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>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order, for October 26th, which is today, 2010. Vice Mayor Chirco will introduce the invocators.

>> Councilmember Chirco: Thank you very much. I am extremely proud to introduce the Ida Price Middle School Saxophone Quartet under the supervision of Catherine Lorigan. Mrs. Lorigan is entering her 12th year. I remember when she was started -- she was just a kid -- directing the music program at Ida Price Middle School in the Cambrian School District. The Saxophone Quartet is part of a comprehensive music program at the Ida Price Middle School. Over 250 students participate in the music program which is 25 -- one-fourth of the student population. The award-winning band -- one wouldn't think I had any pride in this school -- and choir entertain at several community events the marching band will be participating in the upcoming parades. Here to participate is Deb Negretti coming along with Catherine. Muppet theme, 40th anniversary of the Muppets. Thank you all for being here. [∂music∂] [applause]

>> Mayor Reed: Before we do the pledge of allegiance, there's one more thing. [applause] All right, now, let's stand for the pledge of allegiance please. We have some students who are going to help us with the pledge. Thank you very much. [pledge of allegiance]

>> Mayor Reed: I don't have notes of where the students are from. But the kids up there in the orange shirts, what is the name of your school?

>> San José Christian school.

>> Mayor Reed: San José Christian school. Thank you very much for the help with the pledge of allegiance. Orders of the day, the meeting will be adjourned in memory of Diane Perovich. A long time San José residents and beloved member of the Almaden community. Councilmember Pyle, you have some comments?

>> Councilmember Pyle: Thank you, mayor. Diane Perovich was a much loved member of our community who lost her battle with cancer and died peacefully at home in the early morning hours of September 18. Diane was a

wife, a mother, and a good friend to many Almaden residents. She was a devoted member of the Almaden community, actively involved in the Almaden senior association and the Almaden senior net program. She was a leader, a worker and contributor in every sense of the words. She led the Almaden senior association for many years as president, taught senior net classes and participated in hosting many events at the Almaden senior center. She was admired by many for her strength, positive attitude, and creativity. She was always upbeat, even at the worst of times. She fought cancer for several years and yet continued to be active within the Almaden community. Diane loved to travel and even though her abilities to travel reduced as her chemotherapy treatments increased in intensity, she planned trips around the chemotherapy. Just a few months ago Diane took a trip to France, her all-time favorite country, with her family, and Diane came home so very happy to have had that adventure. Although Diane's presence will be missed, the memory of her courage and enjoyment of life will remain on all who came in contact with her. Her friendship and legacy will forever live on at the Almaden Community Center and senior program.

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

>> City Attorney Doyle: Mr. Mayor, the council met in closed session this morning pursuant to notice. There is no report.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to start by inviting Sid Espinosa, Microsoft director of corporate citizenship, to join me at the podium. We're here today on this item to commemorate and commend and acknowledge Microsoft Corporation for its support of the Mineta San José international airport art + technology program. If you haven't had the time to fly out of terminal B, our new terminal, you're missing some great art. One of the things that makes the terminal interesting while you're waiting and arriving, so we're very pleased to have Microsoft as a partner in the art + technology program. They've generously supported the space observer which is at the top of the stairs before you go down into baggage claim. It's hard to miss, and it's a very interest being piece of art that the kids love because it does look like some sort of a space alien, and it is sort of interactive. Go out there and take a look. Microsoft has made a gift of \$100,000 to assist the city with its ongoing maintenance of the space observer as part of the art + technology program. What we're trying to do at the airport

is to demonstrate what happens at the intersection of art and technology. You never really know what's going to happen, but sometimes it's pretty interesting, creative, and a lot of fun, as we've demonstrated. Of course, Microsoft has been a pioneer in innovative technology, and they've changed the way businesses operate all around the world. They're one of Silicon Valley's leading and largest technology employers. I think last count they had a couple thousand employees on their campus here in the valley. We're proud to have San José as a neighbor -- or proud -- City of San José is proud to have Microsoft as a neighbor, and as they support innovation and creativity through art and technology, we are pleased to have them helping us at the airport and we thank them for their generosity. And I have a commendation here. [applause]

>> Just briefly, first, congratulations on a beautiful new airport. And thank you for the vision and insight to understand that art can inspire and engage a whole community. I think that it also, though, with this airport, is a branding for the city. People arrive here, and they know this is a place of innovation, it is a place of creativity, it is a place of ingenuity. And so thank you to the whole council for its foresight in promoting and encouraging public art. I will just say as a challenge to other companies. We, Microsoft, are not headquartered here in the valley. There are so many that are headquartered here in San José, but we have, as you mentioned, several thousand employees, and we are hiring. We will continue to grow significantly in the valley. We are proud that we continue to be ranked at the very top of philanthropists, corporate philanthropists in the region. We don't seek recognition for that, but since you gave us this chance at the mic, we do want to challenge other companies. That said, these are very difficult times, and it's during these times of recession that it's most important to help those in need, to help nonprofit organizations struggling to get their work done, and especially the arts. There's been a lot of publicity about how much arts organizations are struggling. So we challenge other companies to step forward and to support San José, support the people here, and to support the organizations in need. Thank you for this commendation. We don't seek this recognition, but we appreciate the opportunity to ring the bell and encourage others to do the same. Thank you. [applause]

>> Mayor Reed: I want to acknowledge the hard work of our airport staff and our Office of Cultural Affairs that made this art program possible and successful at the airport. Next I'd like to invite Councilmember Campos, Hilbert Morales, Monica Amador and Rosaria Vital to join me at the podium. I saw them as I was coming in.

Come on down. Today we're commending El Observador, South Bay's only bilingual newspaper, for 30 years producing Spanish language publications and serving the Latino community in San José. Councilmember Campos has some of the details of this great record.

>> Councilmember Campos: Thank you, mayor. As the mayor was stating, we'd like to congratulate and thank El Observador for 30 years of community service. Hilbert and Betty Morales and the staff at El Observador have provided bilingual news to San José residents for 30 years. El Observador has remained committed to serving our diverse community and focusing on issues particular of interest to Latino communities and immigrant communities in San José, providing news and commentary about local and national issues. They've played a major role in educating our residents. In addition to the publication, they have a foundation that has been mentoring and training college students to make sure that they are prepared to enter the workforce in this field and be successful. So I thank you, my colleagues thank you on the city council, we all congratulate you, El Observador, for the last 30 years, and we hope that we have 30 more years to come. With that, mayor, can you please present the commendation on behalf of yourself, myself and our technological city council to Hilbert Morales. Let's give them a round of applause.

>> I appreciate this recognition and honor. I accept it on behalf of the team that has produced El Observador without interruption for the past 30 years. Now, it is a team that does this weekly. There's an editor Rosalia Vital, at this movement, chief operating officer, Monica Amador, and general factotum, Jaime Larios, that does everything, and then there's me who writes a weekly opinion piece. I want to call to your attention that in these election days and other times the mainstream media are full of opinions, projections, interpretations of polls. But it is very difficult for ordinary citizens to know what the facts are. And I think democracy depends on us providing facts to our community so they can have the basis much making good judgment in their interest, rather than those with special interests. I want to thank you for this recognition and hope that the community will continue to support us. Thank you. [applause]

>> Mayor Reed: Okay, we have to have the official El Observador photo. Okay, thank you. I'd like to invite District 5 neighborhood leaders from the neighborhood advisory coalition to join Councilmember Campos and me

down here. I'm not sure who all's here, but you know who you are. I don't think we'll have the entire NAC with us today, most everybody is here, though. We're commemorating the District 5 neighborhood action coalition leaders for their years of dedication to the City of San José and the District 5 community. Of course Councilmember Campos has a few additional words on that.

>> Councilmember Campos: Thank you. I'd like to first of all thank the mayor for calling down the District 5 residents. I'm excited and feel very grateful to be standing here with these community leaders who have in the past ten years been the champions, the champions of District 5, along with myself, in making sure that we were able to transform the quality of life for the residents we represent. Alofa Talivaa of Sierra Neighborhood Association, Judy Soito -- and please raise your hands so people know who you are -- Judy Soito and Joy Nieto from Plata Arroyo Neighborhood Association, Guadalupe Gonzales of the Mayfair Neighborhood Association, Bob Dulce and Juan Estrada from the Lindale Association, and Ron and Ruby Gulart from the Mt. Pleasant Neighborhood Association. Let's give them a round of applause. [applause]

>> Councilmember Campos: I want to personally thank you for your time and energy in providing your services to the residents of District 5. With your commitment, we build libraries, parks, pave streets, put up stop signs, and also improve the quality of life of our schools because they surround our neighborhoods. And without your commitment to the residents of District 5 I don't think we would have been able to transform one of the most important assets in our community which are our business districts and that was story and king. Thank you for your leadership, your dedication for the past ten years with me on the city council and on behalf of myself and the mayor and my colleagues, you have received a commendation thanking you for your efforts. At this time I'm going to ask Alofa to say a few words.

>> Thank you, we want to thank God, without him this would not be possible. On behalf of all the great leaders from District 5 we would like to thank our Councilwoman, Nora Campos for everything she does in the community working with us sides by side. We'd like to thank you for recognitions. And it takes hard work and all these leaders over here, we are here to serve the community. This is not about us. But it's about the people that we serve. And we'll do whatever it takes to make sure that our community is free of blight, decrease the violence, and help in any

each way that we can. I truly believe that we all can make a difference in our community. Whether it's picking up litter, cleaning up the graffiti, organize the neighborhood watch, or talking to elderly people in the community. We can make a difference. And I like to live with these quotes. We can do what you can do, you can do what we can do. And together, we can do many things. We are at best when we serve others. Thank you. [applause]

>> Councilmember Campos: And Judy Soito is going to say a few words, and then we'll move on to the next group that we're going to recognize.

>> Good afternoon, y'all. Thank you very much for the award. But what I must say, I want to thank my Councilmember Nora Campos. She has opened many doors for us the last 10 years. She has worked side by side helping us be able to gain projects that were in need in the east side of San José. She is truly going to be missed. And I'm not going to cry here. But anyway -- and I know one projects that she'll never forget that was pretty heavy was the sewage project. She has worked side by side for us. She has given us a tool to be great leaders. It takes a good councilmember to give her leaders tools to know how to work out in the community. Being volunteers, we're not really educated. We have to learn. So I have thank her, and we will miss her. Thank you.

>> Mayor Reed: Next we're going to have some District 5 business leaders join us at the podium to commend them for their commitment to preserving the vitality of District 5 business community in support of recreation and education needs of the residents of City of San José. Just as soon as Art's done taking pictures he's going to come on the other side. Okay, now, the District 5 business leaders. Couple of members of the Calderon family here to represent the District 5 business leaders. Come on down.

>> Councilmember Campos: Once again, I am so excited and honored to be here with my community leaders as you met earlier and my business leaders in District 5. And I want to recognize them today. Because as we built the community we also built the business districts. And it's a partnership, a true partnership with our community to be able to make things happen. We transformed Story and King and we transformed Story Road and we transformed Alum Rock and we transformed King Road. It's exciting to be able to recognize a few of our community leaders. Frank Cortez from the Alum Rock Village Business Association, and he'll raise his hand.

Lisa Regua, from the Alum Rock Business Association, as well. Judy Thompson from the Alum Rock Village Business Association, the Calderon family from Story and King area, the Landen Family from the Story area. Let's give them a round of applause for all the work they did. [applause]

>> Councilmember Campos: And that they continue to do. There was a time when our community had to leave the district to go get the goods and the services that they need. What's exciting about the partnership is that now people can walk out their front door and have the services right there at their fingertips. I thank you, the City of San José thanks you for your commitment. Your generosity towards making sure that the quality of life of the residents of East San José continues to grow. I commend you for your leadership and your dedication for your continued support of my leadership on the council. And with that, I believe Frank Chavez wants to say a few words on behalf of the leadership of the business owners in East San José.

>> That's Frank Cortez. I'd like to thank Councilmember Campos for this commendation and for her continued support of our events and our business association for the last ten years. She truly will be missed. Thank you.

>> Councilmember Campos: That's Frank Chavez, is the one that owns Mi Pueblo. Frank Cortez owns the aquarium, which does wonderful business. I apologize for that. With that, thank you very much, and I believe, mayor, they want to take a quick photo, if you have a few minutes.

>> Mayor Reed: Thank you all very much. Our next item is the consent calendar. I have no cards that I know of to speak on the consent calendar, is that correct? We have a motion to approve the consent calendar. Let's just check and make sure. All right, there are no requests to speak on the consent calendar. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 3.1 is report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. One report today. I wanted to take a moment to update you on the efforts to find our next police chief. We are beginning to wind down the city-initiated formal outreach efforts related to the recruitment which I believe have been quite successful to date. To date we have held 28 different meetings attended by more than 600 people, in addition to 120 people who have completed

online surveys. We have two stakeholder outreach meetings scheduled for tomorrow. The first is with the juvenile empowerment intolerance committee of the Silicon Valley Council for Nonprofits. The second will be with the California Community Partners for Youth, a San José B.E.S.T. partner agency that is dedicating to creating a healthy school and community partnership to support 9th and 10th grade teens. Internally we have met with a number of members of the department and POA representatives, and nearly 90 department personnel have completed a separate online survey. In addition, stakeholder groups continue to conduct their own outreach meetings which we have encouraged and welcomed, and I want to thank them for their efforts to keep me in the loop on their processes, and I do look forward to receiving the information that they compile. I have tried to attend some of these meetings myself, and my staff has also tried to provide coverage. Most of these meetings, not all, but many have been under the umbrella of the Coalition for Social Justice and Accountability. From all of the meetings, the city-initiated as well as outside stakeholders, a number of common themes are emerging. These and the details and the stories behind those themes will be used in developing the questions and the scenarios for the candidates that we will ask that they address, as well as providing guidance for me in developing the composition of the panels, once we get to that interview stage. So Mr. Mayor, members of council, I will continue to keep you informed as we move forward.

>> Mayor Reed: Thank you. I've had a request to reconsider the orders of the day. Councilmember Liccardo wanted to ask that an item be deferred. So you want to make a motion to reconsider?

>> Councilmember Liccardo: If I could, I'd like to make a motion to reconsider ultimately to make a motion to move 11.2.

>> Mayor Reed: Motion to reconsider the orders of the day.

>> Councilmember Liccardo: Yes.

>> Mayor Reed: Is there a second? I do have a second, Councilmember Pyle. Motion to reconsider orders of the day. All in favor, opposed, none opposed, okay. On your agenda item.

>> Councilmember Liccardo: Hoping to defer item 11.2. The applicant is ill and would like it to be continued until mid-November. I know the 16th, I believe we don't have an evening meeting, so I'm assuming the 23rd is an appropriate date. Oh, no, that's Thanksgiving. Okay, well, how about the following, the 30th, we have an evening meeting then? Okay. We'll pick the very first Thursday that is available. I'm sorry, Tuesday, rather.

>> Mayor Reed: For the evening meeting, is that what you're trying to do?

>> Councilmember Liccardo: Yes, because it's a land use issue. I assume that's December 7th, an ominous date, but I'll take it.

>> Mayor Reed: December 7th, clerk says that's an evening meeting. Is there a second to the motion? We do have a second. On the motion, all in favor, opposed, none opposed, that's approved. We will now move to item 3.2, pension sustainability audit. We have a presentation from our City Auditor.

>> Sharon Erickson: Thank you, mayor and members of the city council. My name is Sharon Erickson, I'm City Auditor. As you know, the purpose of our office is to independently assess and report on city operations and services. Pension sustainability ranked high on my list of concerns. The purpose of our audit was to assess the long term sustainability of pension benefits and their associated costs. This audit was parts of our 2009-10 work plan which was approved back in June of 2009. Well before the current election season. We basically during this report tried to answer four questions: Have costs really skyrocketed? And if so, what's the impact of that? What happened? What are the major cost drivers of our current situation? And what could make a difference in controlling costs? The answer to the first question is, yes. Costs have skyrocketed. This graph shows you actual pension benefit payments to retirees and beneficiaries. They have grown sevenfold over the last 20 years. San José administers two pension systems. These are the actual payments out of both of those systems combined. In 1990-91, at the beginning of this graph, the two plans paid out \$30 million a year in pension benefits. That compares to \$72 million in 1998-99 and \$210 million in 2009-10. Now, there are many reasons for this. One is because the number of retirees and beneficiaries is two and a half times larger than its was in 1990-91. It's also

because of benefit enhancements. The average annual pension benefit increased about 175% for Police and Fire, and about 150% for Federated. It's also because average salaries increased, they doubled over this same time period. I want to point out, and I'll point this out throughout the presentation, this is not San José's problem alone. Retirement costs have skyrocketed across the country and concern about how to pay for pensions is a national issue. This graph shows the city and employee payments or contributions into these systems. The first graph showed you the payments out of the systems, this shows you the contributions into the systems. These contributions have doubled over the past decade. In 1998-99 the city's annual contributions into the retirement funds, so that is the maroon bar there, were about \$54 million. In 2009-10 the City's annual contributions were about \$107 million. Over the same time period total employee contributions have increased from about 21 million at the beginning of this chart to about 33 million at the end of the chart. Of concern also is the fact that pension benefit payments have exceeded contributions since 2001. So in spite of doubling the contributions into the system, pension benefit payments have exceeded those contributions. You can see that, the comparison to the blue bar and the maroon bar. This draws down our plan assets. Even if investments yield expected returns, pension obligations are expected to grow much faster than available plan assets unless we raise contribution rates. Meanwhile, the funded ratios of the plans have fallen. As of June 30th, 2009, the pension funded ratio was 87% for Police and Fire, 71% for Federated. However, if you look at this on a market value basis, the money that we actually had in the bank, the funded ratio was 66% for Police and Fire and only 54% for Federated. While these numbers are falling they are much better than the retiree health care numbers. We only have 7% of funding in the bank for Police and Fire for employee health care and only 16% of funding in the bank for Federated retiree health care. The goal of course is to be 100% funded. That is, to have enough money set aside to reasonably cover the pensions already earned. The motion current estimate of the pension liability is \$5.4 billion. As of June 30th, 2009, we had 3.4 billion in pension assets at market value. This is \$2 billion less than we should have. On an actuarial basis, that is smoothed over five years. The unfunded liability is only \$1.1 billion. That's based on a \$4.3 billion actuarial value of assets. In addition, the city and its employees face a \$1.4 billion unfunded retiree health care liability. The City's contribution rates for pension and retiree health care are projected to increase dramatically. For Police and Fire it's expected to increase to 75% of pay by 2014-15. That compares to around 40% today. For Federated it's expected to increase to about 45% of pay by '14-15, compared to about 23% of pay today. There's also a declining ratio of the number of employees to retirees and beneficiaries that creates a risk of

even higher future contribution rates. In 2009-10 there were 6700 active employees compared to 4800 beneficiaries. A roughly 1.4 employees for each beneficiary. This compares to five to 1 back in 1979-80, 30 years ago, or 3 to 1, 20 years ago. This means that the annual cost to pay down the unfunded liability is spread across fewer and fewer active employees. As the pew center has said, when a pension is fully funded the ratio of employees to retirees isn't much of an issue. But if a plan is underfunded, make those payments can become burdensome. So what's the impact of all of this? Well, we colluded that rising pension costs threaten the city's ability to maintain service level. The city has had to make increasingly larger annual contributions to its retirement plans to ensure there are enough assets to pay for pension benefits. It's forcing cuts to basic city services. In fiscal year 2010-11, the current year, the budget deficit was \$118.5 million. About \$52 million of that was attributable to retirement cost. There were cuts to services, layoff, pay and other employee concessions. For 2011-12 the deficit has been projected at \$41 million. The estimated increased retirement cost in that was \$22 million. Retirement and retiree health care contributions are projected to be 25% of the General Fund or about \$270 million a year by 2014-15. What cost the General Fund about \$45 million at the beginning of this chart in 2000-2001, now cost the General Fund about \$155 million, and could cost the General Fund \$270 million four years from now. So the obligation, this is the annual obligation, grew by \$110 million over the last ten years and could grow by another \$115 million within five years. These amounts are not one-time. They're ongoing. We expect when we change a contribution rate, that contribution rate is not going to decrease for at least a decade. To give some perspective, \$270 million is more than this year's entire operating budget for the fire department, airport, and all of the City's libraries combined. To assess fiscal sustainability, we focused on two questions: Can this city maintain existing service levels without compromising service levels for future generations and can the city meet its future obligations? Sitting in the budget hearings this year I can tell you those of us in the audience, while you were in closed session, deciding who to lay off, whose pay to cut, and by how much, we realized, this is not sustainable. So what happened? What caused this? And this is certainly why I was interested in this problem. The plans are administered by and annual required contribution rates are set by independent retirement boards, in consultation with professional actuaries. The contribution rates are set to include current costs and an amortized portion of unfunded liabilities. As this chart shows, the city has paid its annual required contributions in every year but two years in the Federated system, when contributions were being phased in, and the differences in those years was 1 to \$2 million. So what happened? You may have seen in the

newspaper, there's a belief that the city has short changed the pension funds in past years. This is not the case. Unlike some jurisdictions, San José has been fully funding its annual required contributions, as determined by the retirement boards and their actuaries. Both of the retirement boards have completed actuarial valuations on a regular schedule and the city has consistently made those correction. From 1993 through 2009, the city contributed over \$530 million to the Police and Fire plan, and over \$600 million to the Federated plan. In contrast you may have read in the newspaper that the state of New Jersey recently decided simply not to fund its annual contribution for the second year in a row. Many other states are not paying the full amount of their annual required contributions. San José has. You may also have heard that the city failed to pay its share of normal costs. Well, let me explain. The normal or current cost is one component of this annual required contribution. As part of our review, we verified that the normal cost has been correctly allocated between the city and employees on an 8-3 basis as specified in the city charter. Another component, there are several, of the City's annual required contribution is the amortization of any unfunded liability or surplus. This is the unfunded actuarial accrued liability fondly known as the UAAL. This is what's necessary every year to bring the fund into actuarial balance. In some years, the amortization is positive, and in some years, the amortization is negative. This is the same methodology that the retirement board actuaries have used since 1979. Now, it's true that over a 12-year period from 1994 to 2006, the amortization of the UAAL was a surplus. And it offset the City's contribution to the Police and Fire fund by an amount totaling about \$79 million. However, since then, the amortization of the UAAL has been a deficit, and has cost the city an additional \$49 million. So you can see how it varies over time. For 2010-11 alone, this current year, the annual cost to pay down the unfunded liability added roughly \$34 million to the City's annual contribution for Police and Fire, and \$35 million to the City's annual required contribution to Federated. So again, the normal cost was properly calculated. The annual required contributions were paid. The funds were not shortchanged, But what happened? Well, one reason was the recent market collapses. There are no guarantees that even a fully funded plan will stay that way. This chart shows you the actuarial gain -- the investment gains and losses over the last couple of decades. The investment earnings account for more than half of the additions to the retirement fund. One reason for the rise in the unfunded pension liability was investment losses that totaled nearly \$1 billion between 2007-2009. In spite of recent investment gains of nearly half a billion dollars, it is expected that the previous losses will continue to affect the city's unfunded liabilities over the next few years because of the way the actuaries smooth the rate over five years. So even strong returns may not be able to

make up for those previous losses. Another reason is that the city has granted new and enhanced benefits since the voters approved charter minimums in 1965. Now, let me stress these were not awarded in isolation, some were negotiated, some were awarded through binding arbitration. And in most cases San José was keeping up with comparable public employers. These enhancements included changes to benefit formulas and maximums, to retirement age, to definition of final compensation, survivorship benefits, the guaranteed 3% cost of living adjustment and the establishment of supplemental retiree benefit reserves. In at least one case, the retroactive increase to the benefit from 85% to 90% is the example we show here, added \$70 million to the unfunded liability. As a result of changes to the Police and Fire plan in 2006 and 2008. We did not, as parts of this review, question whether benefit levels were appropriate. We were simply asking whether the city and employees had set aside sufficient resources to pay for those benefits. And in my opinion, retroactive benefit enhancements are a problem. They had an impact on cost even before the recent market losses. The time line on this chart, on this slide shows a time line for a sample fire employee to show that the impact of these retroactive benefit increases. This is somebody who came to work in 1980, when the maximum benefit was 75% of final pay. As they worked, and as the city and the employee both contributed into the plans, that was the basis for the contribution, was 75%, that level of benefit. However, in the year about 1996, the benefit was increased to 80%. So for that first 16 years, we had under-contributed. Then the benefit was increased to 85%. The required contributions were increased, but there was still the unfunded liability from all of those previous years of service. When the employee retires out in 2010, it will be at 90%, but the employee will only have contributed, and the city will only have contributed on that 90% basis for the last few years of service. Another reason why this is all happening to us all at once is that actuarial forecasts did not hold true. So the retirement board actuaries build models to estimate liabilities and determine contribution rates. Those models include demographic assumptions like how many retirements, what kind of employee turnover, how long will everyone live. They also include investment assumptions. The expected rate of return on the investment portfolio. So for example, if a retiree on average lives long -- if retirees on average live longer than expected, total benefits will be more than expected. If assumptions don't hold true, or there are changes to the assumptions, then the plans can become underfunded. And as a result of this, \$750 million was added to the unfunded liability as of June 30th, 2009. This was a result of several factors. Long-term investment returns were less than expected. In the Police and Fire plan there were earlier retirements, higher salary increases and longer lives than had been expected. In the Federated plan there were

more retirements, more withdrawals, fewer salary increases, longer lives and a phased in reduction to the investment rate of return. Those all affected the unfunded liability in the Federated system. So the city and its employees made contributions in good faith, at stipulated rates, but investment losses, retroactive enhancements that added to the unfunded liability, actuarial forecasts that did not hold true, and so the city fell behind. At the same time, we've got fewer employees, so the rate per employee increases. Another reason, of course, is the cost of the benefit plans themselves. So we tried do some analysis of what are the major cost drivers of the plans. This chart gives you some of the key factors that add to the expense of the current plan. These figures are in order of magnitude. They are very rough, but we wanted to give you some sense of what are the major cost drivers. The minimum benefits spelled out in the city charter account for something like 44 to 50% of the total cost of each plan. That would be Police and Fire retiring at 55 years with 20 years of service at half of salary, 50%. Federated the charter minimum was 2% per year for 25 years, and 1% thereafter. So that accounts for about half of the cost of the plan. The guaranteed cost of living increase which is not part of the charter minimum benefit accounts for an additional 26 to 28% of the cost of each plan. The one-year final compensation for determining pension benefits as opposed to three years accounts for 4 to 6% of the cost. The supplemental retiree benefit reserve, fondly known as SRBR accounts for an estimated 4% of each plan's cost. Now supplemental benefits to retirees are derived from excess earnings. They cost about .3% of all investment earnings, or about 4% of the annual cost of the plan. The plans were super-funded, or overfunded, or we thought they were, when this benefit was established. In Federated it was established in 1986. In Police and Fire it was established in 2002. When the plan's actual investment rate of return exceeds whatever it was the plan expected, a portion is transferred into the SRBR for later distribution to retirees as a supplemental benefit. This is expected to take place even when the plan is underfunded, as we are today. We also broke down costs in another way. These are not additive. Again, and it's orders of magnitude. But you can see here that retirement age is one of the largest drivers of our cost. This is something that's under consideration elsewhere, and certainly you have read how Social Security is raising the retirement age on a phased-in basis. The retirement age, being eligible -- if you bump down the retirement age by ten years, you could save 30 to 37% of the cost of the plan. I'm sorry, if you bumped it up by ten years. I always get the ups and downs mixed up here. Similarly, pension formulas are also a major cost driver. Having a formula that, for Police and Fire, is 3% per year of service, versus 2.5%. Similarly, if you moved the Federated percentage down, that could save you from 17 to 20% of the cost of your plan. The

maximum benefit being at 90% versus 80% or on the other side of the house from 75 to 65%, cost you 3 to 5% of total cost. Final compensation using the highest 12 months versus three years again is about 4 to 6% of your cost. I did want to point out that my office does have a previous audit recommendation to return to using a three-year average to compute final salary. Finally, the guaranteed cola is one of the largest components of the pension plan costs. It's shown here in various iterations, comparing a guaranteed 3% to a consumer price index with a cap. If you did that, we capped at 2%, you would save about 11% of the cost of the plan. There are obviously many other considerations besides cost. But again, our focus was cost. And I wanted to look -- we did decide to look at a few of your options, although not in depth. Reducing cost for the current plan, your maneuverability here is limited. This is the question of vesting, whether or not future -- whether or not all benefits or future benefits are guaranteed from the day an employee starts work or whether they can be bargained. There is a question of whether pensions -- whether you could affect pensions already earned versus going forward. This would be something like changing pension benefits prospectively, so keeping credits already earned but changing those credits on a go-forward basis, or something like what Social Security has done with retirement ages, phasing in a later retirement age. As you could see from the previous charts I put up, those could potentially have a pretty dramatic cost savings impact. There is also the possibility of additional cost sharing with employees. Other jurisdictions are certainly doing this, but when we looked at what other jurisdictions are due, well, for example, Palo Alto raised the employee contribution from 2% to 8%. I want to point out San José employee contributions for pension and retiree health care are already nearly 16% for police, 14% for fire and 10.3% for Federated. Some bargaining units in fact chose to increase pension contributions as part of this year's concessions and for those employees pension contributions are already more than 20% of wages. Other employees of course took reduction necessary base pay over which future benefits are calculated. The question we asked ourselves was at what point does additional cost sharing become personally unsustainable to employees or would drive employees away from the city, and at what point would an employee choose to retire earlier or accrue a different pension benefit formula going forward rather than having a dramatically reduced paycheck today? There is also the question, of course, of second tiers. This would be for new employees. This frequently takes the form of a redesigned plan. CalPERS and some other local jurisdictions already have created second tiers for new hires. The benefit changes include raising the retirement age, reducing benefit formulas, changing the final compensation definitions. There is also the possibility of a hybrid or Social Security plan. I wanted to point out that

a 401(k) style defined contribution plan alone is not an option for the City of San José. City employees are not members of Social Security. And are not accumulating quarters of credit, while working for the city. So there is a minimum requirement in order to be exempted from Social Security. But a hybrid plan or joining Social Security with some kind of a hybrid plan built on that are of course options. The potential cost savings for a second tier may be minimal in the short term but we estimate within five years an estimated 20 to 25% of employees could be in a second tier at a reduced cost. It could be more, if current employees were allowed to opt in to such a system. However, as new employees enter a second tier, you have fewer and fewer members in the first tier. It does save you money, but it could increase contribution rates for the first-tier employees because you're dividing by a smaller and smaller number of employees. Finally, there are many different perspective on the purpose of a retirement plan. And those will have to be considered. If you're motivating employees to stay in service for a long career, then a defined benefit plan is generally accepted to be the way to reward employees who are employed the longest. For some employees who are not interested in a long career with the city, portability could be much more important, in which case a defined contribution plan might be something they would want to consider. Much of this subject will be -- much of this will be the subject of upcoming discussions with bargaining units whose willingness and ability to agree to particular concessions will be of course dependent upon where the employees they represent are in their careers, and what they expect or prefer in a pension. I.e. the tradeoff between future and current income. Our report includes six recommendations and I wanted to go through those briefly with you. The first is to explore prohibiting pension benefit enhancements without voter approval and retroactive pension benefit enhancements that create unfunded liability. The second is to pursue one or a combination of pension cost containment strategies. None of these are easy. One would be additional cost sharing. Another would be eliminating the SRBR or at least prohibiting transfers in and distribution of excess earnings when the plans are underfunded. A third would be negotiating prospective changes for existing employees. A fourth would be establishing a second tier for new employees. And a fifth would be to consider joining CalPERS to reduce administrative costs. I did want to point out on this one, there is a high cost to self-administer a pension plan. San José's plan administration costs do compare favorably to the administration cost -- administrative costs of other self-administered plans. However, because CalPERS is able to spread its cost across a larger pool of participants we estimate the city could save about \$3 million a year if it were a member of CalPERS. The final recommendations are that we amend the Muni code to require actuarial audits every five years to ensure

reasonableness of assumptions. We don't want to be hit with these changes of assumptions again. We recommend the City Manager's office propose an ongoing budgets for actuarial services. It's clear we need to be tracking these costs very closely. We recommend that the retirement services department provide annual updates to the city council on the status of the plans, on the forecast of pension cost and finally we recommend that the retirement services department distribute an annual summary of the plan's financial condition to all plan members. They have not been getting those kinds of reports in the past. In conclusion, the auditor's office spent a great deal of time this spring and summer pouring over financial statements and actuarial reports. We have concluded that the city will continue to face considering financial risk from rising pension costs for many years to come. Those rising pension costs threaten the city's ability to maintain service levels for our residents. As of June 30th, 2009, I just need to say there one more time, the City's estimated liability for pension benefits totaled \$5.4 billion. Of that, \$2 billion was unfunded on a market-value basis. In addition, the city and its employees face a \$1.4 billion unfunded liability for retiree health care benefits. The city's unfunded pension liabilities has grown dramatically in recent years, and as I've told other people, if I sound alarmed, it is because I am. There is a risk that even if you did you everything in this audit report, pension costs may still be unsustainable. I hope that we've explained how it took a number of years and confluence of events to get to this place. My point was not to lay blame on anyone for this. As I've said reasonable people sat around in rooms and thought that we were doing the right things. Certainly the city and its employees thought that they were funneling this liability. Nonetheless it has grown. And as we said at the conclusion of our report, it's important to do something about rising pension costs and it's important to start now. The report is online. I would encourage people to go to the City Auditor's Website or the link to this meeting to read more about this increasing problem. And with that, before maybe taking questions, we could do it either way, there was a referral from the Public Safety committee with a request for additional information, and we could go through that at the same time. If you'd like.

