since this memo was written, a lot of activity has taken place in Washington, as I'm sure you're aware. And so we will be issuing a revised memo when Congress adjourns for the summer recess next week. Couple things of note. The unemployment extension did get passed and signed by the president. The White House reform measure with a lot of consumer protections, which I'm still weighing through, that as well was signed by the president a few days ago. The war supplemental, which is really going to be really one of your only fiscal pieces moving until the lame duck session, that went through the senate, with the senate rejecting the amendment that would require collective bargaining for public safety in about 20 states. That was rejected and went to the House and was voted on last night, and I confirmed this morning that the collective bargaining piece was still not in the House measure. Councilmember Constant, you had raised that question last month. So we have a lot of things pending, FAA reauthorization, we don't know if that will be resolved before the recess or not. I'm really looking at, at least, our appropriations for the City which right now are about 5 million, and Water District has about 4 million in appropriations. We won't see the results of that until after the -- oh, pay our bill -- until after November 2nd and during the lame duck Congress. And I know, mayor thank you for your recent visit, and you probably, as well -- is that a hint? Observed a lot of activity going on.

>> Mayor Reed: Thank you. Those were not symbolic lighting cues. A couple of things to add to that. I was in Washington yesterday for a conference at the Brookings Institute regarding the Obama administration's -- the president's export initiative that is being currently worked on by the administration. I wanted to have an opportunity to have the Silicon Valley point of view to be considered as part of that. So I participated in the Brookings Institute forum and panel on that. And as part of that I did meet with the president of the export import

bank which if we're going to increase exports has a very significant role to play. They are hoping to be able to add a branch office in San José for the export import bank. I know that redevelopment staff has been working on them with that. It does depend upon getting approval of the president's budget. And I thought it was important for me to go make the personal request to the president of the bank to make sure that if they didn't get full funding for all the branches they want, that we're at the top of our list. So I had a very nice meeting and offered to help them as -- however they think is necessary to locate here, and then do the networking with the venture capital community and our tech community to get their message out. Because I think we'll have a big role to play. If we're going to double exports, that would be a huge thing for Silicon Valley and San José. As was pointed out in the Brookings Institute report, we are the number 1 region in the country for percentage of workforce that is dependent upon exports. We are nearly a quarter of our workforce. So if we could double exports, that would be a couple hundred thousand more people at work, and so that would be good. So that was the reason for the trip yesterday, and I did get a chance to talk to a couple of the administration's and Senator Warner's staff about the America Competes bill, again on the competitiveness of issues from Silicon Valley's point of view. The good thing is Senator Warner has got a lot of tech companies in Virginia, and so he's handling the Senate work on that bill and understands our interests out here are aligned with theirs. So that was good. That's my brief report on that trip, and I want to thank Patton & Boggs for arranging that and facilitating it and managing it.

>> Betsy Shotwell: And thank you for your efforts.

>> Mayor Reed: Anything else on the federal level?

>> Councilmember Pyle: I just wanted to say during this last week I did meet with Congress person Zoe Lofgren. There are so many of our developers that can't get loans from banks. She was begging everybody who had a problem with it she's trying to quantify the amount of the problem and just it is extremely critical that we do exactly at a, and let her know. Thank you.

>> Mayor Reed: Anything else on the federal legislative report? Okay, thank you very much. Our next item is the public record. Anything from the public record the committee would like to pull for discussion? Councilmember Constant.

>> Councilmember Constant: Is a couple of items. First a question for the City Clerk on item C, the senior citizens commission, I know as we are having the commissions meet less frequently which I think is important given the staffing and budget situations, one of their comes in there is about such committees, there's nothing that says staff committees can't meet as long as they don't need staff support, is that correct?

>> There is nothing that was in the MBA that the senior commission was addressing. Actually I'm going to the senior commission retreat on August 12th to talk through some of those issues with them.

>> Councilmember Constant: Okay. Yeah, I think I might be there too. I think it's just important for them to understand it's the staff support that we're having difficulties with because of the staffing. And if there's work that they want to do that doesn't require staff report, I don't think it's necessarily a problem. And then on Item I and P, particularly on Item P, I just wanted to make a comment. I work with Dave on the retirement board, and I just think it's important for us to recognize that he's taking a step to resign so it makes it easier to fill the positions on the civil service commission. I know in the time that I've been here it's been very difficult to find someone to fit that attorney category when you have the requirement of the gender split on the board. And the move he's making to leave early to give us the flexibility to fill those positions sooner I think is a great move on his part to help us out. And I just want to make sure that we publicly acknowledge him for that because it has a lot of significance. And with that, I'd make a motion to note and file everything else.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to note and file. I had one matter I'd like to discuss, that's Item J, the letter from Southwest Airlines chairman of the board and president and Chief Executive Officer Gary Kelly, to me, regarding the opening of the new terminal. When Mr. Kelly was here before the terminal opening, I did meet with him as part