>> Mayor Reed: Yeah, I think we should do that first because the committee has heard this first and had some questions and it would be helpful to hear some responses.

>> Alex Gurza: Good afternoon, mayor and city council, Alex Gurza, director of employee relations. As the City Auditor mentioned, when the City Auditor presented her report to the Public Safety, Finance and Strategic

Support committee, there were a couple of questions that came out of that and an analysis that we were asked to provide. So there's a lot of numbers on this slide. I'm going to do the best I can to walk through it briefly. What we were asked to do was to take a firefighter and a police officer, police officer will be on the next slide, and compare their current pay today, and then compare what they would get if they retired tomorrow. And this police officer and firefighter would have 30 years of service. So on the left, is this is looking at pensionable compensation. I want to underline that. It is not all compensation, for example, a firefighter earns but only that compensation that is used to determine their pension. So you have base pay, holiday in lieu, anti-terror training pay, EMT and that pensionable pay totals \$108,644. Then if we took that firefighter and subtract contributions they make on an annual basis for benefits, we subtract that out, you see at the retirement contribution as the City Auditor mentioned, our employees do pay a significant amount in contributions. Their contribution to health insurance and dental subtracts out 16,000. It's a little dark at the end so that nets out to them \$92,000 pensionable. That doesn't count in overtime or any premium pay. Then over to the right we take that same firefighter who had 30 years of service and if they retired tomorrow, their pension is essentially 90% of the \$108,000 number. So they receive a pension of \$97,807. Since the retirement plan provides 100% of the premium for the lowest-priced plan let's say Kaiser they would then not have to make any health insurance contribution, they wouldn't make any retirement contribution, and dental insurance for the lowest price plan is paid. So therefore their actual retirement check would still be the \$97,807. So essentially, what this shows is that when that firefighter retires, they are actually increasing in their income from \$92,273 from working to the \$97,000. They also, as the City Auditor mentioned are eligible for a 3% guaranteed cost of living increase which for Police and Fire happens in February. So even if they retired for example in January they would immediately receive a 3% increase on that amount, which would lead to \$100,741. Now, to be able to more briefly go through the police officer example, because it is similarly constructed. So you take a top-step police officer's pensionable pay would be \$116,000. They retired after 30 years of service, their pension would be \$104,484. Subtracting out the same things, you can see that the pension would compare to the pay of \$89,000. So again, from going from active service to retirement, because of the 90% benefit and the health care that the premium is paid, their income actually rises in retirement. Now, the other thing we were asked to do is to compare a firefighter and a police officer, if they retired ten years ago, compared to retired today. So to do this we went back to 2000 and 2001 and took again a top step firefighter, added in what was pensionable at that time, and at that point the final average salary was a maximum of 85%. You could retire

at 30 years at 85%. That resulted in a pension allowance of \$64,220. You flash forward to today, because of the pay increases that have happened over that time period. And the increase of the benefit to a 90%. That firefighter retires today would receive a pension benefit of 97,807. I think what this shows is, the combination of pay increases and benefit increases, in the total payment that somebody would be eligible to receive. This again is the same analysis over ten years, looking at a police officer, if we were to shorten it back in 2000 they would have received a pension of 66,286. And again this is the maximum after 30 years of service. But today a police officer would receive a pension benefit of 104,484. So that concludes the questions that we were asked to provide the council.

>> Mayor Reed: Anything else, City Auditor or City Manager? Okay. I think we'll have some questions. I'd like to ask a couple first. I think the assignment of the City Auditor did not include looking at the actuarial assumptions that -- and whether or not those were the proper ones, you've recommended that we do that on a regular basis. What I am curious about, the potential change that may come out of GASB on the assumed rate of return. Because there's been quite a bit of discussion about the assumed rate of returns are being unrealistically optimistic, at somewhere in the 7 to 8% range, which I think our plans are in that range. But the numbers that I've seen that people are arguing should be the appropriate assumed rate of returns are based on private sector returns which are down in the 4 or 5% range. So I'm guessing that if GASB comes out in a few years and says you have to change your rate of return, that would vastly affect the numbers that you're projecting out in the future.

>> Sharon Erickson: Yes, it absolutely would. We looked at this area briefly and decided since GASB is still in the preliminary views stage that we're several years off from that happening. That if San José can get a grip on our pension problem, even with our current assumptions we'll be doing really well. And let's focus there. But that's part of my alarm in this, is that I don't think that this is a one-time problem that we can solve. They're ongoing issues here. So even the unfunded liability as we've stated now, as those unrecognized losses from previous years roll through, as we have fewer and fewer potentially employees or fewer employees in a first tier, these numbers could change on us. And they could be better and I would hope they're better and people sometimes call me a Pollyanna but in this case, I'm very worried.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. I just wanted to start off by thanking the auditor, Sharon Erickson, and her staff for the outstanding job with the audit report. We had an extensive discussion at the Public Safety, Finance and Strategic Support committee meeting last week, regarding this issue. And we asked a lot of questions, so I appreciate staff taking the time in one week turn around to provide really excellent answers to some of the questions and concerns that were raised by some of the committee members. I too have questions regarding the normal cost and whether the city had been paying our fair share into the normal costs. And I appreciate the detailed explanation that you provided today. For me, this audit report couldn't come at a better time, a time when we have seen huge increases in pension cost which comes as no surprise to anyone that the current fiscal pension system that our city currently holds is not sustainable. And it will not be sustainable unless we implement certain fiscal changes and reforms that are recommended by the auditor in this report. Now I understand that a lot of questions have also been raised whether or not a detailed analysis has been conducted prior to make some of the recommendations, especially regarding the two tier for new employees. The auditor was not asked to conduct thorough analysis in terms of making her recommendations. That's really up to the full council. And up to us to have those discussions with the bargaining units as we move forward. The direction was to ask whether or not our current pension system is sustainable. And I think that the auditor did an exceptional job answering that question and make her recommendations based on where we need to go to make our pension system more sustainable in the future. So mayor with that I'd like to make motion to accept the audit report.

>> Second.

>> Mayor Reed: All right we have a motion to accept the report. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I've had the opportunity to go through this report a couple of times between the Public Safety committee and also the structural deficit, whatever name plan task force meeting to talk about the potential of second-tier retirement benefits. This report validates what many of us have seen

comes coming for quite a while and I want to echo Madison's comments on the quality of the work. I know you have been very publicly criticized by a small group of people who are unhappy with your reports. And there's been a lot of words tossed around like incompetence and other unflattering terms. I want to you know that we don't feel that basis point the report that you and your staff has done is very, very detailed. And is objective. And I know it's hard to do an objective job when you're part of the plan. But I think that anyone can go through each of the steps of this report, and clearly see the issues that surround our pension system, and the fact that it is not sustainable. And we've had a lot of people question why you didn't define sustainability very specifically, or why the council has not tried to define sustainable. And all I have to say to that is: You know, unsustainability when you see it. I think a Supreme Court judge said that about another topic once. But when you see the charts, going off the chart, as they are, when you see that in fiscal year '14-15, that pension contribution costs on behalf of the city will be approximately 72% of payroll, it's easy to say, that's not sustainable. And you were able to put a very clear dollar amount on what the price tag of that's going to be in just a very, very, very short amount of time. 2014 is going to be here before we know it. It's a blink of an eye, in as far as budgeting is concerned. And we all know that we've had nine continual years of projected budget deficits that cumulatively have totaled close to half a billion dollars. We know that we have projections out into the future that don't have any positive numbers on the bottom line. And those are things that we really have to look at. These numbers, and the impact of our decisions are going to continue far beyond the tenure of any of us that are sitting up here now. And further than many of our employees will be serving our city. And I think it's really important that we objectively address these issues and come to a point where we can make sure that not only is our fiscal situation as a city sustainable, but living in our city is a sustainable experience for our residents. We've seen a large number of service cuts over the last almost decade. And this, I think, is really the year. This budget year is really the year where our residents, no matter where they live in the city, no matter what neighborhood they live in, no matter what services they choose to take advantage of or not, feel and see our budget cuts and our service reductions on a daily basis. And it's only going to get worse. And I want to underline one point that Sharon didn't make today that I think she made at our task force meeting, is this is one of a series of main issues that faces our city at this time. We were here just a short time ago, talking about our roads way infrastructure issue. And the 100 plus million dollars per year in perpetuity that it's going to cost us just to address that issue. We know that we've had similar discussions about the water pollution control plant and the upgrades to our sanitary sewer system and storm drain system and the plant

itself. That's another large number. And we have areas like our underground irrigation in our parks that we haven't even had the money to analyze how big the problem is going to be. So when we look at this, this is one slice of what unfortunately are very, very large slices of a very large problem pie. The pie is one big pie of problem. All the slices are big and overwhelming. And we have to make sure that we're continually addressing each one of these segments independently but also in context with one another. And that's why I think it's clear to me, now more than ever, although it's been clear for a number of years, but now more than ever it's clear that we have to stand up and take that first step and declare we have a problem. We all know we have a problem. We have to step up to the plate, and those who are still in denial that this is a significant problem need to look themselves in the mirror and tell themselves we have a problem in San José. And we have to address it. It's going to take a number of steps. Maybe not all 12. It's going to take a number of steps for us to correct it and we have to do this. We have to do this not only for our residents that are here today but our children who I hope to be residents of our city in the next generation as well as our next generation of employees, as well. So again, thank you for your work. Thanks for being tough skinned and not letting the criticisms get to you but from my perspective you've done a very good job in painting a very clear picture of a very significant problem. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I also wanted to commend you Sharon for the great work of you and your team. It's surprising to me that folks would criticize your work because this is certainly not work to most of us that have been paying attention to the retirement, the crisis in paying for retirement benefits. Not just in this city but in cities throughout the country. To deny this problem is equivalent of denying gravity. And it is bizarre to me frankly that people would criticize this work knowing that this is a reality, not just in this city but in cities throughout the country, and states throughout the country. California after all PERS is facing I think half a trillion dollars in unfunded liability. Fair to say we are all pretty deep in it. What -- and I am sure you are concerned too about potential changes that GASB has coming down the pike. If that assumption, requirement changes, and we're actually forced to assume a lower rate of return, I think that could force the bankruptcy of a lot of cities up and down the coast, and probably country -- nationwide. I had a couple of questions. One was about the slide that described the \$52 million attributable to retirement cost relative to the \$118 million deficit. I don't know if you had

the slides, the button near you. This was a -- this was when a third of the way into your presentation. And I'm sorry, I was looking to a number so coy refer to it easily. That's its, you just passed it. There it is. I just wanted to be clear, the \$52 million attributable to retirement cost, this is actually an incremental number. This is the \$52 million additional costs that were born just in that year relative to the \$118 million deficit, is that fair?

>> Sharon Erickson: That's correct. And those are ongoing numbers. So nobody -- that 52 million was not a one-time number. That gets built into the base. That's expected to be the new retirement contribution is that increment of the 52.

>> Councilmember Liccardo: Right, so we're at a new plateau, and now in 2011-12 we have an increase in retirement cost of \$22 million, and that again is an incremental, additional cost relative to the \$41 million, which is probably going to be quite a bit larger from what I'm hearing, by the time the numbers come back. I think that's important for people to keep in mind, because in the aggregate, my understanding is, retirement costs were about \$198 million last year. It certainly gives us some perspective on the problem as we look at the deficit. I thought it was very instructive, your discussion about the fact the city has paid its ARC. I'm really frankly tired of hearing over and over and over that because the city failed to fund at some point that's why we're in the hole we're in. I just think that's very far from the truth. According to every source I've looked at, including when we heard from the actuaries from the employees who came before us at Police and Fire Board, it was clear that there had been -- you know, this unfunded liability is not attributable to a failure of the city to fund. I wanted to jump ahead to your recommendation relating to the SRBR, I know we're going to take this up shortly but I'm hoping I can reconcile the numbers in my head here. In Exhibit 27, in the report, you indicate that the SRBR accounts for about 4% of total cost of each plan. So by my math, I think we were around \$147 million in cost last year on the retirement pension side alone, excluding, and I'm sure Alex will give me the precise number but it was somewhere in that ballpark, the remainder of the costs came out of health care. I won't ask you for an answer now. But just if we assume that's a ballpark number, 4% of that is somewhere around 5 to \$6 million a year, if I have that right. What we see in the City Manager's report is that what we know is that at least based on the market performance, which obviously is going to fluctuate enormously, we expect about \$1.6 million to be paid out in Federated and 700,000 in Police and Fire. So I'm trying to reconcile in my head, trying to understand the difference between those costs

numbers, \$2.3 million based on the City Manager's report, I'm looking at page 5 of that item, which is item 3.3, and comparing that to the 4% number that you've cited.

>> Alex Gurza: Councilmember Liccardo, I believe the 4% number, as the City Auditor mentioned, is sort of a range. And I think the SRBR payments every year are going to vary. So for example, last year there was no payment out of the SRBR. So I think the 4% estimates of the cost of SRBR is just over time. The numbers we provided in the City Manager's report is what's estimated to be paid out this year, and in fact, when we get to that item, we have some updated estimates on the projected payouts for this year.

>> Councilmember Liccardo: Okay, so thank you for helping me understand that, Alex. So at the 4%, we're looking at an average over many years. Great. And then finally, I'm sorry, two more questions, one related to CalPERS. You know, I mentioned their unfunded liability. I know they're in very bad shape. You mentioned a \$3 million cost savings. My understand, and I know Russ Crosby has strong views on this, and frankly, I'm very grateful to Russell for the extraordinary reforms he's pushed through in a very difficult environment to actually get us to update our assumptions to something that's more realistic based on the real world. He's made incredible changes. But his contention is, when you look at returns and performance, we more than make up for that \$3 million loss. Sharon, have you had any opportunity to assess that?

>> Sharon Erickson: No. We really didn't look at the investment portfolio, investment rates of return in this audit. I do know that Russell has provided information that does show that the City's systems outperformed Cal PERS. But they do vary over time.

>> Councilmember Liccardo: Sure.

>> Sharon Erickson: And the point here is that it is expensive to self-administer a plan. In the long run, the city may want to rethink whether the city wants to continue to self administer it will in the short term, if you have a great staff on board why rock that boat? But we did feel it was important to bring out the potential cost savings from that.

>> Councilmember Liccardo: That certainly is reasonable concern although I do agree, we've got a great team right now and I hope that remains the case. And finally, with regard to the unfunded liability, I guess this is a question for Rick, I'm looking at pages 53 and 54 of the report. It's always been my understanding, that the city under the charter was required to pick up the unfunded liability, unless there was an explicit agreement otherwise. And it suggests on page 53 that's not the case.

>> City Attorney Doyle: As to the current amounts, the city is required to pick up the unfunded liability the 8-3 split. But as we went through discussion last year with respect to the bargaining groups we did do some adjustments and Alex is looking at me. He looks eager to see something.

>> Alex Gurza: Yes, I think just to clarify, as we discussed last year, as the City Attorney mentioned, the charter has the 8-3 split for normal cost only. So we couldn't do any cost-sharing that impinged on that normal cost split, the 8 to 3. But that the city pays 100% of the unfunded liability is not in the charter, so that's what lead to the being able to negotiate employees picking up for part of that cost.

>> Councilmember Liccardo: I see, so we have been picking up the cost by default, not by mandate of law?

>> City Attorney Doyle: That's correct. The charter refers to it as current service or current service benefits, and the actuaries call it normal. There is a -- the nomenclature I don't think is really that big a deal. I think the city has historically picked up all unfunded up until last year.

>> Councilmember Liccardo: Great, thank you very much.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. I too wanted to thank the auditor's office for fine work. I think you lay it out pretty straight and simple. You had the chart at the beginning that shows the exponential growth to the

right, how benefits have grown sevenfold over 20 years. That's a big number, sevenfold. I mean, if you look at the growth of Social Security for recipients, it's nowhere near that. And I think in fact the last two years there's been no cola increase for Social Security recipients. So that's a definite there. You also talked about the contribution of the City's amount to the pension how that's doubled over the last decade. Again specific facts that our contributions our payouts are actually exceeding what's coming in. Again, that's what happened recently to Security this year. But this is at the local level. We just can't print money. So they can, you know, deficit-finance. We cannot. We have to face this item, and again, you were straight there. You talked about the unfunded liability of over \$3 billion, whether it's actuarial or market based it's still a gigantic number. And then the other problem is a demographic issue. So you know you got to have people paying in to pay the contributions to the retirees and I know there's retirees here for SRBR. If not all of you cannot support second tier I don't know how we'll pay you. Because if I can only hire so many folks to come in to make those payments, whether it's a hybrid or the standard, I'm not going to be able to cover those payments. And I'm really hoping for some more support for the retirees and the current employees for second tier. You have nothing to lose. You have only to be able to keep what you've had. So that's an important thing because as we don't as people mention it's a very difficult situation. Again, the incredible numbers coming out of the General Fund, again, the cola. I think in your presentation you were pretty surprised at how much the 3% cola every year adds up to the grand total. That happens a lot. I think people would say it's going to be proportional, that we might have what Japan has, the decade of basically no inflation. Again, thank you so much for answering the question, did the city pay its fair share? You just have to read the amount the city paid every year, that check they cut, that check they cut. And the two years in '97-98, it was small, infinitesimally small. Compared to the unfunded portion of the pensions. The losses, just because we had one year's market gain, doesn't cover the losses we've had in aggregate. Plus, gee whiz, even though you lost X, a down amount, you were expected to get 8% more, so this is a long time to move out, even with smoothing. And thank you for applying the options on what the council could do. You're very candid in the fact that we really are limited by law on affecting the current plan. So second tier can maybe stop the bleeding. But I'm not sure if the system itself is doomed. Based on the demographic, people living longer and less people coming in because we have such a debt obligation and my discretionary amount I could spend on hiring an employee to provide a service to a resident has a now gone to a past obligation. It just seems very scary to me. And I appreciate the recommendations you've given. I think those are very important. The examples of how

can you actually make more pretax when you retire, than when you're a active employee. And one thing you've left out was, for example, the union dues. So if you are a firefighter, and you pay \$6,000 in union dues, when you retire, my guess, it's that same amount, it's probably substantially less. So again, that's what it is. And you know, there's no faulting any individual employee. This system was created by elected officials. It was created by actuaries. We honestly, at some point, someone thought this was something that could scale, but it didn't. And you know what? It just didn't work. And we just have to live with that and move it over. It's a painful situation. Sharon, there will be people that say what you've put in this report is not accurate, and they have a vested interest or they're being paid to say this publicly. I'm assuming as an auditor you take some type of -- there is some type of code or some type of way you perform yourself. How is it -- what do you say to those critics that gee, this is slanted data, the mire told you to write this, the City Manager directed you, I mean what do you say?

>> Sharon Erickson: Well, I was hired to play a certain role in the city. And my role is to be an independent, objective observer. We try very, very hard to do that. And in our report, I would hope that any report my office puts out, that opponents and proponents of a change will both find something to argue with in our report. My goal is always to put the facts out there so that people can discuss the facts. In this case I did step a little beyond that because I felt so strongly about the kind of numbers we were seeing, that there is a need for -- I felt, to push you all to confront and for this community to confront this issue. These numbers are too big, and they're inescapable. It even quite honestly and I mentioned the billion dollar street repair in the committee meeting the other night. The problem with this one is, the bills will come due. The payments are due and we can't even just not pave the street for a year. I mean on this one we will have no choice. And it's a steam roller coming at us. And as Councilmember Constant, I believe, said, 2014 is not very far away. And when we start typing those numbers into a budget document I am very concerned about what our city services look like at that point. If we just assume that we're going to pay our obligation to the pension fund, are we going to be in a position of just saying what's left for parks and swimming pools and neighborhood centers? That is -- we have got to get in front of this thing. So to the extent that I'm advocating, I would hope that I've erred on the side of transparency, so make sure information is out there so people can review it. When I'm making these presentations I also tell folks you need to be going to the retirement system's Websites. You need to be looking at their comprehensive annual financial reports. That's why I feel so strongly that we should be -- that the retirement services department should be putting out

information to plan members on what's the composition of the investment portfolio. How much money do they have in the bank to pay benefits? Because at the same time, we don't want to scare people, that the system does have more than \$3 billion set aside to pay these benefits. I also know when I'm looking at these graphs, that money can evaporate pretty quickly, if we're just paying out, and we've got you know, payments exceeding contributions. So we have tried in this report to be independent and objective. We have tried not to lay blame on any party. We did not assess whether or not these benefits are appropriate or not. We simply -- we simply said who's going to pay for this?

>> Councilmember Oliverio: And I think it's important to note that we do have assets for \$3 billion. But you know what? That's obligated and restricted. I can't borrow from it to go hire a police officer, a vacancy, once one retires, or to pave a road. And I think that's important. And if we wanted to keep up with the pace of growth in the pension plan, we'd have to raise sales tax 1, 1.25%. I'm sure every resident out there would love to do that. Sarcasm. The other thing I wanted to mention was, you sort of painted the picture of doing nothing. And I think there are folks that would rather do nothing. But if we let's say did nothing and chose to ignore this issue, five to ten years from now what do you think the city would look like?

>> Sharon Erickson: You know, quite honestly, auditors like history. We like the past, because it's something we can kind of nail down. So it's going to be really hard to pin me down on where I think the trends are going. But that's why we tried to cover a long history in these graphs, so that you could see for yourself what the trend line is and you can do the mental calculus, not me.

>> Councilmember Oliverio: Thank you. I think it's pretty obvious the growth of these items on the General Fund are more than entire departments in the city citywide. You can count up three times the entire citywide library budgets, the parks and rec department, whatever department you want to count up, it's going to add that. And that just means we will not provide that as a city. So then at some point residents will be lucky to have the water to turn on and a road that somewhat works and enough police protection and fire protection, but there won't be anything else. Thank you for your work.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I also want to thank Sharon for this report. And I think it's the same as the one that's published a week ago or two weeks ago that's on the Website. And I know that folks in my district have been really appreciative of being able to look at these graphs and look at the numbers. Everyone said it, we shouldn't be shooting the messenger because we are only getting that information and certainly it benefits all of us. Those sitting up here, employees and taxpayers, and you know, everybody in here is a taxpayer. So I think we all need to be concerned about it. So in 2014, just want to repeat that again, so 75% of the payroll is going to be going to benefits in 2014.

>> Sharon Erickson: 75% for police officer, and 45% for Federated. So it's a total of the current estimate and these estimates change over time as new actuarial reports come in, they will shift. It's all an estimate. The current estimate is \$270 million. And that wouldn't just be for that year, that's for that year and the next year and the next year and the next year.

>> Councilmember Herrera: It's ongoing and I think -- I know it will be two years I've been elected to office, in January. Last year I remember sitting in these discussions and almost wanting to fall off my chair when I started seeing the numbers. And I remember Councilmember Constant and I both raised the idea of, do we need to say this is an emergency? And I think in many ways throughout the past year we've been saying that. The alarm bell keeps getting rung, and now this report is another alarm bell telling people yes, there is a serious situation and we need to address it. One of the deposits several times and talking to folks about this about the implication of all of this. But I think one thing you brought up today that made me think about a different angle of this, and that's with the impact of if we go forward with the tier 2, what is going to happen to this shrinking number of employees that are going to continue to pay on that old system? I would be very worried if I were an employee wanting to have maybe some alternatives down the road just in thinking about that obligation. The City's obligation and the employee's obligation to continues to pay that. So we need to be looking at options because I think at time goes on everyone including currents employees are going to be worried about, going to be concerned about how do we pay that unfunded liability, the impact on that. As we see fewer employees having to pay for more retirees. That

increasing number of retirees is not just a phenomenon in San José. We have an aging population throughout the country. Some of these trends we are seeing are things that are happening that are also reflected in San José in these numbers, also. I think as Councilmember Oliverio stated, the other alternative would be to raise taxes. And I think there's been enough polling and interest done on that to say that folks out in the community right now are not too interested in seeing sales tax raised, property taxes going up, when they're struggling with the worst economy we've seen since the great depression. The other issue is the services, just now, and we need services, I can tell you in my direct people need those community centers open, they need libraries open, they need all the services we provide. What we've had to do over the past many years is keep cutting services. That's not sustainable, either. And so despite the fact that this is all very difficult, I'm very happy that we are taking this on. And if we don't have all the answers. As you said, even if we implement all these recommendations we still have to be concerned. But you know what? At least we're attempting to do that. San José is leading the way in trying to address this. Whereas some cities aren't paying their retirement obligation, as you have mentioned. So I'm proud of the fact that San José is stepping up, we are looking at this, we are making headway, and I think that will help in time when we have to deal with GASB, and increasing liability that may have to be on our books, that at least we will be making the attempt, we can show a track record of resolving it. I don't think it's -- it's going to be an ongoing struggle to get this resolved. We're just making those first attempts now. But again, I really congratulate you, Sharon, for your outstanding work. It's really helping give us the ability to look at the numbers I think in an objective way and make our decision. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. First of all I'd like to congratulate you, as well, Sharon. I don't know how you do all these reports and do them so beautifully, but you really do an excellent job. This one I didn't enjoy reading, but I enjoyed the fact that you did such a great job with it. I'd like to start with three questions. Question one is: Where do we go from here? We obviously are not going to be able to solve this problem with one bite. So are you thinking -- did I miss it, phasing over X amount of years, is there a suggestion there?

>> Sharon Erickson: With the city council, I always assume phasing.

>> Councilmember Pyle: That's a given.

>> Sharon Erickson: Yes. But we did make six recommendations. There are a few things that can happen right away. So something like making sure that the retirement services department is reporting to you on an annual basis is reporting to plan members on an annual basis. So everybody understands what is in the pension system now, and what are the projections for where it's going to go. And then we did recommend that the council pursue one or a combination of pension cost containment strategies. I am concerned that, I mean, a second tier is on the table. You will be discussing SRBR later in this meeting. There is a potential for additional cost-sharing with employees. I've said some of my qualms about that. I did want to make sure that we left on the table this negotiating prospective changes with existing employees. Because I think at this point the issue of the net pay being so low that current employees begin to choose in favor current net pay, instead of deferring so much of their income for 30 years from now. Especially if you have newer employees coming into the system who may or may not believe they are going to be here for 30 years. I did want to leave that on the table. I think there are legal issues with that but it is something we have to look at. We may have no alternative. If the second tier takes a while to kick in, because the cost savings of a second tier are not immediate. It takes a while for it to make a significant dent.

>> Councilmember Pyle: Thank you for that. And I'd like to say that obviously this is going to have to be multipronged and that will be one issue. What I want to know is why are we now just realizing the problem? Was it the -- what would you call it -- the global melt down of our marketplace that caused everybody to wake up and see it? This has been ongoing for several years. So I guess what I'm saying is that former -- and I'm not pointing fingers, I'm just making this as an observation more than anything else. Former analyses missed a lot of this or maybe it wasn't the analysis but the projections. So are we doing some form of projecting as well? In other words, within five years, where will we be? What would that look like? What would the trends and all of that, that is more theoretical than we would need with your report but if you want to respond that's great.