of an effort to meet with all of the CEOs, 19 CEOs of airlines that either are doing business in San José or we think have an interest in doing business in San José. So I'm putting together an effort, staff has starting working on a plan to reach out not just to the CEOs of the airlines, but our CEO community here, and hopefully we'll be able to get that going, get the councilmembers engaged as part of rebuilding the passenger traffic at the airport. But as noted in Mr. Kelly's letter, what I asked him was basically, you know, what can we do to help you, convince you, that you need to add some service in San José, what are the issues that you see in our city. Of course they love the new terminal, there's no doubt about that. That is a huge plus. But they do have some issues, nothing new to us, some of these we have been dealing with for a while, and we'll work through those issues and identify other issues any other CEOs might have, that we can help them take the risk of adding service to our airport. So I was pleased to get this response from Mr. Kelly, and of course we'll continue to work on that. But as you see, some of the things that we've been talking about, they're very much interested, the building heights ordinance, the exemption for air carriers with collective bargaining agreements to the living wage ordinance, storage facility for fuel consumption, cost containment number 1 on their list which was clear from his comments at the opening, and also comments from the Alaska Air CEO as well. And they are interested in joint marketing initiatives, things that we can do together to help them build their passengers and fill those flights. So I think it's a good start. Southwest is more than 50% of our capacity at the airport right now, and we want to make sure that they continue to grow that. And I think that's it from the committee on the public record. We have a motion to note and file, but I do have request to speak to one item in the public record. That is item Q, a letter from Aaron Racendez. I think that's Q. I got -- got my numbering system down here, it's item Q on this item. I'll take that testimony now. There's a letter in the packet as part of the public record from Mr. Racendez. So I assume he wants to speak to his letter, so Aaron Racendez and then Sammy Castillo.

>> Hi, mayor and councilmembers. I just want to talk about this letter of an incident that happened when I was running for city council, it's right in front of City Hall when Mr. Ford approached me, that we were very close to have a fight in there. Now, this was not ethical. And I want to see, was right after 11:00, he was on his time, discussing political issues. And he was on city time. So I just want to look at that. We have a videotape. I've got witnesses, and even my wife was there present and some other people from my campaign staff. So I'm willing to working this out with you guys, so put a stop on this kind of politics of the past of intimidation. Nobody in the

community, nobody has come Mr. Ford came to me and approach me. Was unethical, unprofessional, and you know I just want him to apologize for what he did. Thank you.

>> Mayor Reed: Sammy Castillo.

>> Mr. Mayor, I'm here on behalf of Aaron Racendez, and I know him pretty well, and I know that his ethics are true and good, and he speaks from his heart. And I also believe that he should get some sort of an apology. And that's about it. Thank you.

>> Mayor Reed: Thank you. Anybody else wish to speak on this item? Ryan Ford.

>> Good afternoon. I'm Ryan Ford, chief of staff for Councilmember Nora Campos. In the three and a half years I've worked for the City I feel I've always conducted myself professionally and taken my duties as a city employee very seriously. My role as chief of staff, I must protect the use of my boss's name and title, and I've always done so with professionalism and respect towards others. And I feel that held true in the conversation being discussed today. Thank you for your time.

>> Mayor Reed: City Attorney, Mr. Racendez says there's a video of this. We just have a letter in front of us. I'm not sure exactly what the appropriate steps might be if we wanted to do something what they might be under the rules.

>> City Attorney Doyle: I don't know that the Rules Committee has any jurisdiction at this point. I think that my suggestion is to refer it to the appointing authority, which is the councilmember. She is the one who appoints her staff, and he works for her. And then she can conduct an investigation, or do with it, but it is an employment matter, and that would be my suggestion.

>> Mayor Reed: Do we collectively have any obligation or authority for the behavior of any of our employees, or is it only the appointing authority that has either authority or responsibility, whether it's City Manager or councilmember or whomever?

>> City Attorney Doyle: I think at the end of the day, the council can always chime in but no different than if it's an employee under the City Manager or myself, I think the first step is really the appointing authority to be advised of the matter and to take any appropriate action, and if there's a continuing issue then it can go from there. But at this point I think it really belongs properly with the appointing authority. In this case Councilmember Campos.

>> Mayor Reed: And what about the video that was referred to?

>> City Attorney Doyle: We probably can ask to get a copy of it. You know I think that's one of those things that is, the more information the better.

>> Mayor Reed: Okay, anybody else on this? Pete.

>> Councilmember Constant: I'll just modify my motion to refer this item to the councilmember. And everything else as previous.

>> Councilmember Chirco: Second.

>> Mayor Reed: Okay, I would ask that the City Attorney follow up on this issue of the video so that that can be provided to the councilmember.

>> City Attorney Doyle: Okay will do.

>> Mayor Reed: And then, you know we should get some sort of report back from the councilmember. I mean it's an employment matter, I'm not sure what the level of report can be but the councilmember has seen it acted, done whatever would be appropriate in the way of a report back. I know it's limited because it is a personnel matter.

>> Do you have any questions or --

>> Mayor Reed: No, I don't think we have any questions there but certainly would like for you to talk with the City Attorney afterwards to get the video. Anything else on the public record? All in favor, opposed, none opposed, that's approved. I think we are to appointments to boards commissions and committees. We have a recommendation for appointment of Leo Cortez to the small business development commission by Councilmember Chu.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve the appointment. All in favor? Opposed, none opposed, that's approved. We have taken a few things already off the section H list so our next item would be number 4, that's a response to the elections commission to referral from the city council about pay to play regulations. I think we have a report from the city attorney's office to begin with.

>> Lisa Herrick: Good afternoon, Mr. Mayor and members of the committee. Lisa Herrick from the City Attorney's Office. I staff the elections commission along with our City Clerk, Lee Price. I also want to acknowledge the chair of the elections commission, Fred Defuniac, and vice chair Michael Smith of the elections commission are here this afternoon as well. We actually have two referrals, but we'll talk about the first one first. Which is from the council on loosely a concept referred to as pay to play regulations. This referral came to the commission out of a discussion at the council last October about the service delivery elevation and the public-private competition policies. There had been a memo at the committee level suggesting that there be some investigation or changes

made to the contribution limits that we have in the city to limit contributions from certain contractors involved in the process during a particular time or for a particular time. And this is a concept that both San Francisco and Oakland have in their laws and we -- the city attorney's office had reported about this to the Community and Economic Development committee. When this came to the council then it was referred to the commission to look into whether or not it would be appropriate to impose some contribution limits on a class of contractors for a particular period of time. The commission formed a subcommittee to look into this. They did speak with contacts in San Francisco and Oakland as well as Los Angeles and San Diego. Those two cities do not have any contribution limits for contractors, or people involved essentially responding to RFPs for contracts before the city council for a particular time frame. And the members of the subcommittee also spoke to members of the Community and Economic Development committee members who had suggested this proposal. And ultimately the commission decided that contribution limits really were not necessary here, disclosure the way we have disclosure on the form 460 in terms of contribution limits being reported by candidates works well. That it wasn't worth the staff time involved in needing to monitor the contribution limits. But in the event that the council as a whole was interested in imposing some contribution limits, that the threshold for the contract be greater than \$50,000, that exists in both Oakland and San Francisco's ordinances, and that that be something perhaps along the lines of the council appointees contracting authority, which at this point is \$250,000. And so the short version is we have a no recommendation from the elections commission on this referral. And I'm happy to answer any questions and again, the chair and the vice chair are here as well.

>> Mayor Reed: Thank you. Let's see if we have any questions for them before we take the public testimony. I agree with the assessment of the elections commission, we don't need to make any changes. One of the things we have in San José that other cities don't have are more stringent reporting requirements for fundraising beyond the political and the other areas. I don't know if we're doing it quarterly I think, our fundraising effort so there's a lot more public information about it that I think would be -- is sufficient given the comments from L.A. San Diego, disclosure of contributions was effective. I think we have even more disclosure requirements than they do. So I think a no action on this is something I would agree with coming from the committee. I want to see if the elections commission members who are here have anything they want to add to this before we do public testimony. Thank you for your work. Anything from the committee? Ben Field wants to speak on this.

>> Thank you, Mr. Mayor, members of the committee. The policy objective of pay to play rules generally is to prevent contributions by city elected officials from bidders on city contracts during the time that those contributions could influence the award of a contract. There would be no need to adopt pay to play rules unless they address a real policy problem. So is there a real policy problem? A brief review of the most recent campaign contribution reports for San José elected officials and recent contract approvals demonstrate that we have a real problem. It is not hard to find examples of campaign contributions by bidders made while their bids are pending before the city council. The ease with which we found these examples suggest that such contributions are common. There is still a question of whether these campaign contributions actually influence the award of bids in San José. But even if they just create the appearance of impropriety, that would be bad enough. The elections commission researched the question of whether their pay to play rules actually prevented impropriety and the award of contracts in other contracts. And they found that, "Oakland and San Francisco felt their pay to play regulations have helped reduce a real problem of undue influence." The elections commission only objection to pay to play regulations is the burden that enforcement would place on staff --

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

>> -- which legitimate criticism can be addressed. Thank you.