>> Sharon Erickson: Well let me respond. That's why we're recommending actuarial audits every five years at least, to make sure these numbers don't get too that are off. That we've got another expert coming in not me, but somebody else who is an actual actuary to look at these numbers and we're recommending additional -- an additional budget set aside for actuarial services on the part of the city, that the city is also doing these projections go-forward. But I do think we've been hit by a perfect storm.

>> Councilmember Pyle: I don't think it's so perfect.

>> Sharon Erickson: No, it's not. No. When we thought we were super-funded, whether or not we were, I now worry about because now we're finding all these adjustments to the assumptions. We thought we were funded. We thought we were overfunded so we said hey, a million bucks a year for SRBR distributions, or -- you know, we negotiated on a different basis.

>> Councilmember Pyle: Right.

>> Sharon Erickson: And I think the world has changed.

>> Councilmember Pyle: Absolutely. And hopefully, for the better, in reference to this. I would prefer to say once every year rather than every five, or at least some kind of an assessment of where we are. When we tried this, what was the result? When we tried that, what was the result, et cetera. But as I look at page 36, I see that we haven't done too badly in rebounding, because two months are absent from this scenario in ten. I know personally, my portfolio has rebounded. But that's not question. The question is this. Have we looked at the portfolio? And I don't know if Russell is here. I didn't see him. Is there anyone from Russell's office? I would prefer that he attend this in the future.

>> Mayor Reed: Well, we have four members of the retirement board here so maybe they can answer the question.

>> Councilmember Pyle: Yes, maybe they can. The question is this. Have we magnified what we're investing in or are we taking out those things that we shouldn't have gotten into in the first place?

>> Mayor Reed: I think one of the board members can answer that. Councilmember Liccardo.

>> Councilmember Liccardo: Yes, I think under Russell's leadership I think we've taken a very close look at the excessive weighting to equities and higher, what we would consider higher risk investments that were traditionally invested in the portfolios at the time. That those higher risk investments like equities in real estate, enabled us or enabled past boards to make more optimistic projections about earnings, it became very apparent to us, when I came on the board in early I think it was 2009, that the extraordinary fluctuations in returns that were causing long term drag on the rate of return. And so I think there's been a significant readjustment. There is greater focus on hedging of risks, using more sophisticated instruments and a recalibration away from such a heavy dependence on equities. Pete probably has a little better perspective than I do since he's been on --

>> Councilmember Pyle: I think this is something all of us need to see. I would love to see a copy of what that portfolio looks like.

>> Councilmember Constant: We actually -- all that is available.

>> Councilmember Pyle: I'd really appreciate it.

>> Councilmember Constant: Okay, we'll make sure you get it. I thought we all got it to our offices, so you probably have it somewhere, but we'll make sure you get it. But in addition to what Sam said it was alluded to a little bit earlier. Russell has built a team of people with some significant expertise, including having some with a Ph.D. level knowledge of investments who is now scrutinizing the work of the people we hire to scrutinize the work. We have a person who is an actuary by trade who is in house who is able to look at things. We have changed procedures on both boards as far as the asset allocation models, the actuarial studies have been moved up to every year, although I do disagree with Sharon, that an audit of actuarial assumptions is necessary as

well. And that's something that hasn't been doing -- been happening. Sam and Rose are on the Police and Fire side, and Ash and I are on the Federated side. And I know we changed our assumed rate of return for our actuarial projections downward. Police and Fire I don't think has done that yet.

>> Councilmember Liccardo: We tried hard but did not get a majority.

>> Councilmember Constant: So that is going forward. Of course as you know the governance structure change is a big step in the right direction, and that's just about to come to fruition. So there has been a lot of concentrated effort. And I'll repeat one thing that I said. I think a year ago, maybe a year and a half ago. And that is how appreciative I am of how much more discussion of pensions is happening in open city council meetings by councilmembers as a whole. And we have had more of that in the last year and a half, two years, than I think probably in the previous two decades on the council. And I think that is helping everybody, not only the council, but the employees and the public really learn more about our pension systems and the challenges. And then the last thing is, we've also moved the pension board meetings here to City Hall where now the meetings are streamed, where the members of the public can watch it -- or listen to it, I think, just listen to it on the Internet as well as come here to see the meetings. So there has been a lot of progress made, but we still have a long, long way to go.

>> Councilmember Pyle: Okay, I think being apprised of that is very helpful.

>> Mayor Reed: Was that a long enough answer to your question?

>> Councilmember Pyle: Yes.

>> Mayor Reed: Would you like more? Because we have some others here.

>> Councilmember Pyle: Just about. When I look on page 37, and this is in reference to things we need to correct and never ever do in the future, from 1996 to 2008 over a period of 12 years we went from 75% to

90. That's a gain of 15% in a very short period of time. Which according to my calculations, averages out to a 20% difference. That's where our problems are coming from. Wouldn't you say, in a nutshell?

>> Sharon Erickson: The benefit increases has exacerbated the problem, there's no doubt about that.

>> Councilmember Pyle: Okay, thank you very much. I'm looking forward to that report, thanks.

>> Mayor Reed: I had a couple of more questions. I know you weren't asked, or at least I don't think you did predict when we were going to run out of money. But there are people who have tried do that. And I just saw a study done by the Northwestern Kellogg School of Management of cities around the country. And they're predicting that six major cities that have current pension assets can only pay for promised benefits through 2020. Another 18 cities and counties can get past 2020, but not 2025. And San José's better off. They're predicting we won't run out of money until 2027. So those people are getting ready to retire, anybody who's retired now, I think everybody needs to be worried about our ability to pay the promises that we've already paid. And I haven't been able to see the details of this report. Don't know how it compares to the auditor's report but it's clear that everybody needs to be concerned about this and our ability to pay for the people that are already retired. And doing that, on one of your charts, it shows the declining -- decline in the ratio of employees to retirees and beneficiaries in the last 20 years. We have more and more retirees and less and less employees. I know that compared to ten years ago, we have maybe 1200 less employees. It's more than a thousand than we had ten years ago. I don't know how you can pay for retiree health care for all of the retirees as those retiree numbers go up and employee numbers go down. If the employees are paying half the cost of retiree health care, so I'm the last employee standing, it's more than 100% of pay, I know that, to pay for all the retirees' health care. So I'm questioning the approach of reducing workforce in order to cope with the deficit, which is what we've done over the last decade. That's something that's not sustainable, either. Because eventually we don't have enough people to support all the people that are retired, just on health care alone. I don't know what year that is, but it's a strategy that's not going to carry us much further. Which leads me to think we have to look at, again, at concessions on pay and benefits, that's the other alternative or new taxes and new revenues. Which people have talked about. There's a very small range of alternatives. Then I had another question. You had a chart of sort of

percentages of impact of various things. In terms of the issues, age, that one. I had a question, that savings from the second tier benefits are not immediate. And while it may not be instantaneous, I think I've seen your prediction that we may be replacing up to a third of our workforce in the next five years. Depending on which of this you pick, you could add up to 50%, in ease of doing the math in your head, if you reduce the cost per employee 50% and you replace one-third of your workforce in five years, and you're paying a couple hundred million dollars a year right now, you get what is not an insignificant benefit in year 1 with the new employees. It's worth millions of dollars, and it goes up every year for lots and lots of years. So while the benefits are not immediate, they will quickly become a very significant number depending what do you with the second tier. There is a scenario in which you could save a substantial amount of money, particularly on a second tier. Which is part of the discussion we need to have with everybody that's involved with it. I don't know if I missed what you said about the immediate benefits of the second tier or not.

>> Sharon Erickson: No, that's exactly right. We were estimating at the time we did the report that 20 to 25% of employees, if we'd done a second tier five years ago we'd have a quarter of our employees in a second tier. You're seeing substantial savings. It's just that in the first year you may not see much. So in the first year it won't happen. But that's where we have to be taking a longer view here. And the HR director recently, when he spoke at the task force meeting the other night, said that actually 52% of employees are eligible to retire within ten years. So a second tier could have a dramatic impact over a longer time span. It's just, it's not going to help you balance the budget next year. But we have to be looking longer term.

>> Mayor Reed: Okay, then last I wanted to answer councilmembers' question, not the harder one but the easier one about what happened. The capital market crash of 2008 was a latter attack. We suffered a had a heart attack and now we've discovered we're overweight, we've got a bad diet, high cholesterol and series of problems that have built up over decades. And the question is, can the patient survive or not? And we have to do things that allow the patient to survive. Because we have obligations to retirees and employees. But it was a heart attack. Fortunately we survived until now, but that was -- the attention-getting step was the crash of the capital markets. But these problems have built up long before that, but if that hadn't happened, it wouldn't have hurt us

nearly as bad as it did. Councilmember Liccardo, did you have anything to add? Okay. I think that's it right now for comments from the council. Councilmember Herrera.

>> Councilmember Herrera: Yeah, I -- and I don't know if Sharon can comment on this or not. But I think one of the things we've all struggled with is the idea that we did have this crash, we lost some money in investments, we have recovered that, and why aren't things all fixed with just recovering the investments. Because we have done well, and we have, as everyone's testified, Russell Crosby has done an excellent job, we have an excellent staff over there, and things are going well. But how much would we have to improve in terms of our investment to make up for these losses, what kind of increase and for what period of time would we have to see investment returns get us identity of this and again, we have the ongoing thing? I just want you to address that because I hear that a lot, with, you know, the economy will eventually rebound, and we'll be back where we were. Can you address that?

>> Sharon Erickson: Yeah, I was looking for my little note to myself here. I asked that question and these numbers are really rough. But I asked retirement staff. And they were saying the Federated system would have to earn 13% for 10 years net with contributions at 35% of payroll. Police and Fire would have to earn at least 11% for ten years year-over-year with contributions peaking at 65%. So it's substantial. And part of it isn't just the money that was lost. It's that we expected to make 8%. So we expected to have 8% more in the bank, and instead, we had you know, significantly less. That's the problem when you're working with these actuarial assumptions.

>> Councilmember Herrera: Thank you. Thank you very much for that.

>> Mayor Reed: We'll take some public testimony at this time then we'll come back for additional comments or questions. Jerry Mungai and Bob Brownstein. Unless Bob has a brother. Bad handwriting, sorry, bad eyes, too.

>> Jerry Mungail: Thank you, mayor. I want to commend the City Auditor on behalf of taxpayers, on the thoroughness of this report. For the first time, residents are able to learn in great detail what prior councils,

coupled with friendly arbitrators, have wrought. All the recommendations are good and should be pursued, especially those that deal with eliminating defined benefit pension plans and eliminating -- extending the time before one is eligible for retirement and eliminating the SRBR. But our pension problems are a microcosm of a far larger taxpayer problem with unfunded public employee pension and health care plans. Pacific research institute just recently issued a report that says that the unfunded liability of the California State Employee Funds, that's Cal PERS, and the California teachers is over \$327 billion and growing. But they deal with symptoms of a larger problem. Unionized public employees. We have employee retiree plans, compensation plans that are over 40 higher than those in the private sector. In times of layoff, those with less seniority are the ones who are fired, not those who are the low performers. This means those who remain are close to retirement, thus raising the average age of the employee base who get closer to taking retirement pay with fewer employees paying into the system, as you pointed out so nicely. Unions also stifle innovation because the job of unions is to increase jobs and pay irrespective of economic conditions. Good reason why we need to pass measure V and W as a starting point to return to financial stability. If there ever was a time and a case to implement right to work laws in California it is now, with this crisis and with this -- and to this time. Thank you for your time.

>> Mayor Reed: Bob Brownstein.

>> Bob Brownstein: Mayor Reed, members of the council. This report fails to meet the normally high standards of the City Auditor's office. Today, in particular, I want to speak about the fact that the published report has failed to acknowledge that the city did not pay the full normal costs of the Police and Fire pension plan on a massive scale over many years. Spreadsheets drafted 50 City's own retirement investment officer show that between 1993 and 2006, the city did not pay \$79 million in normal costs. Instead, it used surplus credits from investment returns. But when the auditor's been asked to acknowledge this fact she avoids the question, arguing the city has always paid something. Never degree, as if that makes the \$79 million discrepancy vanish. Some councilmembers have repeatedly attempted to deny that the city failed to pay its normal cost. Councilmember Constant is on tape stating the City of San José has always paid its norm costs. A statement that is clearly not the truth. The intensity of this effort to conceal the \$79 million is perplexing and disturbing. Why? Cities all over California made the same mistake. Virtually all of them acknowledge it. Is it possible city leaders do not

understand the message they send to the City's workforce when they refuse to admit something as basic as this? I do not know what the final best solution for the pension problem will be. But I am confident a stable solution is going to require collaboration between many parties, the City's workforce, the City's leaders, neighborhoods, community representatives, businesses and more. We cannot achieve that collaboration unless people are willing to acknowledge facts. And one of the facts that can't be disputed is that the city did not pay its full, normal costs into the Police and Fire pension plan. Thank you.

>> Mayor Reed: That concludes the public testimony. Come back for some additional council questions or comments. Councilmember Constant.

>> Councilmember Constant: Bob, I'm glad you brought up acknowledging facts because you know I hear you repeat the same things over and over and over again. We have had multiple people look at it. And say that those are not the facts. You can repeat it as often as you want, it just doesn't make it facts, Bob. You know, you can keep pointing fingers. And you can keep accusing us of lying. You can keep saying you want to be collaborative but continue to not be. But you can't have it both ways. And you know, if I wanted to point fingers, I could say yeah, there were some years that this didn't happen, and you were the budget directors in the mayor's office at the time. But I don't do that. So think about it. You know, we're trying to find a solution to a problem about sustainability. We know what the problem is. We've been discussing it, we've been trying to take bites at the apple to try and fix it and every time we have it you come out and you argue against it. You went off on a tirade attacking the City Auditor, calling her incompetent, and all these other issues, pointing your finger at her, acting in a hostile manner. And that is not being part of the problem, Bob. So you can't have it both ways, and I just want to be really blunt about it. Because sometimes people are confused at what I'm thinking about things, and I don't say things plain enough. So I'm just saying it plain for you: You can't have it both ways, and you can't go around having people pass out mailers that show pictures of people homeless living in the front seat of their car, and saying this is what's going to happen to city employees if the city faces the reality and does something to fix its pension system. So if you want facts, then let's talk about the facts. If you want to argue, intelligently about the issues, then let's stick to the issues. And if you want to win an argument, you should do it on the facts.

>> Mayor Reed: We have a motion on the floor. To approve the report. Accept the report I think was the motion. Any further discussion? All in favor? Opposed? None opposed, report is approved. Thank you very much, auditor, great work, as usual. That concludes item 3.2. That doesn't conclude discussion on pensions, because we're taking up item 3.3, which is a discussion of suspension of supplemental retirement benefit reserve payments. I guess Alex Gurza is going to take the lead on that presentation.

>> Alex Gurza: Good afternoon. Alex Gurza, director of employee relations. With me this afternoon is Aricelli Rodriguez and my staff. This item is before you by the Rules and Open Government committee putting it on today's agenda, and the City Manager put out a supplemental report to provide the council and the public with background information on the SRBR and that is in your packet. I intend to only go over it, the presentation briefly. The City Auditor covered many of the items and discussed the SRBR but I did want to go through it in a little bit of detail. One thing to put in context as the City Auditor did is retirement benefits are made up of various components. People often think of the monthly pension but there are other elements that make up the retirement benefit that are listed here on the screen. One that I wanted to highlight which the City Auditor mentioned is the 3% annual cost of living adjustment. Because it is, like the SRBR, items that come after you retire and increase the amount you get in pension. And as the City Auditor mentioned, the 3% annual cost of living is now nixed. It used to be where it was tied to CPI with a maximum of 3%. But it was increased in 2002 to Police and Fire and 2006 in Federated. What I mean increased is the benefit then became a 3% guaranteed regardless what the CPI actually was. And as the City Auditor mentioned that cost of living increase makes up 26 to 28% of the current plan costs. Again, important part to mention is that when that was extended, the 3% guaranteed cost of living, by action of the city council, it was extended to all retirees. So even retirees that retired prior to the effective date of that change, 2002-2006, now receive a 3% fixed cost of living increase. I point that out because as 1800 or so city employees have taken a 10% total compensation reduction, if you retire, you get a 3% increase on the pension amount immediately every year. And it's also compounded so if you -- so people that retired a long time ago, their actual amount of the cost of living increase actually exceeds the pension, because it grows over time. And then another part again that is as I mention heed similar to the fact that it comes after is the SRBR however unique in San José in its structure. We called it in parentheses here a 13th check program. What we mean by -- why these kinds of programs are called 13th check is usually pensions are paid annually, so you get 12 checks a year, but

some systems have a 13th check, where, in addition to the 12, you get an additional, or a bonus check, or a 13th check. This shows you when they went into effect. As the City Auditor mentioned, it had been in Federated for many years, since 1986. But there had been many years as can you see between '86 and 2003 when it wasn't distributed in the same fashion. It was most recently, the distribution methodology in Federated was established in 2003 and 2002 for Police and Fire. Again a retiree who receives these checks can't really count on them because they don't know what year it may be paid. For example last year there was no check and a retiree also doesn't know how much the check might be. So unlike your pension that you can count on, it's going to be a certain amount with a 3% raise the SRBR is completely unpredictable from a retiree's perspective meaning if there's going to be a check or not. The distribution methodology is somewhat complicated and attached to the City Manager's memorandum are the resolutions that describe the methodology in detail. But essentially they're similar in both plans with some differences but they have a point system which take into account the years of service of the retiree, how many years they worked for the city, how many years the person has been retired, and then what their final average salary was. So what it tends to do is, it tends to give more points, to somebody who had a lot of years of service and retired a long time ago. So in the end when you figure out how much money is to be distributed if any, the bigger checks go to the people that had a lot of years a long time ago. But it's not a needs-based system. I want to point that out. It last nothing do with income or housing hold income. So for example somebody who retired recently may still get a check. It's just depending how the point system works and what the total distribution there is to make out of the SRBR. This is a slide that just shows how much in the SRBR some the supplemental retiree benefit reserve. It is a part of the pension fund, just accounted for differently. It is invested with all of the other money in the plan. And again approximately \$20 million in Federated, Police and Fire \$32 million. This is where we have some updated numbers. And I want to emphasize that these are currently rough estimates. The amount that gets distributed to retirees will not be final until actuarial reports are submitted to each board, and then the board accepts and approves those reports. And the timing issue is that that's coming very soon. It's November and December when the actuarial reports are expected to come to the Police and Fire board and payments are usually made at this time of year. But based on the rough projections there's expected to be a payout of \$1.6 million in Federated and 1.4 million in Police and Fire. Is this slide just shows how much are the checks that get distributed to retirees. As I mentioned in 2008 and 2009 there were no payouts for either plan, either Federated or Police and Fire. You can see in the top chart the Federated plan in 2007, 2008, there was a

small distribution. I say small, because \$146,000 over all of the retirees in the Federated plan. That check actually wasn't made until May of 2009. You can see there's a footnote there and that was because there was a delay because apparently there were payment errors dating back ten years that the board had to work through and to correct. So there was a delay until when the checks are normally paid. You can see when the checks are normally paid, they are normally paid in November. And then the year before that in Federated there was a distribution of \$1.4 million, and down below in Police and Fire again you can see \$2.9 million in 2007-8, \$2.4 million in 2006, 2007. This is the range of the checks. Again, the individual retiree, the amount that they get again is not going to be known until we know the retirement system knows how much there is to pay and they go through point system. So since there was only \$146,000 to pay out the last time they paid out Federated, you can see it went from a check of 90 cents to a high of \$124 and an average of \$52, again attributable to the low amount what is the paid out. In Police and Fire the average payout was \$1900 with again a low of \$66 and a high of almost \$6500. The City Auditor went influence this again but the way our SRBR is structured, the payments can be paid regardless of whether there's an unfunded liability. Because the way it's structured is, that payments can be made in years where the plan earns more than is the assumed rate of return. But what's not a factor is, what happened to other assumptions? So there could be other assumptions as the City Auditor mentioned that were not met. That's not a factor here. Nor is a factor of the overall funded status of the plan. So a payment could lap this month even though there is these large unfunded liabilities in the plan. Similarly at the City Auditor mentioned we have declining funding ratios and again, the way the SRBR is currently structured, payouts could occur even though the plan is significantly lower than 100% funded. So the Rules and Open Government Committee we were asked to consider if the council did decide to do a temporary suspension of the payments what would temporary be? And what the City Manager was recommending is that temporary be determined to be June 30th of 2011. We selected that time frame because we are in the midst of retirement reform. We hope to be engaging the bargaining units, starting in January. The task force on retirement issues is ongoing, so we think that is a reasonable time frame to be able to come back, work with all the stakeholders, and come back with recommendations on any potential changes to the SRBR structure. So with that, I'd be happy to answer any questions.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I'd make a motion to approve the recommendation. Thank you.

>> Mayor Reed: May we have a motion on the floor to approve the recommendation. Do you want to speak to that Councilmember Liccardo? Okay. I had a couple of things to add. I brought this to the Rules and Open Government Committee for a couple of reasons. One is, I read the auditor's report on pension sustainability and just sort of an hour or so of that discussion it was somewhat alarming to think that we might be sending bonus checks out to people when we are so underfunded with liabilities in the billions. And concerned about insolvency. Some people think we'll be insolvent in 17 years and that's a terrible thing to contemplate and it just seemed we shouldn't be sending out bonus checks until the council has a chance to think about this SRBR in the context of what else we can do with our stakeholder group and we'll need to negotiate with our bargaining units starting in January. And I don't want the money spent until the council has time to contemplate really what we need to do at a policy level and a financial level. So that's why I wanted to get this in front of the council because I know the boards are taking up the SRBR issue in November and December. So I think the appropriate thing is to take a little bit of a time out, suspend it while we figure out what is the best course to do, and solve some of these problems. I'm going to be supporting the motion. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. And I'll be supporting the motion too. But I want to make a friendly amendment and I had a few comments before do I that. So I agree, because of the losses in the overall retirement system, this is certainly not the time to be distributing a 13th collect. We have an unfunded liability in the billions. And so there is really no extra wealth to spread. Anybody sitting at home to explain why we would be doing a bonus system whether we're losing money, we'd have a hard time to explain that. We are still continue to bail out the fund, the SRBR fund, any money that would go to retirees via the so-called 13th check, we need to wait until we can figure out, we need to stop, suspend it for now. And I had a question. I thought Sharon mentioned that, or I mean Alex mentioned that the largest checks accrue to people who had been retired the longest. But I guess what I have heard or what I had been thinking from looking at the numbers I'd been reading is that there's lots -- there are retirees who have been retired for a long time, on less generous pensions, who

have come to count on the SRBR, especially Police and Fire as parts of their compensation, could you comment on that?

>> Alex Gurza: Yes, councilmember. It is a little difficult to generalize the result of the point system, but I was involved in the stakeholder discussions when they designed the point system. And it is intended so that if somebody, let's say, had 30 years of service as a police officer, but retired 30 years ago, meaning they had been retired a long time ago, they are going to accumulate more points than let's say had 30 years of service that retired five years ago. The system is designed then, that first example, they'd get a bigger check. You'd almost have to look at the payouts one by one and take a look at how that point system actually applied.

>> Councilmember Herrera: A lot of those folks that are retired 30 years ago receive a lot less retirement benefit than somebody who's retiring, you know, five years ago, or now?

>> Alex Gurza: Right, no question, that's true. For example, somebody may have retired and they received let's say a pension check of let's say a thousand dollars a month or whatever. It's grown by the cola, the 3% cola but they get much less pension than people who retired even in the last ten years.

>> Councilmember Herrera: So being mindful of this and that some of these retirees don't have -- did not benefit from the generous salary packages and retirement packages that we're talking about in the last ten years that have happened I'm hoping that the maker of the motion would accept a friendly amendment. I would -- I would like to have a -- have staff take a look at including a hardship clause for those folks who might qualify, and that determination, what those qualifications would be would have to be determined by staff, so that as we consider the future of the program that individuals who have the ability to apply for that if it's relevant. And so I hope that the maker of the motion would accept that, directing staff to take a look at that.

>> Councilmember Liccardo: Yeah, I'm happy to have staff analyze that issue, because I think that's at the forefront of all of our minds, as we look at this program, about the value of the program, that is, and I suspect that really as we start to evaluate all the changes that we'll be making in the retirement system, that providing some

mechanism that would be sort of a more progressive approach toward helping those who are really getting very, very small pensions, and we know that there are several -- there are many folks who are not getting the kinds much pensions we've been talking about publicly here, that we look at various mechanisms and SRBR would be one I would hope of several.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: I think we can look at that issue. We will have to work with our outside tax counsel on that. That unless the program is available to all members of the plan you have some IRS issues. And so we'll look at that and work with tax counsel. But I just want to identify the issue.

>> Mayor Reed: City Manager.

>> City Manager Figone: And the other word I heard, Councilmember Herrera, at least to consider a program where people might reply for the hardship.

>> Councilmember Herrera: Yes.

>> City Manager Figone: And so in developing an application process, we might have to look beyond the retirement income that the city provides.

>> Councilmember Herrera: If somebody else receives other sources of income, I'm looking at people who have a need and have been counting on this and have been retired for some time.

>> Mayor Reed: Just need to verify, the motion was amended by friendly amendment with the maker of the motion and the seconder.

>> Councilmember Liccardo: Yes.

>> Mayor Reed: Yes, so we do have a friendly amendment on that motion. Anything else, Councilmember Herrera? Councilmember Pyle.

>> Councilmember Pyle: Thank you. I have a couple of questions, in reference to process. As I understand it, this came about in 2001. And it was -- the purpose of it was to try to keep retiree salaries in the \$25,000 range. That must be the same group that you're referring to councilmember. But there is a process involved. And I worry about labor law, contractual rights. So Rick Doyle would you minds commenting on that?

>> City Attorney Doyle: Yeah, there is an issue of vested rights. This is one we're well aware of, and I intend to get something to council in more detail on the issue. In this case it's somewhat complicated. There are as you mentioned Councilmember Pyle the benefit came into really 2001-2002. As to retirees pre-2001-2002, they maybe in less -- a lesser position in terms of not having a vested right, as opposed to those with, particularly Police and Fire potato 2002. It is an issue we need to look at. There is a -- there is a question as to the vested nature of Federated versus Police and Fire. And those are issues that we can get the information to council in fairly short order, and we have actually looked at that to some degree. The other issue, though, is the meet-and-confer requirements. And that's -- while I wasn't cc'd on the letter, I did see a letter from Chris Platten making the allegation that this is a meet-and-confer requirement. I think with respect to the issue that's on the table, the motion, it's a suspension, and I don't think so it triggers meet-and-confer requirements. If you're talking about elimination of the program, or modification of the program, that's a different issue. I think the other thing I want to say, though, on meet and confer is that it does not affect any current employee, as long as it's the temporary suspension as proposed up until June 30th of next year. The program for SRBR benefits cuts off June 30, 2010. Unless you're retired prior to June 30, 2010, there is no SRBR check you would receive if it were declared. As I understand the proposal it is a time-out, give us a chance to get back with a further analysis, probably work with the retirement boards and go from there.

>> Councilmember Pyle: Great, I just don't want to spend more on attorney's fees than whatever before 37.

>> City Attorney Doyle: Your question, with respect to all pension benefits it's a very real one we're very mindful and we have done a lot of analysis both in the retiree health context and this context.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I have a question you know to the maker of the motion. I was prepared to support your initial motion and then you added the application. So is it a motion to suspend it while they look at pension reform or is the motion for them to suspend it and come back with a process?

>> Councilmember Liccardo: Well, I think the assumption was that there would be additional analysis. We're not eliminating the program. We're suspending it. And so I think the request for the friendly amendment was to look at how there are means of mitigating the impacts on the lowest income recipients in some form. So I took that as a friendly amendment simply to expand the scope of analysis.

>> Councilmember Chirco: So it's not to come back with a program that would achieve that, it's just to do an analysis and bring that back.

>> Councilmember Liccardo: Right, we want options, if there are any. I don't pretend there are.

>> Councilmember Chirco: Because one of my priorities is sustaining the retirement system so every retiree gets the 12 checks. I'm more concerned about that, as we talk about 2027, that unless something's done, we won't be able to sustain it. So as long as it's done just to bring back information but not to actually create a program like that.

>> Councilmember Liccardo: I share your concern Vice Mayor. I think it's important to ask the question and then make our decision independently.

>> Councilmember Herrera: And that was my intention.

>> Councilmember Chirco: All right, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Alex who actually does the distribution methodology points system, is that someone in finance or people get together?

>> Alex Gurza: No. Well, the point system is actually designed in the resolutions in the back of the memo.

>> Councilmember Oliverio: Who figures out the math?

>> Alex Gurza: The Department of Retirement Services figures out the math for each person. But it is the actuaries of each board who determines the amount to be put into the SRBR and how much is to be distributed, and that then goes to the retirement boards. But the actual math of Retiree A, B and C is the department of retirement services.

>> Councilmember Oliverio: Is someone doing that manually, or is that something you spit out from a --

>> Alex Gurza: I would have to check with Russell Crosby as to whether they have a program that works to design that. I'm not exactly sure how they achieve the calculation, but I can follow up with you on that.

>> Councilmember Oliverio: The reason I ask, I'm just curious about the level of effort it is to do something. Because we as the elected officials pass policies and then go, hey, go do something. I don't know what that back room looks like, to actually accomplish the policies. I'm very curious because I'm sympathetic to those retirees that make less than 40,000 for example on their pension. The folks that are making high dollars, I

just -- I think they're doing okay, because there's a lot of folks that have worked 30 years in teaching that are only getting low \$20,000 pensions. So but somewhere in there. So I'm interested in seeing that. And then Rick, the IRS comment, was that IRS liability on the pensioner, or the city?

>> City Attorney Doyle: It's on the plan, and Mollie, maybe you'll want to --

>> Mollie Dent: It -- the IRS requirement is that the plan have what they call a definitely determinable benefit. That means there does have to be some formula for distribution of the benefit, that it can't be simply basically at the will of the council to decide which individuals get the benefit. So when we look at the hardship amendment, we'll just have to look at making sure that whatever we might want to tell you would be an option for that kind of thing would comply with the IRS rules.

>> Councilmember Oliverio: And the few cities that have something like this, do they have something where they manage it per income or something, per amount of pension?

>> Mollie Dent: Well, I don't know whether the other -- I don't know whether the county -- it's mainly the county systems and CalSTERS that have this, it isn't mostly other cities. Actually, the Police and Fire plan does have an element where 20% of their SRBR distribution is based on comparative final average salaries. So they already do have a part of that embedded in the formula.