>> Mayor Reed: That's the only card I had. Back to the committee for discussion, Councilmember Constant. The recommendation from the elections commission was no further -- no further action, no change on that? So this committee -- does the committee need to make a recommendation to the council, or is this just -- go as part of the committee report? Unless it's just part of the committee report that we're --

>> Lisa Herrick: I think that's correct.

>> Mayor Reed: Okay. And then the next one is the response from the elections commission, referral from city council about volunteer expenditure limits. Again, city attorney's office.

>> Lisa Herrick: Yes, that's right. Also last October the commission recommended a number of -- few changes to the campaign finance ordinance which included increasing contribution limits. As part of the council discussion we came out with an ordinance that also imposed some cost of living increases on an on -- to sort of track cost of living and keep the contribution levels increasing on that basis. As part of the discussion a question arose about whether or not the voluntary expenditure limits formula should be adjusted, as well. And as you all know, the formula, to the extent the candidates agree to the voluntary expenditure limits, the formula for the mayor is a dollar per registered voter citywide, and per councilmember, 75 cents per registered voter, district wide -- or reverse. Excuse me, \$1 for the council and cents for the mayor. Thank you, Councilmember Constant. So the question was, should that formula be changed? Should it be more per voter or not? And the elections commission really couldn't come up with a good reason as to why it should be changed. They did note that because population had increased there was some corresponding increase in terms of the ultimate amount that candidates could spend on elections. But felt that they couldn't really give a recommendation on this referral unless they received greater information from the council about why there should be some changes. There was no real empirical evidence they saw that candidates were having difficulty during their campaigns to amass the kinds of resources they needed to run an effective campaign during-win an election or so on. So the recommendation is no recommendation on this one.

>> Councilmember Herrera: Okay, Councilmember Constant.

>> Councilmember Constant: So as Lisa mentioned I'm the one that brought this up. And the reason I brought it up is the amount of money has gone up but not the amount of money per person has gone up. So if you have ten people to mail with, with 10 dollars, or 20 people to mail with with 20 dollars, even though you have device as much money, that doesn't give you any more money to deal with rising cost. And the point that I brought up was specifically postage. The cost of postage in 20 years has almost tripled, maybe doubled, and that amount has gone up. And so it has effectively cut down the amount of mail. You don't really notice it in the primary elections because the voter universe is small. But in runoff elections, if you look at the District 8 election which was, what, two years ago. The number of voters that needed to be contacted in that particular election was huge. And

because the amount of money per resident, or per voter -- and those are two different numbers, but they track very close because the percentage of registered voters of a given demographic rises at about the same rate population rises -- it gives you much less ability to contact those voters. And I was specifically pointing to the postage. Although you could probably come up with a dozen other costs that have increased over that time. So I do think it is something that needs to be looked at on a more deeper level. We obviously have plenty of time.

There is not an election for two more years. But I think it's something that has to be looked at, because we know postage is going to continue to rise. And I think we should have more analysis on what the actual effective amount being -- not the dollars amount being spent but the purchasing power of those dollars in the market place for people to effectively get their voice out. And that was the point I was trying to make, and I don't think that that was addressed at all in this action.

>> Mayor Reed: One of the issues that we considered when we changed -- not yet changed but will be changed, the contribution limits, was the need to be able to defend our limitations as reasonable and will allow reasonably people to raise the money. And so I'm a little bit concerned that we were working with numbers that were put in place in 1990, so we're now 20 years into it. At some point the inflation and costs are you reach a number where that limitation is not reasonable. I don't know what that number is but I think we ought to at least considering, in looking at the other campaign contribution limitation factors has an opinion about whether or not we need a pure CPI inflater or should it go half of the radar cost is postage, so we put a can the limitation is not defensible and the challengeable, and I don't know where that is and wonder if Rick has an opinion.