>> Councilmember Oliverio: Okay, and then I guess the other item based on your presentation, Alex, the '96 and 2001, those were kind of the times in the economy where everything was just growth, growth, growth, and these anticipations of just constant return was there. So I think again it's -- you know, decisions were made at that time, but I think they were made as decisions of not necessarily the true economy going forward. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Rick, I think you answered my question, but I want to just have a little bit more clarification. So you're saying that the action that we take today, regarding this, does not trigger the meet and confer with Police and Fire?

>> City Attorney Doyle: Not if there's motion made to suspend the program and come back with analysis. You are not taking permanent action on elimination or change in the program. It is just merely a suspension.

>> Councilmember Campos: And have you had a chance to talk to --

>> City Attorney Doyle: No, I haven't had a chance, I haven't had that opportunity. Like I say, the letter was sent to me by a council office, and not -- I didn't get it directly from him.

>> Councilmember Campos: So taking this action you don't foresee them filing any type much suit against them for taking an inappropriate legal action?

>> City Attorney Doyle: I would never predict that. That's always a possibility in this business. But I --

>> Councilmember Campos: But you're confident that we can take this action and not have that?

>> City Attorney Doyle: I'm saying I think you can take this action as a suspension and we can just come back with an analysis and have further dialogue.

>> Councilmember Campos: When do you foresee the analysis coming back?

>> City Attorney Doyle: I'd have to ask Alex when he says.

>> Alex Gurza: I think it would be two steps. Basically, if you approve the motion today, what would -- the city attorney's office would have to come back with an amendment to the code to actually carry out the

suspension. Then in terms of the broader analysis of the options and all that, we would fold that into the reform discussions and come back to you prior to, hopefully significantly prior to June 30th of 2011.

>> Councilmember Campos: And Alex, do you foresee having any contact or discussions with Fire and Police regarding this issue in that time frame?

>> Alex Gurza: Absolutely, we would be having on this issue discussions with all of the bargaining units, in addition, discussions with the retiree associations, as well.

>> Councilmember Campos: Before the document is finalized?

>> Alex Gurza: Before -- well, I think what it means, before we come back on the reform discussions, I think it would take two steps. The municipal code amendment would come back to you, I think I'd defer to the City Attorney when that would come back. But the broader analysis of all the issues would -- we would need time to then discuss it with all of the stakeholders. That would be a longer time frame. The short time frame is to make the code amendment so that the suspension is made prior to the payments going out.

>> City Attorney Doyle: And I'm looking to Mollie.

>> Mollie Dent: So if the council's action is to move forward with a suspension then our office would have to come back to you with code amendments and possibly resolution changes as soon as we can get them drafted and get them on your agenda.

>> Councilmember Campos: At the end of that time frame will you be since it was given to you through a council office will you be addressing the letter in a formal process to respond back to Chris Platten?

>> City Attorney Doyle: I think we would do that, and I think at the same time we will be looking to get additional information to the council on some of the legal issues.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I am thinking to protect the most vulnerable, the fixed-income earlier retirees, since we're just suspending it until June 30th, or maybe little longer, is it possible that we just sustain -- suspend those retirees at a higher retirement level, and just distribute the check to those people that at a lower retirement level?

>> Alex Gurza: Yes, I think that for the longer term, between now and June we'd be looking at that as an option based on the motion that's before you today. We would look at all of the options whether it's an income level, or all the options that we want to bring back to you, that would be one of them. Before the checks are actually made.

>> Councilmember Chu: But now we already have a formula. We know the amount that we can -- that we can distribute it, in the next month or two, right, for the 2010 year?

>> Alex Gurza: It's not final yet until the actuaries come before the boards which is expected to happen in November.

>> Councilmember Chu: Okay so by November we know how much that each of the retirees are entitled for this 13th check? And I'm saying once we got those number, can we just send those checks to the lower-income, lower retiree, lower-income retirees?

>> City Attorney Doyle: And my understanding councilmember is no. You have a program in place that has a formula. Under the internal revenue rules you need to apply it equally. What we would look at is coming back with some kinds of -- if there are alternatives, where could you look at hardships in a revised program. But the program

as it exists now doesn't give you that discretion. And to the extent you exercise discretion in picking and choosing who gets a check, that's when you possibly run afoul of the IRS. Mollie.

>> Mollie Dent: In November the total amount available will likely be determined. It generally does take them a month or two though to determine the amount that individual retirees would get. I believe it's probably built into their pension gold system. I don't think it's a manual calculation. But it's still a lot of retirees, and the checks have to be worked out. So part of the motion was to look at some sort of way to make a distribution this year. For some group of people. So we can look at whether or not that could be done, under tax law. But right now, the formula doesn't allow that and right now the formula would have to be followed.

>> Councilmember Chu: Great. I would appreciate if you look into the possibility of early disbursement of those checks to the lower income retirees. Thank you.

>> Mayor Reed: Under the existing system, the part we're not changing with this motion, will all the retirees get a 3% increase February 1st?

>> Mollie Dent: Yes, everyone gets a 3% -- no, Police and Fire gets it February 1st and Federated gets it in March or April.

>> Mayor Reed: So in the early months of next year everybody will get some sort of an increase.

>> Alex Gurza: That's correct.

>> Mayor Reed: We're not changing that, I mean that's one of the issues we talked Mr. But this doesn't change that. So there will be some increase. So there's nobody in our retirement system that is on a fixed retirement, because it goes up by 3% every year for -- basically for everybody. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted to try and give some context to these numbers. Because I think what's happened is when this benefit was negotiated and implemented, it truly was discussed to help people who are at the lower end of the distribution scale for retirements. And I think even hearing the questions here, the concern is for the people at the lower end of the distribution scale. I have data in 2009, it's the most recent data I have. I just want to give some numbers in context that tie in how I believe the formula we have is failing in the fact that it does not distribute money to those who need it the most. But it distributes most of the money who need it the least. With your question mayor about the cola I think we can tie that in as well. In 2009, April of 2009 numbers, and these are only from the Police and Fire fund, because it's the only one I happen to have available to me right now. I'll give you a few examples of people who receive checks. Two people receive retirement benefits of approximately \$131,000 a year. So look into your cola, they're going to get a raise of about \$3200 or something like that, this coming-up year. Their SRBR check during that year was approximately \$1642, plus or minus a couple of pennies in each case. So someone -- two people making over \$130,000 a year received a little over \$1600 in SRBR checks. Meanwhile another plan participant who makes a retirement check of \$92,000 a year, got an SRBR check of \$1483. Less amount of income, less amount of SRBR. As you go to the lower end of the scale, two retirees who received the same amount of pension checks whose annual pensions are \$45,000 a year, one received an \$874 SRBR, and the other received \$1032.85. So if you look in those cases, you'll see that the distributions of SRBR are actually helping those at the top of the pay scale significantly more than those at the bottom of the pay scale. I think that is why we have to look at there in a broader context to say, are we even achieving the goals of the SRBR as it was negotiated and as it was promised to retirees? I wasn't able to get the same exact correlation in the Federated plan. But just looking in the same year, it's hard to find any distribution checks nor did entire year that exceeded \$100. I just don't have the salary comparison on those. There is one at \$119. But most of them are in the 30, 40, 50, 60 dollar range. So I'm questioning whether it really makes sense to make -- to even consider trying to make those small distributions, because they're really not going to have an impact. The check for \$20 to a retiree compared to their cola, which as you pointed out is going to be significantly more, I think we really need to look at the broader context of not only how it fits into the retirement cost, contribution cost that we had in the previous discussion, but also, is the program even meeting the goal that it was set out to meet? I think just on this cursory look it doesn't. And I think that's what really needs to be addressed is if we really want to protect the incomes of those at

the low eggs end of the distribution scale then we need a formula that actually carries that out. And the formula that we have doesn't carry it out that way. I wanted to make sure that everybody had that kind of context and I'm sure there's more recent data available. That is just what happens to be the data available to me.

>> Mayor Reed: The more I hear about the SRBR, the less confident I am that it is actually meeting the goals that were established, at least when I was here back in 2001. And I know we focused at that time on people who were receiving less than \$25,000 a year. And that was one of the things that I was interested in addressing. But I have to be honest. I'm not interested in giving a bonus check to somebody who is making over \$100,000 a year in our pension system. I'm just not. And the data the staff has here, the average pension over the last ten years in Police and Fire, a person, is currently receiving in excess of \$100,000. That's the average. Everybody who retired in the last ten years. And last 15 years they're only averaging \$95,000 a year. But of course with two more years at 3% they'll be over \$100,000 on average. I'm not worried about them. I think they'll take care of themselves. And so I don't think the way the system is working, whatever the point system is, and however the formula works, it's not accomplishing some of the primary goals that we had in mind back in 2001. So I'm interested in looking at that. I think that's part of the analysis. We need to negotiate this. If we are going to change it permanently, we'll have to negotiate with our bargaining units. But the suspension needs to move ahead so we don't spend the money before we have a chance to understand what we're doing and what we're trying accomplish. Councilmember Liccardo.

>> Councilmember Liccardo: Mayor, I'd like to make that explicitly part of the motion in terms of the analysis that's brought back. Because I think the point that Councilmember Constant raises is a terribly important one, and that is, I know he took anecdotal instances, and the question is whether or not the median or average also reflects that sort of regressive distribution. I assume it does, based on what he's saying but it would be very important for us to know that. When we're deciding whether or not this program is worth moving forward at all. I'm hoping that staff will give us that information.

>> Alex Gurza: And we will.

>> Councilmember Constant: I'll accept that. Can I add one more thing in? I think one of the things that it would benefit to look at from the city attorney's perspective is the IRS implication I understand are that everyone has to be treated similarly at the same time. And how would an SRBR checks I believe are taxable. I know when -- because when I get mine, full disclosure -- as everyone likes to point out, I am a retiree -- the year that I mentioned, by the way, I looked up, I got \$715.05, if anybody is curious. We really should look at if it were tied in to some other factor based on salaries, like whether it be tied into the affordable housing index rates, the very low, extremely low, and it was paid out weighted on scales like that, or some other, you know 2X the federal poverty rate, if that would have any other implications to the workings of the plan.

>> City Attorney Doyle: Yeah, anything, we'll be working with outside tax counsel on this issue so --

>> Mayor Reed: Okay, we have some requests from the public to speak. I'd like to take that testimony at this time. Jay Wendling, Jerry Mungai, followed by Linda Didis and Bob Leninger.

>> Good afternoon, Mr. Mayor, city council people and city staff. My name is Jay Wendling, and I'm with the retired Police and Fire. I had a nice speech all prepared to give today. But sitting in the audience listening to the talk back and forth among councilmembers, I realized that there are more unanswered questions than there are answered questions. Therefore, I would beseech the City Council at this time to fail to approve this motion on the floor to suspend the SRBR fund. The flaws that I've seen are that -- and we have the document from the city council of 2001, where the mayor was concerned about somebody making under \$25,000 a year. We now have current members who make \$13,200. And suspending the SRBR would hurt the people who need it the most. So with the unanswered questions, and the hardships that have been brought up, we would beseech you to say no to this amendment -- to this proposition. Thank you.

>> Mayor Reed: Jerry Mungai, Linda Didis, Bob Leninger.

>> Thank you, mayor. We urge acceptance of the resolution, recommendation to delay the payout. I'm not familiar with all the ramifications. But elimination of this benefit should be at the top of the list of pension reform. Today the

pensioners win during good financial times, and the taxpayers lose in bad times. Private pensioners basically get annuities, with no upward adjustments. So why should city pensioners do -- do not -- why shouldn't they do likewise? And also, with respect to these pensions, people who have been retired for a long time, how do we know that they don't have other pensions from other jobs that they've got once they left the city employ? You got do look at that too.

>> Mayor Reed: Linda Didis and Bob Leninger.

>> Hi, my name is Linda Didis, I'm a business agent from AFSCME. I was around in 2001 when we sat down with the city labor alliance and the retirees in the Federated system and worked on the formula that was going to be used. At that time, there was some surplus money in the fund, and there -- the fund payments or payouts had been suspended for a period of time while the formula was being calculated. It seems to me that the formula does need to be changed, and I'd like to see that done sooner than later. If Federated employees are only getting \$100 payouts compared to what Police and Fire are getting, and there's \$20 million in the reserve or in that reserve fund, it seems like there's things that need to be fixed. I also understand that this was put into place, the 13th check was put into place in years when the assumed -- the assumptions were larger and there was a bigger bumper crop, like this year we have 15%. And when normally the fund was funded, and some -- and the fund made 15%, the actual active employees payments went down, as did the City's payments, into the fund. So they both went down. But that the retiree got nothing out of that that year. This is also prior to a guaranteed 3% cola. This is also these people are prior to 401(k)s. These people relied on this as their sole retirement income. As to the gentleman who said how do we know, I think, that the retiree association gets pleas regularly from retirees who can't make a go of it on their retirement. Thank you.

>> Mayor Reed: Bob Leninger.

>> Thank you, Bob Leninger. I'm president of the federated retired employees association. Appreciate a lot of the comments here. I hope I can get an extra minute or two. I've got 3,000 pensioners. I have a couple of points to make, and I hope I can get an extra minute or so. To put some further numbers on this, \$40,000, \$88,000

averages, I can also only work off 2009 CAFR numbers like they can when they did the unfunded liability. 3,000 pensioners in the Federated system. 2,000 qualify under the City's housing program on the pension amount as extremely low income and very low. 875 of those 3,000 get 18,000 or less per year gross. 1500 a month. Take out part B Social Security, Medicare, take out taxes, et cetera. Out of 875, 500 get \$12,000 a year or less, one thousand. So averages tell you one story. When you break that out is what we've got to deal with, it's a whole different story. I came in asking for -- was going to be very strong about don't do the suspension. But I do appreciate some of the arguments I've made to myself over the years when it comes to means, ability to pay and the like. I don't think we should look upon this as retirement reform discussions and tie it down into some bureaucratic process that may go on for months. I think we've all come to an understanding that has a legitimate need and fills a need, but we need to adjust the way it works. And I think we can put the staff to work working with us, working with the employee groups to come back a lot sooner than that, for a lot shorter quote suspension, whatever you call that, with some ideas to make some adjustments in the formula. We can get off on actual income, we can get off on a lot of things like that. It will be a bureaucratic mess, but we can look at those formulas that can much more deeply and effectively, as Councilmember Constant pointed out, hit some of those lower income, long-term retirees, and it doesn't have to take a lot of time. And these people, it's true they get a 3%, but they're getting 3% off a thousand a month, or 1500 a month. And so there's a lot of work we can do here. We can do it a lot faster than tying it into this reform discussion. This can be a stand-alone work product with everybody working together. We ought to be able to come back to you, first part of the year, not too far past January 1. You'll have the numbers from the actuarials. You'll have the contribution distributions worked out by the retirement services, and there's no reason why we can't come one formula options that can address these concerns about means testing, et cetera, and we don't have to let these low-income people wait that long for what really amounts for you and me nothing. But for them, it makes a big difference when you're adding \$25 co-pays and the rest. It is a big deal for them. Thank you.

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

>> Councilmember Constant: I just wanted to add some more context. Because we hear about the low pension numbers. But I think we also have to understand the context of you're retirement plans that have five-year and

ten-year vesting. So while some people may make very low pension checks on an annual basis, we can't also ignore the fact that some of them make those because of a low number of years of service. And that has to be part of the discussion, as well. So I did a sort on this spreadsheet that I had, and this is the one spreadsheet, let's see this is the Federated spreadsheet from April of '09. When you're looking at retirees that have \$20,000 to \$25,000 in pension checks, in this one section I'm looking at, there's about 40 of them that only had six years of service. And I think we have to keep that in context as well, when we allow people to retire with such a short vesting period, we can't expect that they should have the same standard of living on their retirement check as somebody who spent 30 years in the same job and got a 30-year vested retirement. So I think we have to keep that in context as well because we keep hearing about the average salary. But when I look at it here, it paints a completely differently picture in some substances. And there are some. I'm having a hard time finding any here that are less than \$20,000, that are less than 15 years of service. And I may not have the sort completely right but I think that's something we need to look at because I think that's an important part of the discussion as well.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Kalra: Thank you, mayor and I think there's a lot of analysis that needs to be done to really ferret out what these numbers mean. Alex, when the mayor put forward the memo and I know that the City Manager followed up with a memo, that -- was that presented in any way -- I know -- was it presented to the task force doing reform discussions at all or the suggestion of the suspension?

>> Alex Gurza: Well, in the sense that when the City Auditor did present her report, and as you saw, one of her recommendations was to either eliminate or modify the SRBR but there wasn't a detailed discussion of -- this item came up much more recently.

>> Councilmember Kalra: It was presented as part of the audit report. But not the actual suggestion of going through it at this time?

>> Alex Gurza: Not to go through with any suspension. So the task force, again, when we gave them an overview of the retirement benefit, it was something that was discussed, but not what to do with the SRBR.

>> Councilmember Kalra: And then the bargaining units or the retirees, were they met with at any point to discuss this suspension?

>> Alex Gurza: No, again, because of the timing issues, this was put on today's agenda last Wednesday at the Rules Committee, and so in fact we mentioned it -- the City Manager and I had a few meetings with some bargaining units last week. We verbally told them that, and as soon as we put our memo out, I personally distributed it to all the bargaining units, each retiree association, and I asked Russell Crosby to distribute it to all the trustees of both boards. But we didn't have time to actually have sit-down meetings with them.

>> Councilmember Kalra: And we don't have the numbers yet as to what this year will be, but we know last year there was no payment for the supplemental payment, the SRBR. But this year's numbers will be getting -- we're already almost November, okay, at some point in the next month or so, is that the estimate?

>> Alex Gurza: Yes, my understanding again is that the numbers will be coming to each board in their actuarial reports but these are rough estimates, again that you see on the screen now that there could be a payout of \$1.6 million in Federated and \$1.4 million in Police and Fire. As we talked about these low-payment checks that we were talking about before, that \$1.6 million, if it was distributed, would result in higher checks. Because the last time Federated had a distribution, you see the total distributed was only \$146,000.

>> Councilmember Kalra: I know that 90 cents, you know, that's what accounted for -- that kind of ludicrous 90 cent check.

>> Alex Gurza: Exactly, but these numbers, again, I want to emphasize that they are rough estimates, and are really subject to the actuarial reports presenting to the boards, which I understand could be in November, in early November, it's the first and second Thursday of November when each board meets.

>> Councilmember Kalra: Yeah, and I know that the boards are also going through a process of looking at SRBR, as well. I bring this up because, you know, as mentioned, and has been indicated by some of my colleagues up here as certainly a point of concern, is that we do know that although we don't have all the data, and we haven't kind of had a chance to do a matrix where we know for certain where we can identify retirees that are low-income and that may be reliant solely on the pension they get from the City of San José, we haven't been able to identify that at this point, and I think that it's -- it just seems, in regards to some aspects of going forward with this, that we have it backwards, that we do the suspension before we really have all the answers, before we have all the legal answers as to whether there could be a legal claim against us which again could cost a lot of money from the city. As well as what impact this is going to have on the retirees. And you know, the -- this is something that's been going on for several years. We don't know what the numbers are ultimately going to be, they're going to -- as far as what the payments will be. But it just seems like there's this trend that's been happening where we put these items forwards without any discussion with those that are affected, without any discussion with the bargaining units. And then we wonder why morale is so low in the city, we wonder why there's so much angst and so much anger, when we keep doing these things. It doesn't mean it's not the right thing to do or the right steps to take. We need to take many steps, there's no one answer to the problem we're facing. I don't think we help ourselves when we take steps in such a manner that doesn't -- that doesn't encourage dialogue or that we take a step, we suspend it and then we move after the fact and say okay now let's analyze it. Again, it doesn't mean that it's the wrong thing do. But it's the right way of going about things. And I don't believe ends justify the means. And I think our means need to be questioned from time to time when we talk about collaboration and we talk about how valuable our employees are. I don't think we always reflect it in how we go about putting forward these policies or amending these code changes as we are in the midst of discussions. I do appreciate the fact that there's an acknowledgment it seems like a pretty general acknowledgment that we do want to take care of those that aren't the lucky ones so to speak in terms of having the most generous pension packages, the ones that are really out there struggling and that's something that I'm really interested in look at as we go forward and I hope that is part of the highlight of what we look at in termination of the reform of SRBR that if there is going to be a supplemental check if there are going to be supplemental payments, that we focus that money on those in need, that we focus it on those that are low income, those that need the money to survive, or

that an extra \$500 or \$1000 in their pocket really does have a significant impact. And so I'm hoping that as we move forward, that that can be one of the highlights, that it's not simply just where can we save money, for city or for the pension fund but also where ask we help and house can we identify those that can help and I know that other councilmembers have touched on trying get that data and so I'm encouraged that that discussion has occurred and I'm hoping that going forward we can really make as strong an effort as possible of including all of our partners on these really important decisions that affect the lives of people that live in our city and affect the lives of our retirees. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you. I'd like to make a friendly amendment to suspend the payout until January 30th or January 31st, so we could be able to disburse those checks to the retirees earlier. Do we really need until June, end of June to work on this particular?

>> City Manager Figone: Councilmember, the challenge is that Alex is preparing to go into labor negotiations with 11 bargaining units on not only normal matters of bargaining, but the -- whatever direction we do receive as a result of the task force work and the council's direction on pension reform. So really, to isolate this work I think would set those other efforts back, and I just couldn't recommend it. I understand the reason for the question. But given all that we're confronting, including the potential to going into final arbitration we just do not have the capacity to do these on a one-off basis.

>> Mayor Reed: Any other questions? We do have a motion on the floor. As made by Councilmember Liccardo. All in favor? Opposed? Opposed, Kalra, Chu, Campos and Pyle. Motion carries on a 7-4 Viet. Concludes our discussion on pension, we're done for the day on pensions, including 3.3. 3.4. Actions related to airports operations and staff consolidation. We had a one week deferral, Bill Sherry is back.

>> Bill Sherry: Mayor, members of council, my name is Bell Sherry, aviation director. As you noted, this item was deferred from last week to this week giving us time to meet with MEF. We did have that meeting. I think the

meeting went well. We resolved quite a few issues. We informed MEF I think to their satisfaction on something outstanding issues. And they also, we were able to incorporate several recommendations that they gave us, without compromising the work objectives. So with that I would recommend approval of the item.

>> Mayor Reed: We have a motion to approve. One request to speak. Linda Didis.

>> Hi, Linda Didis, business agent for AFSCME, MEF and CEO. I wanted to thank the council for delaying this for a week to enable us, the union, to get a second meeting with the airport to ask questions about the consolidation. As we continue to lose employees to layoffs, it's important that employees and the unions have legitimate explanation on the why and the how. So I also want to thank the airport for meeting with us and taking some of our recommendations. Thank you.

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

>> Councilmember Kalra: Thank you mayor. I'll support the motion. I want to thank Bill Sherry. I wants to thank Linda and her team just as an example of why open communication and working together matters. And you know, I think that when discussing the issue, it seems like Bill was able to explain it in such a way that did not make the employees feel like they were somehow not being treated fairly. And it sounds like there was some compromise made but ultimately we recognize that there's going to be some tough choices but when we can make the tough choices together it makes a world of difference.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: I also want to thank you Bill for meeting with the bargaining unit to have a discussion. I want to thank my colleagues for agreeing to defer it for a week so that they had the opportunity and the space to have that conversation.

>> Mayor Reed: This is but one of many difficult decisions we're going to have to make at the airport in order to maintain the cost competitiveness that is so important to maintaining the airlines servicing our community. The airline CEOs that I've talked to just made it very clear that cost is critical with them, and if we are going to get expanded service, we have to control the cost, as Bill has outlined, and we have directed him to do. Just to hang onto our service, we have to control the costs to protect the jobs that we do have. I want to thank the staff and the employees for working through this. It is not easy, it's not something we like to do, but it is necessary in order to protect the airport and preserve our industry, and put us in a position where we can pay debt service that is going to increase. We very a motion to approve. All in favor? Opposed? None opposed, that's approved. Item 4.1 is our next item, that's amending our ordinance, chapters 20 -- a bunch of numbers in title 20. 20.70, 20.90, I'm sure everybody knows what those are. We have a motion to approve that has to do with bicycle and clean air vehicles and some other changes to be made. So we have a motion to approve. Laurel.

>> Laurel Prevetti: Thank you, Mr. Mayor, Laurel Prevetti, assistant director for Planning, Building, and Code Enforcement. Based on some input that we recently received, we do want to make one minor amendment for the record for your consideration. That, to section 20.90.190. Bicycling parking space design standards, to add a phrase that would read, permanently anchored bicycle racks shall be installed to allow the frame in one or both wheels of the bicycle to be securely locked to the rack. This addition just clarifies the purpose of the rack. And we got comments that this would be consistent with what other cities are doing. Thank you.

>> Mayor Reed: All right, the motion is to approve with one amendment. I have one request to speak, Martin Delsun.

>> Good afternoon, I sort of hesitate to be here. I know you have this very weighty issue regarding the pension and budgets, this is such a trivial thing. I was one of the persons that wrote suggesting the change. I don't know if the audio visual is available now. I guess not. I have a -- I do favor the proposed change to the ordinance. I favor the ordinance and I suggest the change be made. The reason being that here, in fact, I think you have available. This is the definition available, number one permanently anchored bicycle racks is the term I suggest be changed. This is an example of the possible racks that meets the requirements but these kinds of racks that you

often see around the city really are inadequate. Bikes, when they're attached to this, often are unstable because you can't put down the kick stand and you can't lock the bicycle. This is a rack one block away, near the library. This is room for the bicycle, you can lock them. Here is a standard, next the slide will show it, that has actually been proposed by an informal association, American association of state highway and transportation officials for bicycle parking facilities. I just found this just yesterday on the Web. So what I would actually suggest the next slide is that the statements be amended actually with respect to the recommendations made for the bicycle parking facilities as stated in this document. I can give the City Clerk the actual text of that if you would.

>> Mayor Reed: If you would give it to the clerk that would be the appropriate person. Thank you very much.

>> Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. All in favor? Opposed, none opposed, that's approved. Now we'll take up item 4.2, ordinance amendments to title 9 construction and demolition diversion deposit program.

>> Move approval.

>> Second.

>> Mayor Reed: I have a motion to approve. I have no requests from the public to speak. All in favor, opposed, none opposed, that's approved. Item 4.3 is an ordinance amendment implementing the 2010 California building standards. We have a motion to approve. I just want to take a minute to thank the staff that have worked on this. In addition to their regular jobs trying to get the other cities in the county and the region to do something that all looks the same, it's not easy to get others to go along with all these implementation things. But Ed Tolentino is here, Katherine Sedgewick, Homer Mayell, and our fire marshal Ivan Lee have all worked on this above and beyond what they do in their everyday jobs, and that's important to have the valley trying to have one consistent set of codes is really important, and I appreciate that. We'll take the lead, and if it hadn't been for us, it wouldn't

have happened with anybody else, either. So thank you. Any further discussion on that? All in favor? Opposed, none opposed, that's approved. Item 4.4, staff report environmental mitigation monitoring reporting program. Motion to approve the staff report. Just want to disclose that my staff has been meeting with Craig Brion who has worked on this issue for years since I was first a council further discussion? I have no cards from the public, all in favor, opposed, none opposed, that's approved. 4.5, revisions to the public entertainment ordinance. I have a motion to approve. I want to thank our OED staff and the police department staff for getting us here, along with many, many other projects downtown. I had a couple of questions that I wanted to ask. First, since I don't spend much time downtown in the night clubs, that's just not where I spend my time, I have to work on what other people tell me. And I know over the years, as we've had difficulties with some of the night clubs downtown and we've talked about ordinance changes and policies and all the things we have in place, I've been told over and over again, well, it's the bad clubs that are causing the trouble, and most clubs aren't causing trouble. And I always ask, well, how do I know a bad club. And I get a variety of different answers. So I don't know what the definition of a bad club is, but I want to make sure that with the changes that we're doing with our permitting, that our police department and our City Manager and all the people dealing with the clubs downtown have the authority and the powers that they need to deal with the bad clubs. And a few years ago we had a shooting and then we had an emergency and we had to adopt a bunch of new regulations and a new ordinance. I don't want to have to do that again, I want to make sure that you are comfortable that with all these changes that we put in place that we haven't made it more difficult for us to control the bad clubs, however they may be defined. Lee Wilcox.

>> Excellent question, Mr. Mayor. And we have absolutely removed any of that power from the ordinance with these changes. These change really aim at flexibility early on in the night and the licensing and permitting process through SJPD. As you recall, last year, whether we needed to use the urgency ordinance which was the culmination of a few years work for ambassador club that you mentioned, we had, through the ordinance, the power to shut down a night club immediately, and the city still retains that power today.

>> Mayor Reed: Well, that's good to know, because not everybody follows the rules and everybody says what they say they'll do. And these clubs change over the time. They start out at a restaurant, and they decide they

need to serve alcohol, and they decide they need entertainment, and pretty soon the food is minor and the entertainment is major, and they turn into a night club, and they're overwhelmed by things that maybe they didn't expect. And we need to be able to deal with it. The other question I had was about cost sharing. It's on your work plan to try to help get some funds from our general fund to help share the costs of the work that goes on downtown around the night clubs. Good news is, we brought that cost down. That's good for everybody, I think, but there is still a cost that I hope to be shared with our night clubs for the benefit of the General Fund. Where is that in your work plan?

>> Correct. So one of the reasons we're here today is the cleanup of actions council of took in January which were urgency changes in the ordinance based off of legal concerns from the attorney's office. During those exchanges the scope of the entertainment ordinance was changed. So who would need an entertainment ordinance. When we had brought cost sharing in front of the council which you had approved to discharge entertainment venues in the downtown for half of the overtime police cost in the downtown, it was based off of a nexus study that really looked at who was driving the demand for this police overtime. And that data had pointed to entertainment venues in the downtown, which is why staff proposed charging entertainment venues. Since we've changed the scope and we're finishing this work today PD is probably about 85% done with the next nexus study. We'll be talking about that internally and bringing it forward as part of the budget process within the reflection few months.