>> City Attorney Doyle: That was one of the reasons for the campaign contribution limit increase, because some concern about the 20-year-old amount. And so that's why we increased that on expenditures, that's something that I think it was why it went back to the elections commission. I think it's something we can look at and would be certainly willing to go back and speak with internally. And then if you wanted to go back to the elections commission, we would take it up with them, as well. But I don't have a, you know, off the top of my head, and maybe, Lisa, I don't know if you have any thoughts. In some respects, yes, the cost of postage goes up, the cost of printing goes up, the cost of a lot of things go up. You know, increasingly, on the other hand, e-mail is cheaper. And so on balance, that's something that somebody probably needs to look at and come back with a

recommendation. And you can -- a default is always using a CPI. I think it's an easy index always to defend. But I'd like to give it a little more thought and come back.

>> Mayor Reed: Yeah, I'd like for you to do that, and I'd just like for you to think about, okay, Lisa, if you're going to have to defend this next week in front of a Superior Court judge or a Federal Court judge, what arguments do you want to have that it's reasonable, and we picked the right number. Because when we picked the numbers back in 1990, 75 cents seemed okay. And apparently it was, it's been good for 20 years, but that was 20 years ago. I'd at least like to put ourselves in the best defensible position so that we don't lose these kinds of limits in some litigation five or ten years from now.

>> Councilmember Constant: The example you brought up with e-mails, I'm using an example, because to purchase an e-mail list for a voter cost more than the cost of a stamp. It is actually cheaper, at least for one mailing, to do a regular mailing versus an e-mailing. So I just think we need to look at all that. And there's plenty of different ways, whether you just go back 10 years and look at CPI as a whole, or postal costs as a subset. But I think at either measure you'll see a decrease in purchasing power by probably 50%.

>> Mayor Reed: So should we just refer this one to the City Attorney to do some analysis of defensive of things and come back to us in a while. That was the motion.

>> Councilmember Chirco: Second.

>> Mayor Reed: Okay. And we wouldn't do anything that would affect the fall cycle of elections. There is no rush to get it done. I would assume we would want to do, if we're going to do anything, it would be before the cycle starts for the 2012 elections, so we have some time for you to work on it. The motion is to refer this back to the City Attorney. All in favor, opposed, none opposed, thank you. Thank you, elections commission. We appreciate your thinking on these matters. I think that takes us to item 6 under section H, that's District 2 Indian flag raising and cultural show approval as a city-sponsored special event.

>> Councilmember Pyle: Move to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: That's the recommendation of Councilmember Kalra. I have a motion to approve. All in favor, opposed, none opposed, that's approved. We have a recommendation again from Councilmember Kalra to approve a District 2 Start Walking Day as a city-sponsored special event per our policy. Motion is to approve. All in favor, opposed, none opposed, that's approved. We have some committee agendas and work plans for the period of August through December of this year. Recommendations from myself and the committee chairs from the Community and Economic Development committee, neighborhood service and education committee, transportation and environment committee, Public Safety, finance and strategic support committee for those periods. Is there any discussion on any of those work plans?

>> Councilmember Pyle: Move to approve.

>> Sorry mayor there was one item that was inadvertently left off of the September 27th CED committee and that's report on key legislative items. Sorry, other committees are hearing this item in September.

>> Mayor Reed: Okay, we have a motion to approve, including that modification to that one work plan.

>> Mayor Reed: Further discussion on it, Councilmember Constant did you have any --

>> Councilmember Constant: No, I was just going to make the motion so we're set.

>> Mayor Reed: All in favor, opposed none opposed, these are approved. We have nothing on boards and commissions work plans. Open government initiatives nothing other than what we have already discussed. Now down to open forum. Mr. Wall.

>> David Wall: I'm glad to see you all back in good form. First, on this business of this import export bank, it should be made mandatory, under the doctrine of the free trade zone. Now San José has the unique classification on the entire Western United States as having this only free trade zone so that import export banks should be made mandatory. The other thing is the addendum to registered lobbyist. Since Major League Baseball has made an undue influence into San José politics with reference to that ballot initiative that you mentioned earlier, that means that all baseball agents, principals, agents, third party vendors or anyone connected with them are now considered registered lobbyists in theory. The other issue here is now CFLs. There was a citizen that wrote several letters about this warning you about the environmental dangers of CFLs, back in 2008. Several memos. And now it appeared in the Mercury News on July 13th as being a danger to the environment, which means somebody in the environmental services department, someone should be paying attention to these items before they go to our marketplace. Other issue would be an employee contribution to any and all, a percentage of ticket sales if baseball does go through, into a fund that compensates all city employees for having to take this pay cut, and retirement cut. Now, this will be a fund --

>> Mayor Reed: Sorry, your time is up. That concludes the open forum, that concludes our meeting, we're adjourned.