>> Mayor Reed: Okay, thank you. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks. I just wanted to thank Lee for all his hard work on this. Actually all the folks who have been involved. I'm not sure I know everybody who has been involved, but I know lieutenant Dave Knopf and certainly Angelique Nedro, I'm assuming over in the attorney's office. And certainly I wanted to thank Paul Krutko, for the attention the Office of Economic Development has paid to this issue, with its ongoing set of reforms that I think have made extraordinary gains. I was at a meeting of the downtowns association probably three weeks ago. It was their annual meeting. My jaw lit the ground when I heard two different night club owners talk about how much better their relationship is with the San José police department as a result of the good work done

certainly downtown by Captain A. Garcia and Lieutenant Jeff Morozek, I always forget his last name, hopefully Jeff will forgive me. But they've done a great job down there, and the steps that we're taking have gone a long way too. In response to your question, mayor, it's tough to determine the difference between a good club and bad club. But we know that large bad clubs are more problematic than small bad clubs. And so I think the steps that we took a few months ago to really constrain the sizes of new clubs is really going to help a lot.

>> Mayor Reed: Anything else from the staff? I have no other questions and no cards from the public. We have a motion to approve. All in favor? Opposed? None opposed, that's approved. Our next item would be 5.1, grant application for the Hetch-Hetchy trail ramp staircase projects. Motion is to approve. All in favor, opposed, none opposed, that's approved. Item 5.2, joint use agreement with Alum Rock union elementary school district and related funding actions. Councilmember Campos.

>> Councilmember Campos: I want to thank the superintendent for waiting this whole time. Sometimes good things, you have to wait a little longer. I think that myself, along with Albert, we've been waiting for a good seven years to be able to have this partnership with Alum Rock, but we needed the right leadership to make it happen. So I want to thank you personally for this leadership. This is an opportunity for the City of San José to enter into a joint agreement with the Alum Rock union school district in building a sports field which would be a soccer field. And I know that Councilmember Pyle has done this in her district, and it has shown to be quite lucrative for the city, as well as for the community. So I would encourage my colleagues to support this. There is a memo that I sent, as well as staff. Albert, I don't know if you want to add anything, Albert. If not, then I would move for approval. Thank you.

>> Mayor Reed: Motion to approve. But we have a request to speak. José Monzo.

>> Good afternoon, thank you, Mayor Reed, members of city council. And thank you, Councilmember Campos, for your leadership in bringing this to council today. It's a great opportunity to bring an amenity like this to the Eastside. It's been a while since something of this magnitude has happened. And it's not just a sports field. It's

really an opportunity to focus energy in a positive way, for our youth and also, our young adults, within our community. So thank you and I hope this is approved.

>> Mayor Reed: Thank you for the partnership. Councilmember Liccardo.

>> Councilmember Liccardo: I also wanted to thank superintendent Monzo for his collaboration with the city. I just had a quick question to Albert and it is a quick follow up to the question I asked you before on this. We are relying on fees is my understanding to handle maintenance of the field. And I know obviously sensitive issue citywide because I know my own district we've held up the construction of three parks because we don't have a General Fund capable of handling additional maintenance and operations obligations. The question is, how much do we estimate the maintenance to be, and what happens if our fees don't get us there?

>> Albert Balagso: Albert Balagso, director of Parks, Recreation, and Neighborhood Services. Councilmember Liccardo, I don't have the exact figure in front of me. It's consistent with what we've placed in the Leland agreement, and that agreement has paid for itself. We have -- there's very little maintenance that's associated with the artificial field. What we're able to do is collect the fees and what makes it work are the lighting. This one has a lighting factored into it, enables us to operate after school hours as well as a full day into 10:00 in the evening on weekends. That at a market rate enables us to recover the costs. So our only cost is really associated with booking and supervising those fields. There is some cost associated with the maintenance of the rest room, but that is all incorporated into that fee for the use of the field.

>> Councilmember Liccardo: You're confident the fees will cover all of that?

>> Albert Balagso: Our anticipation is that it will cover it all, just like it does with Leland.

>> Councilmember Liccardo: Great, thanks.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Albert, don't go away. I want to personally thank you for your leadership and your commitment to making this vision become a reality, not only for the citizens of San José but for the students of the Alum Rock school district. I think this is going to be an exciting new time for them, the new schools and with the bond and now a new sports field where they're going to be able to run and play and enjoy and grow and all the benefits of them being healthy young people. So thank you for your leadership in making this become a reality. And pass that onto your staff as well.

>> Albert Balagso: Thank you.

>> Mayor Reed: That concludes the questions I believe and the public testimony. We have a motion to approve, all in favor, opposed, none opposed, that's approved. Item 7.1 is municipal water system's water supply assessment for the envision San José 2040 general plan update. We have a motion to approve.

>> John Stufflebean: John Stufflebean, director of environmental services. And I don't have a presentation, we're going to answer questions. This is Mansour Nasser, deputy director, water resources and Maureen Riley, who is a consultant from Todd Engineering who developed the report.

>> Mayor Reed: If there are any questions, some members of the council have already been there at the general plan level with the committee. I see no questions. Councilmember Oliverio.

>> Councilmember Oliverio: Just because the consultant is here and you have done so much good work for city. I know we've passed having enough water for the population we've prescribed. Is it because part of reason we're growing up and not out, that people will not have front yards and backyards with higher density and that sort of thing?

>> That is part of reason. There has been tremendous water conservation measures prepared by Muni and that helps bring the water demand down. The reason for the sufficiency is the portfolio of water supplies allowing

flexibility during shortage, and I think that's the main reason why there's a sustainable water supply for the future growth.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I appreciate the report, and I just wanted to bring up a few things regarding issues that might impact the water supply. And as your memo notes we currently rely on San Francisco PUC for 4.5 million gallons a day of water from Hetch-Hetchy. I'm concerned that we maintain that as a critical part of our water supply. And that as we move forward, that any proposal that comes to us that would jeopardize that, I would not be -- I would not be supportive of that. And I'm -- I guess I also would like someone to comment on how that would work, or how Hetch-Hetchy plays into the viability of our 2040 plan with regards to our water supply.

>> We depend, like the consultant mentioned, on 4.5 million gallons a day. That's our goal to receive from Hetch-Hetchy through 2040. Our current agreement is through 2018. But after 2018, we will be negotiating with SF PUC on extending the contract.

>> Councilmember Herrera: Thank you. And that's all my questions for now, my comments.

>> Mayor Reed: I think that's it. We have a motion to approve. All in favor, opposed, none opposed, that's approved. We'll now take up a joint item city council-Redevelopment Agency board approval. Item 8.1 is the mayor's redevelopment budget message and then after we've done with that we'll move to 8.2 in joint session on the capital operating budgets and 8.3, amended reimbursement agreement with J.P. Morgan Chase bank. We'll start with the budget message which we considered in previous meetings, today's the day to take action. I'd like to add a couple of comments to my message which was out in memo form sedated October 14th. And since we had our hearing on this and study session, some things haven't changed. And some of the things that haven't changed are the uncertainties we face and the difficulties that we face. We hope that the state's not going to take any more of our tax increment than they've already said they're going to take, which is \$13 million in May. But I

think after election day the state's likely to go back into session because their budget is probably really not balanced, so we have to worry about that, we have to worry about the economy and the real estate market and the lag time that it will take to get back into increasing our tax increment. So trying to deal with those uncertainties, I've made some recommendations with -- for a phased capital improvement program, adding a new mid year budget review in February of 2011, restricting the signature authority of the agency director so that matters come back to the council, and we've done quite a few things in order to meet the J.P. Morgan request to set aside a \$5 million liquidity reserve. And in order to keep our letters of credit in place, it's something we need to do to accommodate their request. We don't really have a lot of choice and I've made recommendations on how to do that. But I think it's important for the agency board to be updated monthly, as circumstances change, we hope they'll get better. If they don't or they get worse, we'll have to take action. I think it's important to note that in my message I have recommended that we accelerate or advance the funding for Ace Charter School from year 3 into year 1. And that I have recommended that we consider the council, all the council memorandums on consolidation in a process. And I do want to add a couple of changes to my written recommendations. First, in looking at the funds we had to move to make room for the J.P. Morgan \$5 million, we have greatly reduced some things in some areas. And I'm concerned about our neighborhood business districts and the lack of marketing funding that they will have. They have been an excellent source of tax increase, especially sales tax increase for the city. We don't necessarily get tax increment in those areas, but the sales taxes have been going up faster than the rest of the city and I think we odd to add some support so I'm recommending that we allocate \$50,000 for neighborhood business district marketing which would come from the ending fund balance in year 1. The second thing that I think we need to do on the consolidation issues is to have the City Manager and executive director report back to the city council at the first meeting in December with a preliminary analysis of their work on the consolidation issues. I would ask that they identify any actions they agree on that should be taken. Any actions they agree that should not be taken. Any actions that they agree need further analysis. And then identify any actions on which this disagree. So we'll have that in front of the council first meeting in December, whatever date that is. I think that will allow the council to see what work has been done. We can take some things off the table. I think the staff can take some things off the table and then we'll move on getting ready for the February mid year, instead of waiting for the budget process we would get the council involved in that discussion earlier. So with that

I would ask that the council approve my recommendations in my budget memo as outlined and we can get to work trying to get through these difficult times. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. You know, as we move through the RDA budget, after dealing with our city budget and all the ups and downs, I think it's really important that we return back to why we have redevelopment areas and why we have a Redevelopment Agency. We know that redevelopment as a concept was created by our state to help local governments revitalize their communities. And the California community redevelopment law specifically provides cities and counties the authority to scope and the financial means to stimulate economic conditions and to leverage private investment in urban areas by establish their RDA agencies. And we know clearly that the goals of our Redevelopment Agency can pretty much always be boiled down to three areas. One is, to reduce or eliminate blight. The second is to promote economic development. And the third is to provide funds for the statutorily required housing. And my concern in this budget message and I know I've shared this with you personally, Mr. Mayor, is the fact that we are funding or we are proposing to fund things in this budget that have nothing to do with the three of those. And while they may be individually great causes, I have concerns. I have concerns because we're not funding our signage grant program that we know we have a history of that program, and we know that that program was suspended in this past year. It was on hold. Other than the projects that were in the pipeline. Even though we know that we had an RDA survey that showed significant increases in sales to businesses who had taken advantage of that program. We have had no money to do any significant facade improvement programs, which we know each of us have plenty of areas in our districts, in our redevelopment areas, that could benefit from facade improvements. We nod from our own experience that these facade improvement grants and the program itself turn into real dollars that come into our community in the form of sales taxes and increased property taxes, on those areas that we get tax increment. And is really, again, a direct purpose of redevelopment money. We know that our small business loan program has been on hold, and the small business loan program specifically reaches out to business owners to give them the leverage that they need to get up and to get into business in the RDA areas of San José, so that they can generate sales tax, business property tax, real property tax, provide jobs. Those are all areas where we should be focusing our efforts. I know Councilmember Oliverio wrote probably the shortest budgets document I've ever read. I think it was -- I think it was one sentence or two? One sentence and it says I'll paraphrase but if it doesn't

give us economic development we shouldn't be funding it. And in this budget, as you mention, Mayor Reed, we're accelerating \$950,000 from future years into year 1 for our charter school. And personally, I'm a big supporter of charter schools. But I have to ask, how does that fit into our stated goals, and why does that take precedent over the core essential services that our Redevelopment Agency should be doing, and the core investments in economic development that our Redevelopment Agency should be doing, the elimination of blight that our Redevelopment Agency should be doing. We have schools and charter schools throughout our city. And many of them are in need. I know in one of my SNI areas, we have a charter school that has been struggling with facility issues for a number of years. And we know that these struggles aren't unique to any one charter school or quite frankly, any school district in our city. Yet we picked one, and again, a very worthy school. I don't want to say anything negative against ace because this is not what this is about. Bus ace got chosen over other charter schools and other educational needs throughout our city. But we're not spending the money where we should be spending it. In areas that will have tangible short, medium and long term returns on investment that we'll be able to see that could be generating tax increment almost immediately, that could be generating sales tax almost immediately. And that could be providing new jobs creating new jobs almost immediately. And again, it's not whether the school is good or bad or indifferent or worthy or not worthy. But it's a matter of what is our responsibility, what is our jurisdiction, and what should we be doing? And there is the same discussion that we had during our regular budget cycle. And budget study sessions. We do a lot of discretionary things but we fail to do oftentimes the essential core city services. And that's what really concerns me about this budget. We know we have all these challenges in front of us in you're city and in our Redevelopment Agency and in our budget, we have the forecast. I'm not going to repeat all the different things that are at risk, but we know the risks that we have in front of us. The potential projects that we may or may not be able to fund and the impacts they may or may not be able to bring to our city, yet we're providing nearly \$1 million to a charter school that is wholly outside of our purview. And we're not doing those essential things that we should be doing. And it's regrettable that I can't vote for 24 budget message Mr. Mayor and I think this is the first time I've voted against a budgets message since I've been here. But I think it's important that we think about what we exist to do. And why we have a Redevelopment Agency. And why it's so important that the Redevelopment Agency dollars get spent specifically in those three core areas, eliminating blight, stimulating economic development, and providing for the statutorily required housing.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, I appreciate Mayor Reed's represents in his budget message. I am thrilled to see that you have included funding for as I charter school, that you've given direction to look at funding the B.E.S.T. program which you also stated at the mayors gang task force meeting, to all the participants, and they were extremely grateful for that, as well. The reason why Ace Charter School is a part of the recommendation from my office is because, remind me Harry, was it nine years ago or ten years ago, when we developed the strong neighborhood initiative to go into neighborhoods, ten years ago, I believe, ten years ago. And then the community had the ability to make priorities of what they wanted to see happen in their community. And for the Mayfair SNI NAC building a charter school that would serve their children so that they would have the ability to be successful in the future was one of their priorities. And so that's how it is in this budget. It was a priority of the neighborhoods and was driven by the process. Having said that, mayor, thank you so much for your leadership in meeting with different stakeholders around the Ace Charter School. And I'm pretty sure that Greg is going to make a few comments about that. The other thing that I wanted to touch on, I know that in your budget message, you are recommending that staff look at and evaluate budget document 5, 6 and 9. And I know that 5 and 6 are deserving of future analysis. But I'm wondering the reasoning for including the budget document that says to forward or remove economic development, and the housing department, from the City's side over to the redevelopment. And if you can just touch on that because I know there's a reason why the housing and economic department have been in the city's side and we've talked about that for many reasons. I'm look for him. Paul, has stated many times on what they have had the ability do with that department in his -- in the City Manager's area. So if there's no reasoning, and you're just going to have them evaluate it, I think time would be better spent on looking at budget document 5 and 6, our resources. Because from what I understand that's more administrative work. So mayor, I don't know if you have any comments to that. If not, I'd like to make a motion.

>> Mayor Reed: I do have some comments both to your questions and Councilmember Constant's questions. First as to your question about the consolidation issues. I don't think this is the time to reach the

conclusion about what to do on any of the consolidation questions. I want to give staff the time to work on it. The first meeting of December, some of these things can be taken off the table at that time. I'm just not prepared to understand the answer and make a reasoned decision at this point. And I don't want to have that argument now in the abstract. And everybody just decide what they think is the best choice with no staff analysis and no professional help. So I think that's something the staff needs to work on. And that's why I'm recommending you bring it back in early December so that we can consider that along with the other consolidation questions. I'm not recommending any of them be implemented. I'm just saying they merit analysis. Councilmembers are interested in them. Those are questions we want to have answered and I think we ought to give staff a chance to answer them. As to Councilmember Constant's comments and questions about Ace Charter School the only reason I'm supporting the Ace Charter School is because it is a priority of the Mayfair SNI NAC. If you look at the budget over the years we have spent substantial amount of money in our SNI areas. But over the past couple of years that money has been reduced dramatically. But it is a priority of our neighborhoods. It is one of our key programs to deal with the problems in the neighborhoods and we've asked the neighborhoods to identify what their high priorities are. It addresses blight. There's an economic opportunity in there with some additional funding to create some construction jobs for sure it meets some of our elements of what we're trying to do but not all but primarily it is a priority of the community. We can't meet all the priorities of all the communities in fact we've shrunk down dramatically, and this is one of the better ones and it is a high priority for that one. That's why I have suggested we leave it in the budget and we accelerate it into year one.

>> Councilmember Campos: One more question, not for you. Thank you mayor for that explanation and I appreciate you giving a clear message on why you're supporting the Ace Charter School. So my question then is probably for the City Manager, and the redevelopment director. As we pass this budget, and the direction is received in your department, will both of you work together to come to an analysis on whether it is feasible to move the economic development and the housing, or is it solely going to be in the redevelopment department to do the analysis? I think that's where I'd like to understand the process.

>> Mayor Reed: Let me explain my proposed direction before they answer that. The first is they come back to us, and if they can't agree, they will identify those areas they disagree and it will be a council decision of -- you

know, move on, proceed or whatever. Because the analysis needs to be done jointly and I'm proposing that that be done with the executive director and the City Manager and a representative of my office, which will either be me or my chief of staff, so that we get the decision framed up for the council to make. And if it's a decision the Redevelopment Agency thinks ought to be in the Redevelopment Agency, and the city thinks ought to be in the city, ultimately it's going to be a policy decision. But I want to allow them to do that policy work. I think the City Manager wants to answer your question.

>> City Manager Figone: Yes just to add in terms of how I'm thinking about that and Harry and I haven't even had a chance to talk yet. You all probably know I'm a little bit more of an analytical type, so what I would imagine us doing, because we really don't have too much time, such as the mayor's point, some of this might just be an update. I would envision us kind of taking a quit analytical view of where the work is, where there might be overlap, why overlap exists, and in some areas there's probably plenty for everyone to do so it might be just to point to an operational need limit the overlap but not necessarily reduce staff. In other areas there neighbor some economies of scale where on the city side or on the agency side, things can shift. So, again, I'm going to take -- I'm thinking of this from an analytical perspective, not a negotiation at this stage and to bring you the result of our conversation, and where the possibilities may exist and where they may not. But Harry and I haven't had a chance to talk, but that would be my intention.

>> Harry Mavrogenes: And likewise, I think we're both committed to working on this together and seeing what's best for the city. We're going to look and again we did this five years ago. We came up with some solutions then. The clerk for example does the minutes now of the agency. There are other things like that, that we can look at on both sides, and I think again, it's the best interests of the city and the agency we all look for in the end. So give us that chance to look at it, and we'll be back.

>> Councilmember Campos: Okay, thank you, so I'll go ahead and make a motion mayor unless there was somebody else who was going to make a motion.

>> Mayor Reed: Go ahead.

>> Councilmember Campos: So I'm going to make a motion to approve the Mayor's Budget Message, with the dialogue that the two heads and your office will have a discussion about where to move memo, I think it was 5, 6 and 9. And that the ultimate decision will be brought back to this governing body to determine what moves forward.

>> Mayor Reed: All right, we have a motion on the floor. I just wanted to clarify, would that motion include the \$50,000 allocation for neighborhood business marketing that I recommended we add?

>> Councilmember Campos: Yes.

>> Mayor Reed: Okay, that is the motion on the floor. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. I'm happy to second the motion. I wanted to thank you for your continued leadership in really trying to do more with less. And for being fiscally responsible, not just in terms of the City's budget but RDA budget, as well. And I strongly support your commitment to continue to support tax revenue and job-generating opportunities especially in the industrial areas. Obviously the Monterey corridor is definitely one of the most important areas in the city which continue to provide much-needed jobs for our residents, as well as some of the other industrial areas throughout our city. But I think that this budget addresses and meets all of the components that make up the work and the mission and the functionality of the RDA such as affordable housing, blight elimination, neighborhood and economic development and job creation. I think we touch on all those components in this budget message. I think we're trying to do the best with what we have and I think that we continue to look to your leadership to help us in that direction. In terms of the consolidation obviously consolidations always welcome when we're trying to you know be more effective with the different departments that we have. But I also want us to move a little more cautiously after we think about consolidating the different departments. In my opinion, I think the housing department and the office of economic development departments are definitely two of the most effective departments that are here you know working for our city, without the housing department we wouldn't be able to provide low income houses for residents, as well as generating jobs

for our residents in this city. And so when we're trying to be more effective and more efficient with the types of work that we have, I think it's best to look at perhaps moving different positions so that we don't over-compromise.

But to tackle the issues of moving various departments to one agency or to the city, I think that's drastic measure, and I think that we need to move in that direction with a lot of caution. If the vote is today I definitely would not support that. I think the housing department is doing fine job with the city and I thank Leslye Krutko for her leadership as well as Paul Krutko for his work with the Office of Economic Development. I think these two departments need to stay where they're at, at the moment but again we're going to have this much larger discussion at the appropriate time and I look forward to that.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. I don't think I've been inconsistent on this one, I think I've been terribly consistent, that I thought all RDA money should go to the redevelopment -- through -- sent to the redevelopment agency should go to economic development, because that's our biggest bang for the buck. We have been able to do some nice things. We have been able to spend \$105 million in certain parts of the city to do improvement, but not the totality of the city and there are other parts of the city with true needs. With that said, I think we really need to look at having a leaner, focused agency that solely purposes economic development, and the constraints of the budgets are going to push us that way but I think it's the area that we need to go in. Mayor, I think you've been extremely generous with the past RDA budgets, and this current one, especially for the neighborhoods, and it's nice to hear compliments from everyone here on the council regarding that. I, like Councilmember Constant, share his concerns. I think Ace Charter School is outstanding but you know there's almost 300 other schools in San José and many of those provide educational opportunities to underprivileged communities. There is really no formal RFP process that said this was the one school that should win all of San José, but yet they're here, I'm very excited to hear about their increase in test scores and all the things that were discussed at the public hearing. That said I will be supporting the budget even though I think economic development has to be 100% of the funds. And then as far as consolidations, we need to explore those and see what happens. I look forward to the analytic framework coming back, and thank you.

>> Mayor Reed: Councilmember Chirco, Vice Mayor Chirco.

>> Councilmember Chirco: I'm troubled about the conversation of looking at housing and office of economic development. But I will be supporting the motion because that will be coming back the first part of December with some analysis by the City Manager and if director. So I'll look forward to that coming back in December.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. And I support the motion, I support your budget message and also commend you on your leadership in really work in a tough environment financially to put this together. I wanted to make a comment on the Ace Charter School. I mean, I think and I guess back up before that I think that economic development is a primary goal of RDA but so is eliminating blight. And even though there hasn't been necessarily an RFP process to select ace, I think I'm satisfied that this is a good decision, because they're not going to get a dime until they go out and secure their financing. So I think that was a very wise decision, and they have really shown that high achievement has also been discussed. I think that's great that we can include some of these programs that really help our neighborhoods. I'm also happy that the B.E.S.T. program is continuing in here because we have to continue to fight gang violence and do everything we can do make our neighborhoods safer. Economic development is wonderful, but if we're going to be raising money on one side and then spending it on more police and dealing with unsafe neighborhoods, then it sort of defeats the purpose. So I think we have to continually look at how we keep our neighborhoods better and keep them safe and work on reducing blight as also a book end of economic development. I see that as part of it actually. As far as the recommendations that are going to coming forward, I will be looking to see that analysis. I think that we really need to look at total cost of ownership for economic development activities, that needs to be one of the things that we factor in. And you know, specific programs that we're doing in economic development, how much does it cost us to do those things and how much does it cost businesses to interact with the city. So I am going to be looking at what can RDA do, when can the city do and I think ultimately it's going to have to be us to make that decision but I will be really looking forward to getting that analysis.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I think this allows us time to define the problem. I'm not sure in my mind that the problem with RDA has been defined. And so by following your lead, mayor, it allows for a much more inclusive approach to the problem and we're not going to be making assumptive mistakes. By that I mean going ahead and moving one department into another and causing problems that we don't even anticipate. I think it's a problem across the state and I think this will serve for a model of way to go nationwide, as well for all I know. Thank you for the work that you put into that.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I wanted to echo concerns that were expressed by Councilmember Nguyen and others. The notion of moving OED and housing into RDA doesn't make a lot of sense for two reasons. One is, those are really -- those have been star performers in the city's portfolio and it seems to me when you've got award winning operation moving at the pace they have to change what's going well doesn't make a lot of sense. The second concern I have really is, as you look in the out-years here, taking even the assumptions that are established within the RDA budget, and we look at exhibit B, or I'm sorry attachment B, in the Mayor's Budget Message, it should be startling to all of us, I think, as we look at year 4 and 5, of the Mayor's Budget Message, if there is no agreement with the county, then the way we essentially pay our bills is to have zero operating expenditures for personnel, that means there are no employees in RDA and no capital expenditures in either year four or five. And before anyone says, well, this is far too pessimistic, consider that in year 5 we've got \$60 million of bond proceeds we're assuming that will materialize. And of course if we're in litigation with the county or if we've got a judgment against us from the county I think we're going to have a hard time issuing any bonds. So the notion of saddling redevelopment with additional responsibilities at a time when we're trying to save the ship seems to me is pretty misplaced in terms of priorities. It's maybe an academic discussion about who should be doing what, when the reality is we need to be focusing on what we can do to make tax increment grow, and keep RDA moving forward. And it just doesn't make any sense to me that you settle them with additional personnel cost or any other responsibilities. We know that personnel cost will be about

\$11 million in this fiscal year. I pushed the memo that I did precisely because I'm concerned that as in years past, where we all believe there's great value in the work that's being done out there, in SNI and business development and several other areas, that there is opportunity for cutting cost, where we know duplicative services, duplicative work is being done between the two organizations. So I'm not really that focused or consumed with the notion of moving one box to another organization or another. I'm focused on trying to find ways to save and cut costs that are not absolutely critical and essential to the survival of this agency. We know we've got a couple more rough years ahead before we hope that rising tax increment is going to carry us out of this and that's the time really when we need to be tightening our belt the most. So that's my concern from day one. I'll support the Mayor's Budget Message, but I am deeply concerned with the general trajectory here.

>> Mayor Reed: There are a couple of more things I wanted to add. I want to thank the staff that's put the team together and working on the job and revenue generation team, as I've called it. I do think they have another name for it. Because we do have developers and projects who want to invest \$1 billion in San José in the redevelopment areas. They're serious, and staff is serious, and those things are moving ahead. So that's great news, except that will be 2013 before they're built, constructed, done, finished, whatever the assessor does and onto the tax rolls. So they're out there, but that would be year 4. And we need some tax increment growth in year 4 so it's good to see the pipeline beginning to get filled up. I'm optimistic, more optimistic than I have been, just because I've talked to a lot of developers who think now is the time. We've had first time in 23 months that we had net job growth year over year, month to month, year over year. We had five out of the last six months with positive job growth here in San José. People see that, they understand the economy is turning around. We've had some pretty sharp turn arounds in the past with the economy, they are looking forward to that, as am I, and the agency has had some pretty sharp turn arounds in the past, when we start coming out of it. But the question is when. It's not going to be this year, it's not going to be next year, it's going to be 2013, 2012, before we start seeing real improvement in tax increments. But despite all the bad news, and all the pessimism, overall I'm optimistic about increasing tax revenues, increasing our ability to do the things that we all want to do with the agency. But I did go back and look. In 1980, Redevelopment Agency had five employees, and I think a capital budget of about \$10 million. We have grown it through a couple of decades, I guess that would be three decades, of really hard work, and great success on economic development by the redevelopment agency staff, by the city staff. They're all

doing great work, and we can see the results, and we can see the companies that have located here, the companies that have expanded here, and we're seeing it in the job growth numbers. And now we're beginning to see it in the residential market numbers. So we've just got to keep focused and do what we have been doing to grow the tax increment revenue, and grow our way out of this. That is the only way out, is to grow it out. The good thing is, the way the assessor has done the assessments, when the economy starts coming back, we'll get the increases on our base and we'll have the pipeline to add on top of it and that will allow us to have sufficient room to pay our bills and operate a capital program, we hope. It could get worse. We're going to look at it in February to make sure we're not on the wrong track in terms of what we think's going to happen. That's why I've recommended a mid year review in February which we've never done in the past. Councilmember Constant.

>> Councilmember Constant: Just wanted to respond to a couple of things. First on your statement Mr. Mayor about the priorities. I'm keenly aware of the priorities of my communities, who has been waiting ten years for a park, whose funds in the budget keeps getting moved back and back. An area of town that has the least number ever parks by the amounts of parks they are, as acreage per parks, per capita per square mile, per acre, no matter how you calculate it, but it's a matter of going out like I did and talking to my community and explaining that the only way we, quote, grow out of it as was just mentioned is by putting the money into economic development that returns tangible dollars that we can use to fund these other issues. And I clearly told them that they have to wait, it's one of those things. We only have so much money and we need to mutt the money into where the money is going to create returns of money so that we can continue forward and we can grow our way out and so years four and five won't be so scary. And the answer to the I guess the not-so-direct question of what the hell was I thinking when I wrote budget document 9, I just wanted to explain that. We've been talking all day about pensions. We've been talking all year about total cost of employee compensation. We know that by year 4 and 5, it's going to cost us a lot more for our employees in the city than it does today. And we know today, our overhead cost and our benefit cost for city employees greatly exceeds those overhead and total compensation cost as a percentage of payroll in the Redevelopment Agency. So it's not simply just saying let's pick up the box and move it here because it sounds good. It is in the greater context of the Redevelopment Agency as a lower cost as a percentage of payroll for overhead, for benefits, and can put more people to work for the same amount of dollars or the same amount of people to work for less total dollars. So that's what I was thinking. And that's why I think it

does need to be analyzed because we have to be conscious, again, of the greater context of the city and whether we're going to spend the money having the city reimburse the city for services or, as we do now, where the agency reimburses the city for some services. We have to figure out where we get the greatest bang for our buck, which is a quote from I believe Mr. Oliverio, where we can do it most efficiently, where we can reduce the problems we've been talking in all these other contexts and that we can deliver our services. So that's what I was thinking.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. If I recall I want to thank Deb and Harry for the explanation on how you're going to work together to bring back an analysis on this. But I was -- I think that Vice Mayor Chirco and Councilmember Nguyen and Liccardo had some very compelling arguments about where they're at with the two departments moving to redevelopment. So I'm going to amend my motion and if it gets -- if Councilmember Nguyen agrees to accept the amendment, then I'm going to put it to a vote. Because I think it's -- there is a lot of discussion about -- and strong feelings about not wanting to see those two departments go to the redevelopment. So I'm amending my motion to not send the housing and economic development departments to be analyzed, for that to come back to the full council, and just -- so to remove memo number 9 from the motion.

>> Mayor Reed: That's okay with the seconder. I'm not going to support the motion. I think we do analysis first, action later. I can -- I have a lot of arguments both directions on this. I'd like to see the analysis. I tend to agree with the people that think they have the conclusion that they shouldn't move housing. I'm not sure about economic development. We've had a lot of different ways we do economic development. I'm not going to support the motion because I want the staff to have a chance to do their work before we get into a decision-making mode. I think it's a mistake to jump to the conclusion without having heard from either the economic development team or the redevelopment team or the city manager or the executive director on those two issues or any of the other issues. So if you want to, I guess we'll have to have that discussion now, because I think it would be a mistake to jump to the conclusion without at least having people have a chance to talk about it. I know that people think they

know the answer. Sometimes I think I know the answer, but it's helpful to have some analysis. So I'm not going to support the amended motion. Councilmember Oliverio.

>> Councilmember Oliverio: I cannot support the motion, either, and I think it's just grabbing for too much.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I would really like to hear the analysis. Because I think that information will provide us some input as to how to best look at this situation. I'm certainly not sitting here thinking we should move one box to the other box but I would like -- I think that's worth look at. I had never even thought about consolidating some things with the RDA until that budget memo came out. So I want to have an open mind and hear what staff has to say about it. I think ultimately the decision's with us. Staff is not going to go and do anything without us making that decision, but I definitely want to hear that. I think there may be some functions maybe RDA could do. I don't know. I mean, we definitely want to reduce the cost to businesses out there. We hear over and over again, that some things are too expensive. If we're shipping things to the city that are costing businesses more, and we could have RDA do that, that might be good. I think Councilmember Liccardo's points about what lies ahead for RDA are also very compelling. So I'm not sitting here today knowing exactly how that should look. But to take an idea off the table before we even have a chance to analyze it I don't think is a good thing. I don't think we should be afraid to look at all these options and hear what staff has to say. So I won't be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I appreciate the comments of Councilmember Herrera. I think that certainly room for analysis of a lot of different things. I think that we also, as has been said many times before, be cognizant of the bandwidth of the staff and where we get our most bang for the buck in terms of the staff time and what we can analyze. And I agree with much of the comments that have been made by my colleagues regarding the effectiveness of the departments that we're suggesting that we're suggesting analyze to be moved and I think

that our resources and our time and our staff time can be better spent in other ways to determine where we can gain more efficiencies, so I will be supporting the motion.

>> Mayor Reed: We have some requests from the public to speak. Take that testimony at this time. Call on down when I call your name. Pat Saucedo, and then Greg Lipman.

>> Pat Saucedo: Mayor and council, Pat Saucedo, San José Silicon Valley chamber of commerce. My comments basically are going to be that the chamber and the business community clearly believes that economic development is the priority responsibility of our Redevelopment Agency. I mean, I remember back when I was on council we had the North San José Rincon area, the Edenvale redevelopment area and obviously our downtown and we had the Olinder area as well. We had grade strides in progress and at one time economic development actually resided in the Redevelopment Agency. Looking at the budgets of both the agency and the city I think what's been offered today is to have our City Manager and our director sit down, look at what needs to be done, how do we maintain an agency that's viable and its core mission is economic development and also a viable city operation is really the best step forward as we look at these challenges we're facing. It may be appropriate to move economic development back to the agency. It may not but we obviously have not had an opportunity for that analysis. I would strongly encourage to allow that analysis take place. Have it come back in December. We are all and you in particular are facing such challenging issues that you have never faced before. Let your staff go back, review these. I heard Mr. Mavrogenes, I heard the City Manager say they want to sit down, they want to talk about this, analysis it. Give them an opportunity to do their job and then come back. We know the agency has been successful we need to ensure it is viable going forward. We will come out of this some day, we just have to get through this the next five years. Thank you.

>> Mayor Reed: Cora Tomalinas and Greg Lipman.

>> Good evening, honorable mayor and city council, my name is Cora Tomalinas, I am a resident of District 7. I have good news and I have bad news. There are still gangs in the City of San José and they are all over San José. Gangs, no family wants to live in a gang-ridden area. No industry would locate in a gang-ridden area. A

gang-ridden area creates blight, with the graffiti and crime. The good news: The good news is you have the mayor's gang prevention task force which is funded by B.E.S.T. How do I know it works? Look at the valuation. Look at the data from the police department. Look at the assessment from national -- in the feds actually. And internationally, it is a model internationally. So thank you for your support of that, mayor. I urge you to support the mayor's support of the gang prevention task force. Strong neighborhood initiative. RDA is also about the development of people, not just buildings. People make neighborhoods and good neighborhoods make economic development a lot easier. Take a tour, the neighborhoods that have strong neighborhoods initiatives. Furthermore, the gang task force, the strong neighborhood initiative work together, along with the police department. So at the end, I just want to tell you I'm so proud much you today and your discussion. Thank you.

>> Mayor Reed: Greg lipman, Dulcie and Tamera Alvarado.

>> Tamera and Dulcea had to leave earlier so three won't be working today. My name is Greg lipman. I'm from the Ace Charter School. I want to thank Mayor Reed for inclusion it in his budget message and I want to thank staff for the work they put into this. I want to thank Councilmember Campos for her leadership of the families in the Mayfair and I want to thank her staff for all the time they somewhere put in. I wanted to thank all of you. Ace and its representatives have had a chance to meet with you and your staff to discuss this issue. I want do thank Councilmember Kalra and Councilmember Nguyen for meeting with me personally. It has made a great deal of difference for us to be able to connect with the council. I want to thank executive director Mavrogenes and the RDA staff, especially Kip Harkness, for the work this have put in on this, and of course the broader Ace community, the community we hope to continue to be a part of for a long time, the Mayfair NAC that was honored earlier today, PACT, the Alum Rock school district, which as Councilmember Campos mentioned has some new leadership and has allowed for the kinds of collaboration that are happening now. And of course, the ace families who I want to speak on behalf. They haven't been able to -- they weren't able to stay all the way until tonight but a lot of them wanted to come and thank you personally themselves. So on behalf of Mayor Hammer who also wasn't able to stay, and myself, we look forward for the opportunity to, in Councilmember Constant's words, to

bring private investment to San José to leverage your support of our program, and revitalize and work with the members of the neighborhood in the Mayfair thank you very, very much.

>> Mayor Reed: That concludes the public testimony. We have a motion, modified motion by Councilmember Campos on the floor. All in favor? Opposed? .oliverio, constant, Reed, Herrera. One two three four, that passes on a seven-four vote, includes the work on the budget message acknowledge staying us to item 8.2 which is the approval of the agency FY 2010 capital and budgets.

>> Motion to prove.

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

>> Councilmember Liccardo: I'm going to vote no on this item for reasons I've expressed in past meetings. My concerns about projections as well as about the allocation of resources within the agency.

>> Mayor Reed: Anybody else? I have no cards from the public on this item. Motion is to approve. All in favor? Opposed, constant, Liccardo opposed, two opposed, that passes on a 9-2 vote. Taking us to item 3.3, authorization to execute an amended reimbursement agreement with J.P. Morgan Chase Bank. Motion is to approve. All in favor, opposed, none opposed, that's approved. Take open forum, then we have a few redevelopment items. Any cards under open forum? We have no cards under open forum. We will complete the agency board agenda. We have nothing under closed session report, Rick? Consent calendar is all we have. Motion is to approve the agency consent calendar. All in favor, opposed, none opposed, that's approved. Concluding the agency agenda, and our afternoon agenda. We will be back at 7:00 to take up the evening agenda. We are in recess.

>> Mayor Reed: Good evening. I'd like to call the San José city council meeting back into session. We have fortunately gotten done with the afternoon agenda, so we can start with the evening agenda. We have some ceremonial items, I'd like to invite Councilmember Constant and some Lynbrook high school students to join us at the podium. Next we're commending Lynbrook high school student Cynthia Day for placing silver in the ninth annual China girls mathematical Olympiad. I can't imagine how hard that was. Fortunately I didn't have to do it. Councilmember Constant.

>> Councilmember Constant: Many times I have brought students out from our district, district 1 to receive our congratulations for their achievements and I tell you, Cynthia has a lot to be proud of. The China girls Math Olympiad is an annual math competition held in Shi-Jau-Shuong (phonetic) I think that's how you say it, China. Unlike other math competitions, this particular one puts a greater emphasis on creative thinking over rapid completion of problems or just mastery of advanced mathematics. The competition was originally open only to teams of girls representing different regions of China and surrounding Asian countries. But since 2007 the United States has been competing against students from 19 other nations. Over 170 talented math students competed between August 9th and 13th this year on their abilities to solve eight advanced math problems over a two day period with an hour for each problem. I had a hard time just reading the questions, because they were so complicated. Cynthia Day obviously is a San José resident in District 1 and a junior at Lynbrook High School. She won the silver medal in the Olympiad and was one of four high school students that medaled and the only one from the City of San José. So we are really proud of her and her achievements and of course of Lynbrook High School and all the wonderful things that their teachers, faculty and students do. So the mayor is going to present the commendation, and then Cynthia is going to read one of the problems, because I couldn't.

>> Hi, so I guess I'm really happy to be here today, and I'd just like to say that CG-MO is a really great opportunity for girls who want to participate in math, and the problems are extra fun. So I guess I'll read one of them. So number 3 on the contest was to prove that for every given positive integer M there exists a prime P and an integer N such that P is congruent to $5 \pmod{6}$, P does not divide N , and N is congruent to $M \pmod{P}$.

>> Mayor Reed: Does anybody have the answer? Nope? Okay, sorry.

>> Councilmember Constant: Come on over here for a picture real quick.

>> Councilmember Constant: And most importantly, this is the math teacher who got her here, Rita Korsunsky. We're going to take one more picture.

>> Mayor Reed: Now I'd like to invite Councilmember Chu, Councilmember Pyle and members of the Dr. Martin Luther King Jr. association to join me at the podium. Today we're commending the Dr. Martin Luther King Jr. association of Santa Clara County board for their continued efforts to honor Dr. King's memory by furthering his legacy of nonviolent social and political activities. Councilmember Chu has some of the details.

>> Councilmember Chu: Thank you, Mayor and councilmember, for joining me to present a commendation to Dr. Martin Luther King Jr. Association of Santa Clara Valley Board for their continued effort to honor Dr. King's memory by furthering his legacy of nonviolent social and political activities. Dr. Martin Luther King Jr. association of Santa Clara Valley board organized activities that are aimed towards educating the community about the significance of social justice advocacy and grass roots movements in American history. The board recently hosted their second annual working women's brunch on October 2nd, 2010 at the Hayes mansion. Councilmember Nancy Pyle was one of the speakers and the honoree included you our own City Manager Debra Figone. I wanted to take this opportunity to congratulate City Manager Deb and also ask the mayor to present the commendation to the Martin Luther King Jr. Association of Santa Clara Valley Board. Accepting the commendation is the board president, Dr. Reverend Bonita Carter Cox.

>> Good evening. I would like to thank the councilmembers for this lovely commendation. I would also like to introduce the board that is with me. Kathleen Flynn is the Vice President of the board. And Christian Hemingway is the secretary of the board. With us also is Warren Cox or scholarship chair and one of the founding members of the board, the last standing founding member of the board is Dan Hoffman. Thank you. [applause]

>> Mayor Reed: First item of business this evening is item 5.3, the neighborhoods commission pilot 2009 work report and a pilot plan for 2010-2011. I think we'll have some words from the staff and maybe the commission. Norberto.

>> Norberto Duenas: Mr. Mayor, members of the council, Norberto Duenas, deputy city manager. On September 21st, the neighborhoods services education committee, in accordance with council direction, approved the neighborhoods commission work plan for the upcoming year. In addition to that, the Neighborhood Services and Education Committee also approved, reviewed and approved the annual work plan. Today staff is here to answer any questions. This report has been out since September. We want to recognize the good work of staff and the commission as we've completed one year of the pilot program. You have the report for that year, and we're also embarking on a new year as we move to year 2 of the pilot program. I do want to take the opportunity to commend Ernest Guzman from the city manager's office and his staff for his leadership and his work in implementing this pilot program, and I also want to thank, from Vice Mayor Chirco's office, who is the council liaison to the commission, Adriana Masuco and Peter Hamilton for their assistance during this critical one year of the pilot. With that, staff is available to answer any questions, and I know there are members of the commission that would like to say a few words.

>> Mayor Reed: I think I will take those commissioner at this time before we take any questions from the council. We have the chair of the commission, Beth Shaffron is here, why don't you come down, and then Matthew Wallen, Mario Estacio, and David Biagini, all commissioners.

>> Good evening, Mayor Reed, and council, my name is Beth Shaffron Mukai, and I have the honor of serving for the second year as chair of the neighborhoods commission. I'm very pleased to be here tonight with both staff and members of our commission, and thank you all again so much for establishing the initial two-year pilot of this important work. The commission had a busy first year, both in our ambitious work plan itself, but also in growing and learning together through our outgoing, ongoing discussions on matters affecting and on the concerns of our diverse San José neighborhoods. As a citywide body looking at policy issues affecting the totality of our City of

San José, the commission brings a wealth of experience and a unique perspective to these dialogues. I'm proud of the work our commissioners have done in the first year, reaching out to neighborhood groups, reviewing complex issues, and providing recommendations to the council and city on effective community policing, and our city budget challenges. We are enthusiastic as we move forward into this second year of work and will continue adding value to our civic dialogue. The commission is a resource both to neighborhoods, in each council district and to city leadership. Please let us know how we may be of service as you review the continued challenges facing San José and how we may best partner with the city to support safe, strong and vibrant neighborhoods. We understand that you have received copies of our proposed second-year work plan and staff report, and request your continued support of the work that we're doing. Thank you.

>> Mayor Reed: Matthew Wallen and then Mauricio Estacio and David Biagini.

>> Good evening, everyone, esteemed Mayor Reed, Vice Mayor Chirco, and councilmembers. I'd like to commend you all for -- well, first of all, personally and on behalf of every engaged citizen and neighborhood group throughout the City of San José for having created the civic space and for providing the support necessary to make the neighborhoods commission a reality. The commission is a testament to your vision and foresight as well as your commitment and sincere efforts to create a meaningful and lasting partnership with the public at what is perhaps the most important level, the neighborhoods. In our first year as chair Shaffron Mukai pointed out it is possible to attract the best and brightest of our neighborhood leadership to this partnership, and we have laid a solid and operational foundation and built a well-structured framework for how to do our work. Our second year promises to yield even more significant results as we refine the scope of our work plan to better engage with the city and articulate a cohesive voice for our neighborhoods. It is my hope that the neighborhoods commission remains a viable and important partner to the city as well as venue for civic engagement and participatory democracy for many years to come. Together it is my belief that we can find solutions to our biggest challenges. Thank you all very much for this unique opportunity. My most sincere thank you.

>> Good evening, thank you. My name is David Biagini. I'm the chair of the caucus subcommittee. Recently each district's commissioners successfully completed the report back to their neighborhoods. This is an opportunity not

only to present our first year accomplishments but it is also an opportunity to hold meaningful discussions regarding the neighborhood priorities and topics the commission should focus in on the coming year. The dialogue between the neighborhoods and the commissioners was insightful and productive and provided us with a clear path forward. We are confident that the work plan we have submitted to you for approval represents the voice of the neighborhoods. I would like to join my fellow commissioners in thanking you for your continued support.

>> Good evening, mayor and council. I'm Matthew Wallen. I'm the chair of the communications and outreach subcommittee of the neighborhoods admission. And rather than having prepared remarks I just wanted to say that it's been an amazing experience. It has been a real challenge seeing something, an enterprise of this magnitude come together the way it has. And especially seeing such a large group of highly dedicated and skilled people come together. As the chair of the communications and outreach subcommittee, of course, our job is to try and figure out how to reach out to the neighborhoods, when there are issues that you want brought forth. And also, when we hear from them, how to bring that back to you. And so like I said, it's been challenging. It's been exciting. I've really enjoyed the process so far, as I think all the other commissioners have and we have been especially grateful for the support of the city council, and we look forward to your support in the future. Thank you.

>> Mayor Reed: Thanks to all of our commissioners who served on this commission. It's been a very interesting and useful year, I think, and some of us have been working on this issue for a long time. It's good for us to get a year under our belt with some good work that's been done. That concludes the public testimony. Bring it back for some council discussion. Vice Mayor Chirco.

>> Councilmember Chirco: I'd like to say thank you to all the community members that stepped up and took on a big time commitment and a big responsibility for a new commission. I know when I got on council and saw how the NAC-PAC worked in SNI and how it mirrored my work on PACT, people acting in community together and found that to be dissolved after a period of time, knowing that they represented one-third of the city, the question began, how can we spread this good work throughout the city. Working with the neighborhood leaders and good

solid staff people that did the heavy lifting we're now ready to launch into our second year of the piled. And I cannot speak more highly of the people I have seen engaged in this. I was especially touched when Beth became the chair because she had been a leader in the SNI. And I know that the first vice chair was the newest youngest member of the neighborhood commission. And I thought, what a wonderful coming-together to pass on the information and the knowledge from those that had done the work, to those that would do the work. I'm real excited about the neighborhood commission, and to see it become a reality. Thank you all so much. And as we look at leaner times for the city, having the vehicle of being able to reach into the neighborhoods, I think, will be priceless beyond belief, and help us stretch our dollars even further. I know there's others that may want to comment but I'd like to put a motion on the table to accept the neighborhood commission report.

>> Mayor Reed: Motion is to accept the report and that includes the work plan I presume.

>> Councilmember Chirco: Yes, it does, thank you, mayor.

>> Mayor Reed: We have a motion on the floor. Councilmember Pyle.

>> Councilmember Pyle: Thank you. I just wanted to praise Ernest Guzman. He just this past week gave a presentation to some neighborhood associations in my group and I thought did a phenomenal job. Roberto was there as well. Thanks to you both. But I was very proud of our city. And I think the responses that I got since amply tell you the appreciation that the people who attended had. They were very, very demonstrative in their remarks. It really really does make a difference. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. I think my colleagues said it well enough, I'll just say thank you. This is a unique experience and one that I think will really empower our community so I look forward to all the work that's going to be done in the future.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. And I also want to thank Vice Mayor Judy Chirco for initiating this process and seeing this vision come to fruition. And also all the work that's been done by the neighborhood commissioners, and full disclosure, Matt Wallen's my husband. And just all of the effort out there to really bring our community together and bring forth the input from all of the neighborhood groups. I look forward to watching this unfold and seeing even greater results. Thank you.

>> Mayor Reed: We have a motion to approve. All in favor. Opposed, none opposed, that's approved. Let me just talk a little bit about the rest of the agenda for the evening. We have some land use items, nothing on the consent calendar. Item 11.2 was rezoning on west side of north third street. That was deferred under orders of the day to December 7th and I want to take up 11.5 which is a conditional use permit appeal. Before we get into the annexation issues. We'll take 11.5 at this time and then we will as noted in the agenda, take the annexation issue and the rezoning related to the annexation issue. So 11.5. It's administrative hearing in consideration of an appeal of the Planning Commission's decision to approve a conditional use permit. Laurel Prevetti is here to speak to the item.

>> Laurel Prevetti: We have no staff report beyond the written reports that we've provided to the council.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Thank you. This is a gas station that wanted to renovate the facilities but they also wanted a liquor license and also a 24-hour service. The Planning Commission recommended that they be allowed the 24-hour service but not the liquor license. It is a gas station and there are two liquor store -- or liquor outlets right next to them. So what I'd like to do is move the Planning Commission's recommendation for the 24 hours, but to deny the liquor.

>> Second.

>> Mayor Reed: We have a motion to consider this matter but I don't have a card from the applicant. Is the applicant here? Why don't you come on down. Because this is an appeal to allow the applicant five minutes. And then we'll take public testimony. Wait just a minute, microphone is not working right. Check it again.

>> Hello.

>> Mayor Reed: Okay go.

>> Mr. Mayor, members of the council, my name is Fred Stern I'm the architect and the applicant on this project. When we filed the appeal it was our understanding from the information gotten from staff as early as October 9th behavioral 2009 that this was not an over concentrated liquor area and we have as a matter of fact just recently been told that it is. That this particular tract district only has the ability to have three licenses. And there are already three, there are the two that are directly to the south of us and there is the one for the Safeway that is on about a mile away from us. So it is already over-concentrated so our appeal really, we wouldn't have made it had we known that. We were misled by the staff, because they did not -- you know we did not apply for the actual liquor license with the ABC board because we needed to have a permit, conditional use permit, from the city first and there was no sense in applying for it unless we had the conditional use permit. So we were told by staff that it was not over-concentrated but it is. I think all of the benefits for the ARCO AM-PM that we are going to do for the neighborhood are pretty much spelled out in our presentation and we would just like to really continue with and accept the Planning Commission's recommendations. Thank you.

>> Mayor Reed: Thank you. I don't know if we would consider that a withdrawal of the appeal City Attorney or --

>> City Attorney Doyle: Just get confirmation. I interpret your comments as a withdrawal of the appeal.

>> Yes.

>> Mayor Reed: Okay. Anything else from the applicant? All right. So for the public's information, they've withdrawn their appeal. We still have some people here that want to speak on it. But Vice Mayor Chirco in terms of the motion if they've withdrawn the appeal I'm not sure what the appropriate motion would be, City Attorney.

>> City Manager Figone: The Planning Commission's action would stand without the appeal.

>> Laurel Prevetti: There was a second appeal filed against the 24 hour use, I'm not sure if that appellant is in the audience.

>> Mayor Reed: Another appellant here that wants to speak on this? Please come on down. So the 24 hour was something that the Planning Commission recommended, correct?

>> Laurel Prevetti: That's correct and that provision was appealed by this gentleman.

>> Mayor Reed: Okay so we will take up the second appeal, if I could get your name, sir.

>> Mr. Mayor, councilmembers, I own the 7Eleven that is next --

>> Mayor Reed: Your name?

>> Boone Tan. This wine store that's selling convenience, any convenience store we're 7Eleven we are going to have another a.m. p.m. which is going to impact our business really, really bad. The economy it's really not good. So it's really -- it's really tough to make ends meet. And as a small business owner I invest a lot of money into this business so I don't want to see my hard earned money goes away because of the competition, so for this I'm appealing this.

>> Mayor Reed: All right, anything else?

>> That's all, I have a lot but I think this is my main reason.

>> Mayor Reed: Okay, thank you. There's some other people that want to speak on this item. Predam Grewal and somebody who didn't give me their name. But come on down. If you submitted a card on this one.

>> Good evening, my name is Predam Grewal. I'm the owner of the wine fountain liquor store right next to the projected, the ARCO gas station. I'm against this project simply because we -- this is a small neighborhood residential area. And we already have two existing liquor, two places where this have a license to sell liquor and alcohol. An additional third licenses will hurt the two existing businesses especially in this economy. I'm pretty much definite if the third liquor license come into the ARCO gas station, one of these three will have to go out of the business. I mean, I don't know what you want, but all three right next to each other in a residential neighborhood is hard, almost impossible to survive. And also today we are dealing with a lot of youngsters hanging around and trying to buy the liquor one of the other way. And we're also dealing with the graffitis and the gangster activities stuff like that. So additional alcohol license place, will increase these kind of activity and also, it will be concern for the neighborhood safety as well. So I'm against the project. Thank you.

>> Mayor Reed: I have one other card for somebody who didn't give me their name if you want to speak on either of these appeals. This is the time to do it. I don't see anybody. See if we have the right motion on the floor. We still have one appeal in front of us and another appeal that was withdrawn.

>> Councilmember Chirco: Okay, the -- I think the appeal that's still there is the 24-hour, so my motion is the same. To move the Planning Commission's recommendation to allow the 24 hours, and of course the appeal has been withdrawn. So there is no alcohol component at all.

>> Mayor Reed: Okay, so that would be to approve the Planning Commission recommendations which would be denying one appeal that's still in front of us and the other one is moot. Basically, approve the Planning Commission recommendations.

>> Laurel Prevetti: That's correct.

>> Mayor Reed: Okay as long as staff understands it because they got to sort it out when we're done. I don't know who had the second on the motion, just modified the motion. All right, okay, it's the same motion, two different appeals. Any further discussion on the motion. All in favor, opposed, none opposed, that motion is approved. That concludes that item. We'll now take up the annexation issues. The way I'd like to handle that is we'll have a staff presentation on both the annexation initiation and the rezoning items. We'll hear from the public on whatever they want to talk about on either those two items so we'll get everybody's testimony. And then we will deliberate on them, and take separate votes. We'll vote first on the annexation initiation and then on the rezoning issue. But we'll try to get this the most efficiently done, the most efficient way, possible. We'll start with a staff presentation.

>> Laurel Prevetti: Thank you very much, Mr. Mayor and council. With me this evening is Rich Bucuma, senior planner with our department of Planning, Building, and Code Enforcement, Debbie Curran with Keyser Marston Associates, Scott Johnson, our finance director, our fire chief, Willie McDonald, and from the police department, Chris Moore. There are other staff available, as well, if you have other questions. The item before you, as the mayor described, is a rezoning as well as a protest for this rezoning, item 11.3, and the initiation of the annexation, known as Cambrian 36. As you know, the council launched our annexation program in April of 2006. We've been focusing primarily on islands that are less than 150 acres in size. This is consistent with recent state law. And the provisions that are contained in the city-county agreement that the city make its best efforts, good-faith efforts to annex these pockets. To date we've annexed 42 islands and currently there are five islands pending in this final phase. Four of those are in the Alum Rock area, and those are scheduled for final decision in November. And then the fifth is this one this evening, the Cambrian. So far we've annexed 900 acres and have added a population of 9,000 new residents to the City of San José through this program. If all five islands are annexed in 2010 we will have annexed over 1400 acres and have added approximately 17,000 people to our population. This map identifies the annexations that have been approved as well as pending. The ones in the red are the pending ones and the green ones are those that have been approved. You can see they are scattered throughout our city. We still do have very large pockets larger than 150 acres and that's a subject for another time

when we determine how we might proceed with that. The annexation of considerations for Cambrian 36 is that this is a location in the southern part of San José. The blue line essentially differentiates between the city of Campbell and the City of San José. That line is what is known as the sphere of influence line, that was determined by Lafco, our local agency formation commission. They recently went through a process to confirm all of the spheres of influences for the cities within our county and the blue line shows this. Let me direct your attention to the top of the map, where it says City of San José. I'm not sure I can get this to -- up at the top where it says City of San José, that indicates existing City of San José residents. That's a current neighborhood in the City of San José. To the East and South is also the City of San José and then as you -- so essentially this pocket, the Cambrian pocket, is about 75% surrounded by the City of San José. It's generally located north of Camden Avenue and West of Bascom avenue. It is within the City of San José's general plan. That's typical, our entire general plan covers our sphere of influence so this area currently has land use designations that reflect the existing uses, predominantly single family homes as well as commercial uses along Camden and up near Bascom. Our process for the Cambrian annexation is very similar with what we have been doing with all of the pockets to date. Early on we distribute to all of the owners within the pocket what we call an answer-book. This is an award-winning piece of outreach that essentially answers questions that residents and property owners might have about the impacts or implications of annexation. This helps them understand where they might be getting building permits if annexation happens, what happens to fees and taxes, garbage service, as well as other things such as post office addresses and school districts. And school district boundaries are not at all affected by annexation nor are post office, zip codes or addresses. Those are determined by those other jurisdictions. For this particular pocket we did hold two community meetings, one in May, one in August, that informed the rezoning designations, as well as we heard loud and clear concerns of the residents regarding the annexation itself. Planning Commission held its hearing on the rezoning in August and we are here before you tonight to discuss the rezoning and the protest, as well as the initiation of the annexation. If council chooses to initiate the annexation, then we're recommending that it be ordered on December 7th, in order to allow the tax changes to occur and have all of the services transferred for 2011. The proposed rezoning is a recommendation that again reflects existing land uses. This is an area that's largely built out. We've identified our residential, our single family residential zoning district, the R-1-5 as the appropriate residential district that's shown in yellow on the map. This would essentially reflect the lot sizes of approximately 8,000 square feet. The commercial areas are shown in red

color. We're recommending the residential neighborhood, a much smaller portion of the area but reflects the existing uses and would allow the residences to remain and expand according to our existing zoning code. We did receive a zoning protest, the protest consisted of over 64% of the properties within the Cambrian 36 boundary. There were a couple of properties just adjacent to the boundary, we also accepted those protests. Most of the protests concerns had to do with the concern that the rezoning would essentially pave the way for annexation. And I'd like to just clarify for the council that the rezoning decision that's before you is independent of the annexation. So you will be asked to make two separate decisions tonight. State law does allow for cities to assign zoning districts in anticipation of future annexation. And should the council decide not to rezone, then according to our zoning code, all of this territory would be deemed A, agricultural, so that way if the area is annexed to San José, we would have at least some zoning to guide this area. So again, the action on the zoning protest is independent from the annexation. Our zoning code does require a two-thirds vote of the council to override the protest so that's a procedural item that you would need to consider. Again the council could also choose to deny the rezoning without the override. You have several choices before you after the public testimony and before your decisions I'll be happy to review those logistics for you again. Our staff report identified many of the issues associated with this annexation, as well as the concerns of the residents. And we came up with several alternatives. Our recommendation is to proceed with annexation. So our recommendation this evening is to initiate and proceed with annexation. I did want to highlight some of the other options that we did provide in the report for your consideration. Again, we want to make sure the council knows what all of its choices are, but staff is firm on our recommendation. The second recommendation option for the council is to annex the pocket and then proceed with negotiations with Campbell for an equitable exchange. This would be consistent with city council policy regarding boundary adjustments within the urbanized area of San José. A third choice is to defer for one year and then return with a proposed split with Campbell. And I've got some maps that I'll show you what that might look like. To completely defer, to allow Campbell to initiate the annexations they would also be required to petition Lafco for sphere of influence, changes, and pay for all of those fees. And then the last option of course is not to initiate and not to pursue final action. That would essentially result in the pocket remaining within the county and result in the current service delivery that this area has. It would be inconsistent with our city-county agreement. So in terms of the option of working with Campbell on the split, as documented in the staff report, we did have several discussions with Campbell, with -- between our City Managers as well as planning

directors. And this is one of those options where essentially the gray area would be the portion that would go to Campbell. And then the area outlined in red would come to San José. That essentially would be one option for a logical boundary since we do have that peninsula area up to the north. The other option is for Campbell to take slightly more territory, again, including portions of the residential neighborhood. This is the option regarding the split with Campbell. So again, staff is recommending that city council initiate the annexation. We believe this is the most prudent action given that the area is within the city's urban service area. It's within our sphere of influence boundaries, as I mentioned it is 75% surrounded by San José. This would allow us to unify an existing neighborhood within our city and it does provide for a logical city boundary. In addition we did do some additional fiscal analysis and we found that there is sufficient revenue to support city services. And our consultant is here if there's council questions on that. We also looked at several fire protection options. Based on the residents' concerns about fire protection services we studied four options. The typical one which is to annex and then have our city fire department provide service, we looked at maintaining county fire department, as the service provider. And this is our recommendation. So we would not be doing a detachment from the fire district. A third option is to proceed with auto-aid and then a fourth is to actually do a service contract with county fire. So that would include the detachment and then a subsequent contract. So our staff recommendation, in conclusion, is to approve the rezoning because again it does reflect existing uses in the area and is consistent with the 2020 general plan and to initiate the Cambrian 36 annexation. Staff and the team are available to answer your questions. And we look forward to the testimony as well. Thank you.

>> Mayor Reed: Thank you. Well, I'm going to try to get the public testimony done here. Is there anybody who wants to speak that hasn't submitted a speaker card? I've got these cards in groups, I'm going to try to call them together, if you have something organized, I respect that. We are hearing testimony on both items, you can speak on 11.3, 11.4, annexation, rezoning, either, both, neither, your choice. We're going to get all the testimony done before we get into deliberation. Based on the number of cards and the fact we're hearing both items together, I'm going to allow two minutes for each speaker. I'm going to allow you to speak on either. Tom Davis, Lisa Sivatonich. If I call you out of order than what you had planned, come on down and we'll straighten it out and then Cheryl Hibrey.

>> Greetings we're here tonight after a four year journey to try to help our neighbors in San José that's you the San José city council make the most important decision ever made about our neighborhood. Specifically we want to address councilmembers who have not fully made up their mind. In 2006, we became aware that our days as an unincorporated neighborhood were coming to a close like it or not. Because of a new state law, we were going to force annexation, we were going to be forced into annexation into the city limits no vote. To the surprise of most of our neighbors that city was not Campbell like our address but San José. A quick check with our neighbors confirmed that virtually 100% of us knew this was a mistake. Since then we've had nonstop letter writing/yard sign/more petitions/e-mail campaigns. Let me stop right here and say that if our natural city was San José and we were going to be denied being annexed into San José we would be fighting as hard for that as we're fighting for this. We are a Campbell neighborhood. And all our dealings with the city no one has ever defended the original decision to assign us to San José. Everyone knows it's wrong. Tonight you will hear from many people in our neighborhood. We hope they are polite and respectful. Trust me, it's been a frustrating four years dealing with this complicated issue. We don't get to control our future, you do. 100% of our neighbors can't be wrong. Please be good neighbors and release us. Thank you. [applause]

>> Mayor Reed: Just give me your name please so I know what name to get out of order. Go ahead.

>> Good evening, Mayor Reed, Vice Mayor Chirco and the council. My name is Jim Aspenal and I live in the Cambrian 36 pocket. We realize today's annexations are the product of long-standing land initiatives, lobbying and legislation. As such, we have been left unrepresented, and for the most part abandoned by powers greater than any individual or group can imagine. As primary stakeholders in this dilemma, we deserve to be as informed and as involved as anyone. In the absence of any representation in this matter we have had to create that involvement for ourselves from the media and staff and legal counsel. In our requests we have tried to navigate this situation through all of the information publicly available on the web, e-mails, letters, by phone and in person. We have public records indicating important aspects of our preference that are the most important, appropriate. Our quest has encountered ambiguous and conflicting information, policy, process, practice, and the assertion of personal values at every turn, month to month, week to week, day to day, even hour to hour. We have learned that staff and council are allowed to express personal interpretations of their city policy and

practice. We have seen different and outdated versions of answer books. We have heard that both residential annexations are revenue negative and that they are now a cash cow. We have experienced little notice, much less ability, to review to respond to some of the staff reports. We have learned that answers to the same questions can change from meeting to meeting if answered at all. We have encountered misinterpretations and misrepresentations of policies, process, and the law. We have found that the published process and time between process steps varies. With all of these ambiguities, it is not clear how any of this can be rushed to a decision other than by setting a precedent of democracy and self determination and letting Cambrian 36 be annexed by Campbell. To this and the agenda of this meeting we understand from information available on the City's Website, as a point of order, that rezoning must precede initiation and initiation is not to happen for two weeks.

>> Mayor Reed: Sorry, your time is up. Next speaker is Lisa Suitonich, followed by Cheryl Hibner and Chris Heckert.

>> Hello, I'm Lisa Suitonich. Thank you for allowing me to speak. As an introduction, you folks will be making a long term decision tonight regarding the future of the Cambrian 36 area. The decision will affect the safety, the quality of life for all the residents of the area. And fortunately I think the council is using a four decade old sphere of influence. In the urban area this designation has not been reviewed since it was established in 1972. Kind of some points to that. Nixon was in office, there was no proposition 13, Silicon Valley was still Santa Clara Valley. And, well, the mayor of Campbell hadn't even yet been born. Cambrian 36 annexation, the residents of Cambrian 36 had voting rights when determining which city they would live in and best serve and best fit their neighborhood from 1948 to the year 2000. For 52 years residents were secure in the fact that we would be able to participate in the process of this annexation. This right was taken away from the residences within the last ten years through state legislation. San José can honor the funnel right of self determination and recognize that the cities -- the residences choice to become part of Campbell, was demonstrated by over 65% of the parcel owners who signed the rezoning protest petition. As stakeholders, at no time during this long process were all the stakeholders invited to meet and express their concerns. San José mayor, City Manager, had declined several requests for meetings by the neighborhood. Lafco has a letter October 22nd referencing the areas U.S.A. and SOI encourages --

>> Mayor Reed: Sorry your time is up. Next speaker would be Cheryl Hibner, followed by Chris Heckert.

>> Hello my name is Cheryl Hibner and I've lived in Cambrian 36 for 19 years. I'm just going to continue where she left off. Lafco letter from October the 22nd referencing the areas USA and SOI encourages that San José and Campbell to work together fully to explore and consider the boundary and service delivery options for our area that I live in, and to date, this has not been accomplished. All of the reports that have been completed by San José and hired consultants. This important information has been overlooked, misrepresented or otherwise been put in San José's favor. U.S.A. and SOI have not been reviewed for 38 years. Lafco or an independent unbiased third party must review the areas U.S.A. and SOI to bring them up to daylight. So what's that risk for me, a resident of Cambrian 36? First and foremost public safety. There are delays in dispatching. If I use my cell phone to call 911 it's answered by the Campbell dispatch. That's a no brainer because I live one mile away from there. That creates additional call transfers, screening and triage. Police and Fire response is times will increase, it's a clearly avoidable risk to light and property. San José police priorities do not address typical residential disturbance and traffic issues. In fact those calls are abandoned. What else is that risk for me as a resident of Cambrian 36? My quality of life. I would require additional I.D. with a Campbell address in order to --

>> Mayor Reed: Sorry your time is up. Chris heckert. Brenda Friedrich, Steve Doss.

>> I'll be picking up where she left off. My name is Chris heckert. I appreciate the opportunity to address the mayor and council of San José. Quality, what is at risk for the quality of life for San José? We have additional I.D. that is required so that we can prove that we have a Campbell address although we live in San José. The community centers and activity centers will need that so that we can have access to them. The libraries will need that so that we can have access to them. We are unable to participate in Campbell which we consider to be our natural community and which many of us have participated in those community activities that we could for in my case the 25 years I have lived there. The road maintenance changes. We have additional fees that are imposed without choice. Or anything else. Our ratio of representation in the city changes. It's one to 40,000 as it will be. I'd also like to address on the next chart debunking some myths of alternative number 3. San José is not legally

required to annex Cambrian 36. The staff report says that it is legally obligated -- as part of the annexation process but the City of San José's attorney office stated that there is no obligation for the city to annex the pocket into San José. San José may legally allow the pocket to be annexed by another jurisdiction as part of the annexation process. Continuing with debunking some of the myths. Releasing sphere of influence to Campbell would not set a precedent for presently unannexed pockets. Cambrian 36 is a unique area with clear majority of supporters for residents to be annexed into Campbell. Cambrian 36 is the only urban pocket substantially bordered by two cities. Cambrian 36 currently receives no services from the City of San José. No other pocket has another city willing to take them --

>> Mayor Reed: Sorry your time is up. Brenda Friedrich, Steve Doss, Patrick King.

>> Good evening thanks for giving me the time here to speak. I wanted to say one thing on my own behalf. One is when I bought my house 11 years ago on shamrock drive I did not receive any notice from Lafco or the City of San José regarding disclosure of this issue. But I did get a Campbell address. Secondly, I've heard that the county fire issue, if the county is to provide this fire service, that there's a potential for being double billed for that service through our property tax as well as through some City of San José assessment or fee. And lastly on the issue of the pocket being bordered 75% by the City of San José the only reason you can come up with that 75% is including that finger that's laying over the top of our pocket which is currently surrounded by the city of Campbell and our pocket by the City of Santa Clara. The debunking issue, as it's said no other pocket with the city that is willing to incorporate this area as the Cambrian 36 has the option to be annexed by Campbell instead of San José. The annexation of Cambrian 36 does not set a precedent. Each annexation is unique and comes with its own issues and circumstances. Each annexation must be decided on its own merits. There will be no process, if there was no consideration of the issues, for each annexation. So we're asking the council to pursue the staff alternate number 3 and defer to allow Campbell time to annex our pocket. This alternative best meets the desire and best interests of the residents of the City of San José and the residents of this county pocket. The desire of the residents as well clearly serves the purpose of the annexation. It is in the spirit of the whole annexation process and what has been happening with this whole process.

>> Mayor Reed: Your time is up.

>> As the only way to maintain the current (inaudible).

>> Mayor Reed: Steve Doss, Patrick King, David Strauss. [applause]

>> Good evening, Mayor Reed, Vice Mayor Chirco. Councilmembers. My name is Steve Doss and in support of the previous slides just wanted to point out something in particular. That our pocket is not a precedent for other annexations. In fact there is a more important precedent going on and that is the avoidance, the misrepresentation of official policies, of procedures, the fact that they haven't been followed. There has been a lack of communication. Information has been distorted. And in fact, members of the community have been ignored and left uninformed. That is a serious precedent, and I urge you to think about is that the kind of activity that we want to endorse and support? In terms of the alternatives that we've proposed, alternative 3, we feel that this would more closely meet some of the Lafco intent of streamlining the county pockets and supporting Lafco's general plan. Which is to provide these services as efficiently and equitably as possible. To preserve this level of service, Campbell is the only way to ensure this area despite all the different maturations and changes that have been discussed within the service that our current level of police, fire and EMS can be supported. Next slide, please. This allows for service accountability, annexation into Campbell and will increase service accountability. I urge you, I urge you to think about what I had said in terms of a precedent and defer this decision until the appropriate conversations and the transparency of government can be established. Thank you.

>> Mayor Reed: Patrick King, David Strauss. [applause]

>> Mayor Reed: David Strauss and then Lynn de Hart.

>> Good evening, Your Honors, my name is Patrick King. To continue the points of the process, the process to us has been vague, and misleading the whole time. When we have questions there, when we have the meetings and the questions, those questions come back not answering all of our intent on what's going on, on our side. What's

going on in our neighborhood. And we feel that the process needs to be more involved with us. You guys have your agenda. And we respect that. We know the job needs to be done but we feel like we need to be a part of it more than we have been. To continue with alternative number 3, it would avoid potential litigation and associates' cost. Campbell annexation avoids potential cost from future legal actions by Cambrian 36 residents. The new district council person would allow the newly elected council person for District 9 to participate in the annexation for Cambrian 36 if we were to defer it. Ultimately, to impose a controversial decision on a new representative prior to taking office, this would allow a new councilperson to be part of the process. As well as us. It would be a win for San José. No risk of dilution of service for existing residents. No risk of funding staffing or service issues. No complex service agreements. No additional road stock mileage. Compliance with spirit and intent of the annexation. The moral and ethical high ground would still be met. And we would remain good neighbors. The overwhelming appreciation from Campbell 36 would be most appreciated if you could do this. Thank you. [applause]

>> Mayor Reed: David Strauss. David Strauss, David Strauss, David Strauss, going one two three times. Linda Hart, Lisa harmer, Gunita Saena. Please come down so you're close to the front, there's plenty of seats down here.

>> I'm David Strauss. I've lived in Cambrian 36 for 31 years. Continuing with the presentation. We are not convinced that Cambrian 36 annexation by San José is not right. We are convinced. Process errors, there have been ethics and open government issues. There have been service issues. Quality of life issues. Expressed will of the residents, you have the opportunity to make the right decision. Alternative number 3, Cambrian 36 belongs in Campbell. Please release the sphere of influence if you would Thank you. [applause] That's the end of the presentation, I believe. I'd like to say also, that our family lives within walking distance of downtown Campbell. And we frequently walk to downtown Campbell. It's where we play and enjoy, it's where my two sons are grown up live. We've lived in Campbell the entire time our family was being raised. Our sons decided to live in Campbell. They had every option to live anywhere else including Los Gatos and they've consistently told everybody when they ask why do you live there that they live there because they like to live there. We like living there. It's a small town atmosphere in the confines of a rather large metropolitan area but it still feels like a small

town and we enjoy that. We've chosen to do that and we'd like to stay that way. We really believe that the true sphere of influence in our neighborhood is Campbell. Is with Campbell. If this annexation goes through --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Lynn D. Hart, Lisa harmer, Gunita Saena.

>> Hello, my name is Lynn D. Hart, and thank you for listening to us tonight. I consider myself a resident of Campbell. I have a Campbell address. As Mr. Strauss said, I can walk to Campbell services. I walk to downtown. I use library in Campbell because, again, I can walk there which saves, you know, on gas and my carbon footprint which I'm concerned about. And if I were officially a resident of Campbell I would also you know be able to do my neighbor -- my legal business with the City of Campbell by a short, less than a mile walk. Another issue I have is that right around the corner in a park in Campbell is the community garden. It's within two blocks of my house. My fondest wish is to be able to have a plot of ground in that community garden. But because I am not a Campbell resident at this point in time, even though my residence says, I'm not allowed to have that plot. If I were a Campbell resident, two blocks and I'm to my community garden. I can't even tell you where the nearest community garden is San José is. If San José services were as convenient to me and hi a San José address I have no problem of going to San José. Please, please, please simplify my life and the life of all these people, and help us stay in the community where we are grounded simply because that is where we bought our homes, and that is actually the city with the nearest sphere of influence to us. So please, consider our request, at least for a deferral, I beg of you. Thank you. [applause]

>> Mayor Reed: Lisa harmer. Followed by Gunita Saena and Dana Doss.

>> Good evening, my name is Lisa harmer. I'd like to bring a point of order concerns a procedural issue about tonight's presentation. Could I have the first slide for L-3 please. The last minute change to this meetings's

agenda was not reviewed or approved by the Rules Committee. It was been held out of order from published process. It cannot complete initiation without adoption and rezoning. There's been insufficient time between rezoning and initiation hearings. In addition, we are novice residents. How can we expected to be participating in a continuously changing process. The process according to the San José process, is this -- excuse me -- is the process a process or is this a discretionary action? Planning Commission hearing on rezoning is expected one to three weeks before city council hearing if it's needed. The city council hearing on rezoning is required two weeks prior to initiation of annexation. The city council hearing to initiate annexation is then four to six weeks prior to ordering of annexation. None of these deadlines have been met. Step 1. Rezoning. Rezoning is a process of applying a city zoning designation to the unincorporated land prior to its annexation. The zoning designation determines such things as allowed uses for the property such as residential, commercial or industrial, the maximum height of buildings and required separation or setbacks of structures and property lines. This information was not presented at any community meetings. Step 2 in annexation, again, according to the San José Website, annexation is a process of bringing a property into the city limits, and results in the city assuming responsibility to provide services. In addition to the rezoning public hearings mentioned botch the city council holds two separate public hearings on the annexation proposal. The first city council hearing --

>> Mayor Reed: Sorry your time is up. Gunita Saena, Dana Doss Mike Chrisman.

>> Hi there minimum e-my name is Gunita Saena I'm here to represent Cambrian 36. My kids were raised in that house they were born in that house and I really want you to think about that from a financial as well as place of heart to see where we all really want to be. So continuing on with step 2 annexation, the ordering hearing occurs no earlier than 45 days before the prehearing. October 27th to December 7th is sooner than 45 days. The default zoning conditions, advised by staff we would be zoned A, agriculture, if rezoning protest stands. We are not currently A. How could this apply? For pockets currently zoned A, exclusive agriculture zoning district or A-1 residential and agriculture zoning district in the county, staff can recommend that the land be automatically zoned A, agricultural zoning district, upon annexation to the City of San José, without a rezoning hearing, in accordance with section 20.120.310 of the zoning ordinance. Cambrian 36 rezoning protest. Planning most issues. Inadequate notice. August 18th, community meeting, late notice. August 25th, Planning Commission,

meeting, late notice. October 5th, council hearing, half of the -- half or fewer residents were notified. Inadequate time to properly review and respond to staff reports before August community and Planning Commission meetings. Planning Commission demolished Planning Department on several points. What other aspects have compromised on these points?

>> Mayor Reed: Sorry your time is up. (saying names) Jane harmer.

>> Good evening, my name is Dana Doss. And before I continue on with this presentation I just want to say there are a lot of areas that have been annexed however, there are not a lot of areas that have our unique situation where we have another city that wants to take us and willing to take us. So continuing on with the presentation. Planning process issues, the first community meeting, zoning issues, were not clearly communicated. The staff did not or could not answer residents' questions. And at the second community meeting zoning issues were still not communicated. The staff relied on handouts which did not clarify or explain differences in zoning parameters, both commercial and residential. The staff did not or could not answer residents' questions. The annexation answer book incorrect -- was incorrect on many points. In addition there were two versions and it was not current. Planning staff analysis insufficient. Inadequate comparison to current county zoning. It has not explained or analyzed how the permitted and conditional uses in the proposed zone will compare with what uses are currently allowed under my property's existing zoning. It has not provided a comparison of floor area ratios and densities. It has not provided such analysis of what existing legal uses would become legal nonconforming. As such, it is impossible for me to understand and evaluate the effect of the rezoning on my property. The lack of currently environmental review. The reliance on the San José 2020 general plan environmental impact report. The environmental impact report was certified as complete on August 16th, 1994, more than 16 years ago. And is not current.

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

>> Thank you.

>> Mayor Reed: Mike Chrisman, Jane Harmer, Aaron Carrell.

>> Good evening, my name is Mike Chrisman. I live at 905 Sweetbriar Drive, Campbell, California. I'm going to go off the presentation real quick and just saying being part of this for the last four years and including tonight this process has been a moving target and it's extremely frustrating. We spend the time to try to follow process, have clear information, have speakers lined out, for everybody to understand what we're trying to present tonight. And this week, the agenda changed. Tonight, you say it will be heard first, 11.3 and now we're hearing everything at once. So with that said I do have a quick statement. In addition to the other concerns raised I'm concerned that this annexation will violate my constitutional rights as provided by proposition 218. Proposition 218 provides that local jurisdictions cannot impose new and additional property tax assessments or fees without voter approval. Yet this annexation will result in San José imposing new and additional taxes and fees on our properties without any voter approval whatsoever. The attorney general has opinion that the annexation protest proceedings satisfy the prop 218 election requirements for new and additional fees. However, in our case, because this is considered a pocket annexation, our right to a protest hearing vote is waived. This waiver conflicts with prop 218 and violates our right as taxpayers under article 8 excuse me 13 of the California constitution. To avoid this constitutional violation I urge you to vote against the annexation or provide the property owners of Cambrian 36 for the opportunity of a protest hearing and vote in satisfaction of proposition 218. With that, we ask that you recognize the rezoning protest as a representation of our lost vote for self-determination. And allow us to be annexed into Campbell.

>> Mayor Reed: Sorry your time is up. [applause]

>> Mayor Reed: Jane harmer. Jane harmer Aaron Carrell, Jeff harmer.

>> Good evening, my name is Jane harmer and I'm a property owner in parcel 36. I'd like to go back to the last slide that wasn't finished. It started with lack of current environmental review. There, thank you. On the very last item here it says at the very minimum, an addendum to the environmental impact resolution is requested. And then on the next slide, the rezoning leads to nonbeneficial annexation. Annexation will not provide the conditions

of providing benefits to Cambrian 36. There is a compromise of services. The quality -- there are quality of life issues, there is an issue of accountability. And insufficient information has been provided about the zoning impact. Thank you. [applause]

>> Mayor Reed: Aaron Carrell, followed by Jeff harmer, randy White.

>> First of all, mayor, thank you for your open ears and minds tonight community I guess input in tonight's event. My name is Aaron Carrell, I'm a proud San José state spartan, a fellow Californian, and finally a Campbell resident. I'd like to touch on the issues supporting the protest today. It's going to be a compromise to the process, the process that was clearly laid out and unfortunately was not followed. There's insufficient analysis, to the facts that is being used to proceed forward with the annexation and the rezoning. Lack of zoning information was provided -- there was a lack of zoning information provided to myself and my fellow residents in this pocket. It is insufficient time to review and to respond and to properly digest what was going on. There was a lack of an environmental report and hearing notice violations took place with this process as well. I urge the council that this council simply cannot approve this rezoning or initiate the annexation process as presented. On a personal note, our pocket is very, very unique. In the sense that we're -- there was a lot of the other pockets that were annexed into San José were completely surrounded fully encompassed by the City of San José. We're truly unique in the sense that that is not the case with us, and not only that, but Campbell has willingly expressed their interest in coming to the negotiation table, by annexing, by annexing our pocket. With all these reasons, I don't have to restate what everyone else said bore everyone here but I urge the council to go with the options to defer for one year, and return to the negotiation tables with Campbell. Or, to allow Campbell to openly access us.

>> Mayor Reed: Sorry your time is up.

>> Thank you for your time.

>> Mayor Reed: Jeff harmer. Come on down, please. Got a lot of people waiting to speak. Please come on down to the front when I call your name. Jeff harmer, Randy White, Jeff Patton, just stand and wait to speak. A lot of people still need to speak.

>> Good evening, mayor, vice mayor, city councilmen, city manager, I'm Jeff harmer. My parents purchased a home in the pocket in 1957, and my daughter currently lives in that home. I live a short distance away in the incorporated city of Campbell. This process has been very discouraging, and we never seem to know when the next day is going to bring. And which are quite amused by the finger of San José that extends one block wide, that cuts off our pocket from the City of Campbell to the North. I've even reviewed the maps. And for instance, other District 9 annexations and stuff, and can find one that I thought was really likely to be bothered on Los Gatos and I find no pocket that has any other exposure to any other city. I think the situation was different when the spheres of influence were initiated, and now that the -- the mayor of Campbell has been born and gone through college and everything it's time to be reconsidered. Thank you for your time.

>> Mayor Reed: Randy White, Jeff Patton. Randy White and then Jeff Patton and Tom Hibner. Please come on down.

>> Mr. Mayor, councilmembers, my name is Randy White. My story is simple. I bought my very first home in Campbell over 40 years ago. I was very young and newly married. I love Campbell because of the small-town feeling. And the supportive nature of the community. Shortly after I was drafted in the army. And went off to war in Vietnam. Served one and a half tours. When I came home my marriage had failed and I had lost my home in Campbell. That was devastating. After a few years I started a new life in Santa Clara, another small town which I love. That failed, and I took up -- took my four-year-old daughter and moved back to Campbell or Cambrian 36. Where I've been there for 36 years. I mean 15 years excuse me. Raising my daughter as a single father it hasn't been easy but the Campbell community was very supportive in every aspect. The engine 11 came to her fifth birthday party. The Campbell police offered counseling when we needed it, and we have enjoyed all the aspects of Campbell through the years and completely identify with Campbell. I don't think my daughter has even been to Downtown San José. And I haven't been here -- this is the first time in many, many years that I have been

here. Campbell is our town. Please don't take that from us. We don't want to be in a city of over a million when we have a city of 40,000. Thank you very much.

>> Mayor Reed: Jeff Patton. [applause] Jeff will be followed by Tom Hibner and (saying names).

>> Hi, I'm probably one of the newest members of Cambrian 36. My future wife and I spent two and a half years looking in Campbell to purchase a house and we finally found this house in July and purchased it. We're very excited by our new neighbors, and certainly this process has been interesting and we've been -- we always wanted to live in Campbell and we hope to continue that and we hope that you would defer till next year or at least reconsider this process. Thank you for your time.

>> Mayor Reed: Tom Hibner. Followed by Doug Billington. Doug Lamley and then JoAnn Saucedo.

>> Mr. Mayor, councilmembers, my name is Tom Hibner. My wife and myself, family have been residents of Campbell for a little over 19 years now. And what I'd like to do is to urge you to put yourself in our shoes. If you lived in an unincorporated areas, where you always thought you were a part of a smaller community, where you thought you'd get better fire and police protection, what would you want? I bet if you honestly answer that question, you'd side with us. And we members of Cambrian 36 think we deserve a vote in this matter. We do think we're unique from the previous other annexations that have occurred. And we hope and pray that you listen to our voice. Thank you. [applause]

>> Mayor Reed: Doug Billington. Followed by Doug Lamley and JoAnn Saucedo.

>> Hello, I'm Doug billing ton. I would like to apply to your nature as Americans. This is not right. You have a power over us wide our say, and I wand to plead with you, let us have a voice in this, let us go to Campbell. Thank you.

>> Mayor Reed: Doug Lamley. JoAnn Saucedo, Gabe McMann.

>> Hi, my name is Doug Lamley. I bought my home in Campbell about 10 years ago, and frankly, for four years, this whole thing's been pretty much a nightmare to me. So all's I can say is I hope you vote to release this to Campbell. Thank you. [applause]

>> Mayor Reed: Joanne Saucedo, Gabe McMann, John Suitanich.

>> Hi, thank you, for listening to us council. My name is Joann Saucedo, I also work for the city of Mountain View, so I'm very familiar with small cities, which is why I chose the city of Campbell to live in. I can't afford to live in the city of Mountain View. I love working for it. I love being a civil servant. I ask you as fellow civil servants to allow us to stay in the city of Campbell. They want us. I want to stay in the city of Campbell. I've been there for 15 years. That's the address I signed the mortgage to. The city of Campbell. And if you don't, I would urge you to consider relocation assistance to the city of Campbell. Thank you. [applause]

>> Mayor Reed: Gabe McMann, please come on down, Gabe McMann, John Suitonich, Thomas Scellar, empty seats down front. Just like church, there's always seats in the front row.

>> Good evening, Mayor Reed. Dan Durkell. City councilmembers, thank you for your time tonight. I'd just like to implore you to please consider that the citizens of 36 are not lost in this debate here. We all have feelings, we're proud Americans, we feel like we live in this community, this is a community we want to stay with. We want to be with Campbell. It's nothing personal against San José, we're proud shark fans, we love San José but at the same time, we feel like we're a part of this community and we'd like to stay this way. Thank you for your time.

>> Mayor Reed: John Suitonich, Thomas Keller, followed by Edith Gallart.

>> Good evening, I'm John Suitonich, I live in the Cambrian 36 pocket. And I am a local. I was born in the City of San José but I do live in the Cambrian 36 pocket and consider myself a Campbell citizen. We have many concerns in our community. Quality of life, services and self determination. I know the quality of life and service

concerns have been repeatedly brought up and have not been resolved satisfactorily to our community. We know information compiled by the City of San José we will not receive the level of services that we currently enjoy or are available through our other boundary neighbors, the City of Campbell. In addition to reduced services we would receive the same reduction would also be incurred or inflicted upon City of San José residents, current residents because of the dilution of our input into your city. And I know that the City of San José cannot afford to increase the spending requirements needed to fulfill the services to the levels needed. I understand this is not the fault of the current members here and I do commend the efforts of the mayor in his efforts to rein in the unsustainable spending. My concern, in addition to the reduction of services is the idea of self determination. Our community has not been asked of our preference now or in the past. San José is a good city. We have always identified, however we have always identified ourselves as part of Campbell. This uprising is not new. We call it an uprising, revolution I guess, I don't know. This uprising is not new but does go back -- goes back decades and the push back you're seeing is a unity community, trying to remain who we're, Campbell people. My question to all the leadership here, the San José leadership is, does San José make decisions based on consent of the governed or --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Thomas Keller. Followed by Edith Gallant. Kathy Espinoza. And Graciella Hahn.

>> Good evening, my name is Thomas Keller. I live in Erin Way in Campbell, California. I like to talk about the use of diplomacy to solve the issue of this unincorporated pocket of Santa Clara County. The state of California demands to annex pockets like Cambrian 36 to a city boundary. The residents of Cambrian 36 vote almost completely for annexations to Campbell. The City of San José has it all plan dated back to World War II of owning the Cambrian 36 pocket, most recent deputies between San José and the county of Santa Clara about the proposed concert hall reinstated the plan. The residents of Cambrian 36 should not have anything to do with that, nor being accountable for the dispute. I ask you, the City of San José, to release your sphere of influence with an

unprecedented move by applying the great power of diplomacy to give the peace and determination of the people of Cambrian 36 to go to Campbell. I was born in Switzerland where democracy and diplomacy kept the country free of war since the founding year of 1291. Even in modern time like 1978, when the youngest Cankton was born by spitting off a big one, when the power of diplomacy, when the power of the people had to decide. Thank you very much.

>> Mayor Reed: Edith Galante.

>> I've lived with my husband and six children, we wouldn't be here all in agreement if we didn't have a good point. This many people wouldn't come here disturbing our evening and everything else if we didn't have anything to say. I just urge you to really not only hear us but listen to what we're saying. And as someone else stole my thunder, I was going to ask you to just really put yourself in our position. What would you feel if you were in our position? What would you feel? Thank you. [applause]

>> Mayor Reed: After Kathy Espinois, Graciela Hahn and then Ken Koshaska.

>> Good evening, Mayor Reed and members of the council. Thank you for taking the time to hear us tonight. My name is Kathy Aspenwall. I moved to 329 Dallas in Campbell 15 years ago. It's about self-determination for me. When I purchased my house I would have had a vote. That was taken away from me. I believe we have proved to you through our protest of the zoning that if we had a vote today we would not be annexed to the City of San José. And I thank -- I ask you to vote for number 3. And allow us to go to Campbell. Thank you. [applause]

>> Mayor Reed: Graciela Hahn followed by Ken Prohaska and Barry Brocco.

>> Good evening, mayor, councilmen. I came here to this country 4th of July, 1976. I had a choice of living anywhere in the world. That's the choice my parents gave me. I chose to live in the wonderful state of California, in the wonderful country United States, simply because I had an individual vote and choice, as a human being, as a citizen. I have been involved in this whole community over 30 years. Over 30 years, and then I've made

Campbell my home. Why? Because I wanted a small town. I have helped start South Bay youth soccer, taken kids off the street, volunteered wherever I could. Why? Because I wanted the kids in the city of Campbell to have opportunities. I did not want them to have to go to other communities and play in unsafe fields. So we fought for the Campbell community center to have wonderful opportunities for them. And now, you are taking that away. And you're not allowing me to have a vote. That goes against the principles of who we are as American citizens. Thank you. [applause]

>> Mayor Reed: Ken Patreska, Barry Brocco, Mike Chrisman.

>> Mr. Mayor, members of the council my name is Ken Prohaska, I live in Cambrian 36. Pretty much everything I think needs to be said have been said so far. Just from my personal point of view I want you to know that I've lived in the Cambrian 36 area for 36 years. When I moved in I knew it was the county, knew it was the sphere of influence of San José. But knew we would have a vote of any city that would have annex us. In 36 years times have changed. The state wanted to move things along. We know things do change. We were hoping through the process we're going through here that that change would include letting the sphere of influence to immigrate from the City of San José to the City of Campbell. One thing you might find particularly interesting, I know I did, if we go through the City of San José. If we call for emergency services through a wireless telephone, that will first go into Campbell and then we will be triaged into the City of San José. I can tell you in 1998, I actually had a structure fire. The speed of which time came to my house the fire engines, 90% of the furniture in my house, basically saved my house. I hate to think if there had been a delay of two or three minutes in terms of getting dispatch to my house, it was a blow-over through the attic, it was horrendous. Research that came up almost 25% of the households in the United States now are cellular service exclusively. That means our area 36, 25% of the residents would always be going to Campbell configuration if they needed fire assistance. Another fact for you to think about. Thank you. [applause]

>> Mayor Reed: Barry Brocco followed by Chris Whittaker and Don Whitney.

>> Good evening. And we're all here to represent ourselves, I'm trying to figure out what's going on. But lived in the area since 1959, and we bought a piece of property on Camden avenue in 1960, which we had a business. And dedicated right now two lanes, maybe three, for traffic. It was supposed to be deleted in 19 -- after they got 85 they said there would not be any more traffic on Camden. Which is not true. We're getting older and we got to look at ourselves a little bit. Campbell is the place I'm living, still do. We want to know why we got to change things this time of life when it's not that good. Thank you. [applause]

>> Mayor Reed: Chris Whittaker. Don Whitney, Carey Whittaker.

>> Good evening, thanks for listening to us. My name's Chris Whittaker. I live in Campbell. I moved from Mountain View seven and a half years ago. Both my kids have been born and raised in Campbell. I associate myself with the city of Campbell. I'd just like to read the first sentence in this agenda and I wanted to applaud San José government for having such a beautiful statement at the beginning of the agenda which is the city council is committed to open and honest government, and strives to consistently meet the community's expectations by providing excellent service in a positive and timely manner, and in full view of the public. So if we were to just look at this one sentence, committed to an open and honest government, this has been a difficult process for us. We don't feel like we understood the process. Quite honestly we feel like we've been railroaded on this and like what, we're going to become something? I bought a house in Campbell and I live in Campbell, what's going on here? So it didn't feel like an open and honest government. The community's expectations. I think you can see what the expectations are, and the hopes and desires of this, I microphone neighbors, my Campbell neighbors. The last thing I would point out is, in a positive and timely manner, in full view of the public, so is it a above thing to annex a group of people that have clearly expressed their desire, not to be annexed? Are these going to be happy people? It's not a positive thing, okay? And I want to express my deep appreciation for the council people that listen to our concerns --

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

>> Thank you very much. [applause]

>> Mayor Reed: Don Whitney followed by Carey Whittaker.

>> My name is Don Whitney. I've been a resident all my life. I have a couple of concerns. I was a caregiver for my father. The fire department we have now, are two minutes away. I call 911, they are here in three minutes. They help my father, he could tell you about that. If it goes to San José there's a big gap there and moments count. I have a friend that had a stroke at 45 years old. The only reason he is alive today he had very fast response and that's very important to me. Thank you.

>> Mayor Reed: Carey Whittaker. Ms. Whittaker will be the last speaker.

>> Today is my 40th birthday. And I care so deeply about this issue that I am here at a San José city council meeting instead of out celebrating with friends and family. [cheering and applause]

>> It is my experience in life that when we make decisions based on what's in it for me, rather than what is the right thing to do, the outcome of those decisions is as bad as the intention behind the decision. If you all look deeply into your conscience and thought about what the right thing to do is, you would see that it is to release us from your sphere of influence. The benefit of tax revenue for San José does not outweigh of diluting services and increasing response times. The benefit of a straighter city boundary line does not outweigh the cost of trying to serve admonish citizens with dwindling resources. The benefit of San José winning this does not outweigh the loss that 300 citizens will feel about having to live in a city where they never intended to live. Part of being American is about having your voice heard and about elected officials listening to the voice of the people. Clearly, if you are quiet enough to listen, you will hear the voices of your constituents who do not want to share their city resources with more people. Clearly if you listen, you will hear the voices of 300 people who want to stay in the city where they chose to buy their homes, pay their taxes and raise their children. I know that in my life sometimes I need to get very quiet and look deep within to know what the right thing to do is. I am hoping that you have done that or are doing it now so that you can clearly see what the right decision is. Not the right decision for you, a councilmember. But the right decision for the people, those who elected you, and those who stand before you

tonight. And if you can't release us to Campbell for any of the reasons listed here you can do it as a birthday present to me. It is -- it is the right size, color, I won't return it. And it will be the best birthday present a girl could ever ask for. Thank you. [cheering and applause]

>> Mayor Reed: Happy birthday but we're not going to sing. Thank you for being here, everybody, and participating in this. That concludes the public testimony. I'm going to see if there are any additional comments the staff wants to give to us or responses that they need to clarify or anything else they want to add before we get into council discussion.

>> Laurel Prevetti: Thank you Mr. Mayor. You heard quite a bit of testimony just now. And staff did try very hard to reach out to the community, answer questions, as I mentioned earlier. We provided the answer book very early on, access to our Website. Staff did do e-mail blasts out to the community to those who attended our community meeting, so as data became available we were answering questions and providing responses to the community. As you do know we had a little bit of a deferral problem which caused the deferral of this item to tonight so we rectified that and met all of our requirements legal and otherwise to be here this evening. You're hearing about the 45 days between the rezoning and the ordering of the annexation. As you know, with our city charter, we are able to do what's known as a quick-turn zoning. So if council chooses to accept the rezoning this evening, the second reading could be heard next week and then the rezoning would be final prior to the ordering of the annexation on the 7th. We do have a way of meeting that requirement through a quick-turn and this has been discussed with the city attorney's office this afternoon. Staff is available to answer other questions. There were a lot of issues raised. There is no prop 218 violation. All of the fees and taxes are currently existing. There are no new fees or taxes, as annexation happens. These individuals would be subject to those fees just as they would then be released from other fees that the county might offer. And all of this is explained in the answer book. So we've been talking about this for quite some time with the residents, as well as with Campbell, and at this time, staff continues to recommend the initiation of the annexation and the approval of the rezoning. If there are other questions that the testimony raised or others that any of you might have, staff and the team are here to respond to those. Thank you.

>> Mayor Reed: Thank you staff. I know it's been a long haul for the staff as well as for the public. These things - none of them have been any fun. This one is probably the least that we've had on these annexations. That's what state government works. They give us the rules and we have to live with them so we process these things because we have to. So we will -- we have really three things to consider in front of us. We have the initiation of the annexation reorganization. Then we have the protest, majority protest on the rezoning. If we approve that item, with eight or more affirmative votes, we will then go on to the rezoning. So there's really three motions that we'll need to take up. The first would be on 11.4 which is the initiation of the annexation reorganization. And we'll vote on all three of those items separately. Vice Mayor Chirco.

>> Councilmember Chirco: Yes. Staff there were many questions that were brought up. As soon as I find my pad of paper. I don't think I have enough paper. And I was wondering if you could maybe answer some of them. I know one of the questions brought up was, talking to Campbell about the change of boundary lines. Could you briefly speak to some of the questions? We had talked to Campbell about doing maybe some border adjustments elsewhere to keep San José whole so this property could go to Campbell. I know that was something that we spoke to Campbell about.

>> Laurel Prevetti: Yes, thank you Vice Mayor. In our staff report beginning on page 6, we outline the interest by Campbell. So -- of annexing this particular pocket. And they've been interested in annexing it. In fact they went so far as to say they not only wanted this pocket but they also wanted the San José neighborhood that's located just directly to the north of it. By city council policy, which is up on the screen, this is adopted city council policy 6-15. City boundary changes in existing urbanized areas. This policy guides those types of discussion so that way the City of San José essentially retains a logical boundary and obtains essentially some equivalent and equal change of like territory population or tax base. The purpose of this policy clearly states that these are the guidelines that should be followed when considering boundary transfer requests. And I know this is a county pocket annexation. But as we discussed this with Campbell, we did talk about that equitable exchange of territory which then invoked this particular policy. So if Campbell were to assume this property within their boundary and made the appropriate applications to Lafco, then San José would be seeking equivalent territory from Campbell. And you can imagine what that kind of discussion might be between San José and another

jurisdiction. So we believe that it was most prudent to proceed with this annexation because it would create logical boundaries, maintain good service levels for the residents, and essentially resolve those issues. Let me also just add, there's been some confusion about the sphere of influence. Back in August of 2006, Lafco approved a city service review which included the spheres of influence and they adopted essentially, and reaffirmed the existing spheres of influence. The same was done for Campbell in October of 2007. So while there was some discussion that those spheres haven't changed since 1972, they've actually been reaffirmed much more recently by Lafco itself after their following their procedure, and the way that they conduct those service reviews. So that issue had been discussed.

>> Councilmember Chirco: I know part of the policy 6-15, in it there's a line that says it would serve no useful purpose to revive the long dormant annexation wars of the '50s. That's actually part of the policy and thank you for the -- in the letter from Lafco to Mr. Chrisman, is the statement that Laurel just referred to, about the reaffirmation of the spheres of influence. So while it is a very dated policy, there was a recent affirmation of that. There was also a question by one of the speakers about being double billed for fire. Could somebody speak to that?

>> Scott Johnson: Mr. Mayor, Vice Mayor, Scott Johnson, director of finance. Actually the property tax allocation would change in regards to what scenario the council chose to take in regards to this annexation. However, the tax rates would not change. The staff report does indicate that there are certain options that council can consider in regards to fire service, for example. And you know, council can consider those but the property tax rates would remain the same. But the allocation to taxing jurisdictions would be different depending on which particular scenario council choose to take.

>> Councilmember Chirco: So in layperson's language Scott that means what?

>> Scott Johnson: That means the property tax rates would not change for the residents and businesses within this area.

>> Councilmember Chirco: Thank you, Scott. Laurel, could you address, there were several speakers that referenced that Cambrian 36 is the only pocket that lies adjacent to another jurisdiction that has the ability to be annexed. Do we have, or have we had other pockets that were adjacent to other jurisdictions? And I know we do but I would like you to speak to that.

>> Laurel Prevetti: Yes, I can think of three just off the top of my head. And I apologize I don't have a map for you this evening. We have two in district 6 that were also adjacent to Campbell. We didn't get into this depth of discussion. Instead the city council did decide to go ahead and annex. We also had another one in District 9 that was also very close to the Los Gatos border and again, consistent with all of our policies we chose to annex that pocket as well. And I apologize if I've forgotten the other one.

>> Councilmember Chirco: There are pockets and I remember the one in District 6 that expressed a desire to be annexed into Campbell but the annexation process went forward. And then there were several that spoke to the community being uninformed. Can you address that concern?

>> Laurel Prevetti: Certainly. As I mentioned in one of the earlier slides, the first part of our process is to distribute the answer book which we did earlier this calendar year. But it was clear from this testimony is residents knew about the pocket and the potential for annexation dating way back from 2006. So this was really not new information. We understand properties change hands and new residents are certainly welcome to the area. But we did start the process as we have with all other county pocket annexations by reaching out and notifying every single property owner of this process and providing the answer book, along with this contact person, so that way they could talk to an individual staff member early on in the process. It's typical then that we follow that with community meetings. And in this case we had two. Typically we only have one. At that first community meeting we did discuss what annexation was, what was motivating us as well as zoning. In fact we brought with us the slide show that we actually used at that May community meeting so you can see for yourself that we did in fact discuss setbacks and lot sizes et cetera. And it was based on that community input that we actually chose the R-1 district that we did. So the community had the opportunity and really did influence the rezoning that's before you. So we've been having the discussion, we know some of this can be confusing so we acknowledge that but

we've had a dedicated staff person that's been available and has had individual e-mail correspondence as well as phone conversations well before the public staff reports that's been on our Website and also blasted out to the community.

>> Councilmember Chirco: And I don't know whether you or Rick would be the one to address the procedural issues that were clearly articulated by a number of speakers, I don't know which one of you would be the best to address that.

>> City Attorney Doyle: Let me just address the one issue that was raised tonight which is the order of items before you and taking up the initiation prior to the rezoning issue. And we have looked at the law. We have -- there is nothing that prohibits you from taking up the initiation first. The council has the ability, they've both been publicly noticed, you take things out of order, you do that from time to time. There -- we even went as far as contacting Lafco because we know that Lafco process you have the rezoning and then you have the initiation. And they, after reviewing the laws specific to cities in Santa Clara County that initiative these island annexations, there is nothing that -- they don't have any trouble with the way that we propose to do it. So we're all -- we're comfortable that the council can decide the order as the mayor's indicated.

>> Councilmember Chirco: And again I know we've spoke a lot about Police and Fire. There was one or two speakers and especially one of them was especially poignant talking about his father having been saved by Mr. Chrisman. Could the -- could you maybe, chief McDonald, speak about the intent of the staff's recommendation to preserve the fire service.

>> Mayor, members of the council, Vice Mayor Chirco, there are two county fire stations that are in the area that are closer than our nearest fire station. There's one that's about three minutes away, mile and a half, second one that's about 1.7 miles away, it's about five minutes. Our agreement would be that those two fire stations would continue to provide the service as they do today. And the third station would be a San José fire station that would respond to that area. The service would be essentially the same as it is today, could in fact be improved because there's some opportunity in that part of the city for us to do some more integrated sorts of responses, where we

could drop boundaries completely in those areas, and we could respond the nearest company, irrespective of where it is.

>> Councilmember Chirco: Again I ask for lay-person language. The fire stations, the central fire that currently serves this area will continue to serve the area, with there will be additional resources available which there always have been through cooperative agreements?

>> Yes.

>> Councilmember Chirco: But due to this community's advocacy, it has opened a conversation, not just for this area, but for other areas of Silicon Valley, which I think is an important acknowledgment we need to give this community. Along with many others. I know that response is important to you. Response is important to the city. The last speaker made reference to sometimes she needs to get quiet and look within herself. This has been a very long and very drawn out process for all of you but also for my office and the staff. As I can say in the memo nobody can tell you how to define your home. Nobody can tell me how to define my home. San José did not set out to annex any of these properties. When I got on council, that was an ongoing discussion, prop 218, small pockets, difficulty of delivery of services. My mother retired from the county over 30 years ago and these pockets of county were in issue at that time. The state legislature decided that the county was really the agency responsible for delivering social services. Not urban services. Legislation was passed that forced the city -- well, actually, the county to force the city to start annexing these pockets within the boundaries of each of our communities. Campbell had certain areas that were under their sphere of influence. San José had certain pockets under their sphere of influence. This was actually the result of a court case where the county took the city to court to force us to annex these pockets. It is not our desire that we do not hear your voice. Now, we have heard your voice, that you would like to go to Campbell. But the reality is we have had 50-some pockets.

>> Laurel Prevetti: About 42 so far.

>> Councilmember Chirco: 42 and there's five more, so 47 pockets. You happen to be a pocket that is very desirable. I happen to come across a memo when they had a study session at Campbell on Cambrian 36. And they showed that there was a significant revenue to annexing Cambrian 36. You happen to be a pocket that has revenue in you. We -- I don't know, how many pockets did we annex that had zero revenue. As a city, as an elected who takes a vote, to be a -- have a fiduciary responsibility to the community I took an oath to, I feel that this is where -- and many of you have heard me say this -- that it is my duty to represent my community. And you are my community. Now, you're going to say, but we don't want to be part of San José. And I understand that. So I asked myself the next question: Are we doing harm? Are we building a fence? Well, now, just a minute. I listened to you. It is your turn to listen to me. I will extend you sympathy but you still have to be listening to me. We are not going to be putting up fences. As I said in the memo, I go to church in Campbell. My first home was in Campbell. Some of my husband and my favorite restaurants are in Campbell. You can still walk to Campbell. You can still participate in their music program on the City Hall green. You can still go to the farmers market, which is the best in the valley, as far as I'm concerned. Sorry, San José can groan. They deserve it. What I noticed in Councilmember Constant's memo, his recommendation is to look at the commercial strip. I know when we looked at that in our office, it created another finger of San José which goes against what Lafco supports. Is that we have the logical boundaries. And I think we may have a picture of that. So you see at the top of the slide that is something that is already San José. And Laurel if you could speak to the other picture.

>> Laurel Prevetti: Yes, the dark area represents San José and along Camden, you'll see again a little finger that goes up towards Highway 17. That would be the commercial strip along Camden. And that was just if we took a literal interpretation of councilmember Pete Constant's memo dated October 25th. So that would be the result of that particular suggestion.

>> Councilmember Chirco: And how would Lafco look at this kind of a property division, really, where you have now another finger going -- as far as you want to look at the logical boundaries issue?

>> Laurel Prevetti: Actually it's state law that gives us certain findings that need to be met. And we're supposed to make hurry sure that we ensure that good services are provided, that the proposal is consistent with our

general plan, that we -- I know there's one about -- that the proposal does not create an island or areas in which it would be difficult to provide municipal services. That's probably the finding that's most germane to this one in terms of kind of the Campbell, San José, Campbell, San José pattern that this might result in.

>> Councilmember Chirco: So in light of the fact that the legislature passed legislation, county took you us to court to force this, I'm going to make the motion reluctantly to move staff's recommendation. You will still be in extremely strong community. The Campbell village is a neighborhood to themselves. You will make your home where you choose it to be. This, the fact that you're now, you know, actually San José not just sphere of influence and especially since this area of influence was reaffirmed in 2006, and for Campbell in 2007, says to me that, according to Lafco's guidelines, this makes the best sense. It is delivery of services. We have heard your concern. We thought they rated a great deal of merit. And the staff has worked to maintain the fire so that you get the response that you have always gotten. So that would be my motion.

>> Mayor Reed: All right, we have a motion on the floor. This is on item 11.4.

>> Yes.

>> Mayor Reed: The staff recommendation, the motion is to approve the staff recommendation on the initiation. We'll go back to the others after we get done with this one. Further council comments or questions on the motion here? I just wanted to at a couple of things. I heard quite a few comments about people moved in and thought they were in Campbell or intended to be in Campbell, but the reality was they were in a county pocket, within the San José sphere of influence, which was going to come into San José some day, and I think the people who bought their houses should have been on notice or were on notice that some day this was going to happen. And the state of California sets the rules that set this up, and we're just trying to do what we have to do under state law. But people had notice or should have been on notice that some day you were coming to San José, and we're looking forward to having you here. It's the county that doesn't want you. Everybody else wants you. That's a good thing I guess but the county wants to get rid of you and we're going to move ahead I think on this motion. I'm going to support the motion. Councilmember Liccardo.

>> Councilmember Liccardo: Just had a couple of questions. Have we -- I know there's a lot of issues that are driven by the fact that there's this finger of San José territory. And I'm wondering, have we talked at all to the residents of that San José finger? Do we have any idea how they feel about being in one city or another?

>> Laurel Prevetti: No, of course all of our community meetings, and this meeting, and the Planning Commission meeting were public meetings. We did not do specific outreach to that one. We handled this as we did all the other pocket annexation. We are in the final phase of pockets that are less than 150 acres in size.

>> Councilmember Liccardo: Okay And the fiscal analysis I know that nobody else in the audience cares about this but since we're all interested in money over here, the fiscal analysis that was done, I have to admit, I was pretty surprised. You know I've been through fiscal analysis for industrial conversion policy and now for the general plan update and been convinced in each occasion that residential uses of land are a net loser for the General Fund. And there's maybe some dispute about at what point you get to a high enough density it actually becomes a net gain for the General Fund. But single family housing was always regarded as a net loser by the General Fund. And I saw in the report that there seems to be some distinction between a built out neighborhood and one that's about to be developed. I'm not sure I understand the distinction in that difference. Or difference in the distinction. By that I mean, certainly when you develop something you generate fees from the developer. And when you, in this case, annex a built out neighborhood, you don't even get that. So I'm trying to understand why the analysis just completely turns on its head when we're talking about this parcel or set of parcel? [applause]

>> The findings of the fiscal analysis, the beneficial analysis aren't related to it being a built out community versus a new community. What it is a relation to is that we have commercial properties in this pocket. And the combination of the sales tax revenues, plus the transient occupancy tax revenues that are generated by the motel, they generate a significant, a large portion of the tax revenues in the pocket. And so that is a big driver. The significance of it being built out is that the analysis is not an analysis of projections. It's largely an analysis of empirical data. So they're not estimates of what could be. They are recordings of what is.

>> Councilmember Liccardo: Okay.

>> And so that was the point of that, in the report. And as you can see, the sales tax -- the combination of sales tax and the T.O.T. revenues are about \$200,000 a year.

>> Councilmember Liccardo: Yeah, I see that, 192,000.

>> Yeah.

>> Councilmember Liccardo: Forgive me for beating this horse dead, that's 192,000 but that margin still seems smaller than the net gain that's represented if you look at the tables on the net annual revenues, page 3 of staff's memo, where they summarize the net annual revenues, in one case where I guess staff's recommending that we retain central fire, a net annual revenue of \$316,000. That's certainly in excess of the \$192,000, that would suggest that the residential itself is a net positive, which is completely contrary to everything I've ever understood.

>> Well, it's also a function of the property taxes that -- and the assessments of the residential. And so -- and this analysis does assume that the cost of providing fire protection is based upon the cost of the fire protection district. So it isn't looking at -- we did not analyze it as if it was a property within the City's boundaries, and examine what the cost of providing fire. So that's one element that might be different.

>> Councilmember Liccardo: Well, I thought that's what scenario 2 was about. If detached from central fire, actually the net annual revenues drop.

>> Well, that analysis is that yes, it was a detachment. But the fire protection would still be provided through a contract with the fire protection district.

>> Councilmember Liccardo: Or with the county.

>> Or with the county. And the assumption is that the cost to the city under that scenario would be that the district would charge you the amount for the revenue that they would have otherwise have received if it remained a direct service provider.

>> Councilmember Liccardo: You're telling me all that difference is just attributable to just who provides the fire service?

>> I'm not saying all of it. It's a combination. A, you have commercial properties, and that's \$200,000.

>> Councilmember Liccardo: Right.

>> You know if you subtracted that out you'd have a marginal difference of 100,000. It is not always true that all residential doesn't pay for itself either. It's a function of the type of residential --

>> Councilmember Liccardo: And that's usually density though, usually we're talking about high rises that pay for themselves. I've never heard in any forum anybody say that single family residential pays for itself. [applause]

>> Well, we did not analyze the residential component only. And we did not analyze the residential component only in the context of a normal -- a situation that you would provide fire. I can't really speak to that because I've done a lot of analyses of single family residential that does pay for itself and it's a function of the taxpayer.

>> Councilmember Liccardo: I don't doubt that it does in Monte Sereno or Saratoga. I mean, but we have affluent areas in San José in Almaden and so forth, and I've never seen a suggestion that even those areas pay for themselves.

>> I'm not going to dispute what you're saying, it's just that we did not analyze it within that same framework.

>> Councilmember Liccardo: All right, I'm just a little puzzled. I know that there have been extensive conversations with the City of Campbell Laurel and I know that Vice Mayor Chirco asked you about some of those. And my understanding is that several of these different options were put on the table. Can you just help me understand better the position that Campbell was to various options that we have explored?

>> Laurel Prevetti: Thank you. We did provide to you in the form of attachments the various letters and memos and even a staff report from the City of Campbell that is dated June 16th, 2009, where they had a study session to discuss the Cambrian 36 pocket area. And we did look at a variety of different options. I think what surprised us the most by this analysis was -- well, I guess we were surprised that they had agendaized something like this on their agenda. I don't believe we were able to attend the meeting. And then the recommendation was to not only pursue the unincorporated territory, but also, to look at a redistribution and to essentially have the area to the north also come into the city of Campbell. So there was clear interest by the City of Campbell to do that. For us, given our city council policies, we've always been briefly interested in having exchanges of like territory. And we've done attachments and detachments with the City of Santa Clara, albeit on a much smaller scale. So we have familiarity with exchange of territory, but here we're talking about several -- we're talking about a lot more territory, and that was part of our concern, is that we felt we were under the obligation through the city-county agreement to make sure we were moving in an expeditious way on the county pockets. And then when Campbell expressed interest in acquiring additional territory, it raised other policy issues for us. Where in Campbell would they give up like territory to San José? And we never had that discussion. So that is an option that we identified in the staff report. Again, full disclosure, staff wants to make sure you know what the range of choices are, but we also know how disruptive that can be to neighborhood identity.

>> Councilmember Liccardo: Right, just not viable. Thank you for spelling that out. I know you told us some of that before. I'm just trying to understand fully what to explore, and it sounds as though we've pretty well gone down that road to its furthest extent. I just want to say to all the folks here I appreciate there is enormous frustration in this room right now. There have been different interpretations of council policies that have been offered and certainly frustration from the sense that these are decisions beyond your control, that impact your property values, that impact the services provided for public safety, and otherwise just impact here your sense of

self-determination. I understand how city government in various ways, city, county some state, et cetera has been making your life miserable for the past four years. The colonel I have is really along several different levels of analysis, that the options are pretty limited here. And every time that it seems that we've engaged as I understand it both from the staff reports and what I've been told here with the City of Campbell in some collaborative way know to try to find an answer, there hasn't been an obvious one that's emerged. By the way, I have no idea, I just turned 40, I have no idea what you're doing here on your 40th birthday. I was miserable on my 40th birthday. It was not good for you to be in city council meetings. I hope you have a wonderful birthday, but at this point, I'm challenged certainly by this decision, as I know Vice Mayor Chirco is. I know that she makes her decisions on purely principled grounds. I'm having a hard time finding a principled way of justifying just letting this go to Campbell when we've done this -- been really compelled to do this on 42 other occasions.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Everyone, thank you for coming tonight. Very impressive group, extremely articulate, great presentations, the Whittakers, excellent tee shirts, again, happy birthday. I've been on this council for three years and I'd say many times, where things have come on the council agenda where it's associated with someone I've know very well, and that always -- I'll be frank, it's a part of my decision process. I can't separate the fact that I have a relationship, that I consider it. And that's the case tonight, but at the end you got to sort of make that right decision. So no secret, Mike Chrisman and I have known each other since junior high school. And we've spoken many times over the last three to four times about the topic of annexation. Your neighborhood, I don't think it could have a better representative, that's more organized, tenacious, advocate for what you want. [applause]

>> Councilmember Oliverio: So Mike, you asked me what would it take to get my support, and I think you remember the conversation or the text message. It was you know part of it was can we tone it down? And I really do appreciate the change that came quickly. And the e-mails that came across were much more cordial than some of the e-mails I was getting prior. And I do read all my e-mail as I do have a blackberry and it's just so exciting. And the reason I asked to tone it down was is because there was a lot of this negative San José

comments. But in reality all cities in California are suffering with declining property values and all the things that are adding to the pain in the municipalities. And just in our county alone cities are raising taxes, general purpose taxes, utility taxes, sales taxes, Palo Alto, Campbell, et cetera, just to make ends meet. And at the end of the day, all cities have borders. And some of these borders don't make sense. I have them in my own district, because I border Campbell on three different points, and I also border the City of Santa Clara. I have a border that goes through someone's house. Two-thirds of their home is in one city, a third is another, just cuts across their back yard. It's the motion bizarre thing, but that's how things are in some cases. My neighborhoods that share borders with Campbell, that all of the neighbors go to the same schools. They go to Bagby, and Ida Price, Monroe, to name a few. They utilize the same parks, they go to the same shopping patterns. I, because of this incident -- or not because of the incident, because of the topic, I've asked, hey, do you view yourself differently from the person that lives across the street? And they don't. They view themselves as neighbors because they have a commonality based on their homes and their friendships, and they don't view themselves as differently because one person lives in another municipality. Hammond Park is another neighborhood in my district that's half Campbell, half San José. San José provides a 10-acre park to the neighborhood, even though it is mostly surrounded by the houses of Campbell. We've actually offered to give the park to Campbell. Here it's yours, free. But Campbell said no, we can't maintain it. So San José continues to maintain that park, and I know someone brought up community gardens. We have 19 community gardens in San José. So there are plots available. We have mutual aid between our two police forces in the Hammond Park area and all the city borders. That's how police work. I don't think, in terms of chief Moore, I don't think you stop at the street, and go, sorry, I can't help. And I know, talking to Campbell police, they've used San José as a big brother, because there's a limit to what Campbell has, and San José has more, and we're there to help. The annexations for me have always been represented to me as an entire portfolio. The portfolio represents a spectrum of diverse land areas. Some pockets have higher crime. Some have nonexistent crime. Some have storm sewers. Others do not. Some have nice roads, others do not. Street lights, sidewalks, et cetera. If I felt at any time as a councilmember, I could have picked and chosen the pockets I would have -- the city would have annexed, I would have voted against the majority of all of them. I think if we did it all again we should have annexed the county pockets that had the higher property value first, so the city could have brought in that revenue to help pay for things. So if it's not

obvious from my comments I'm going to be supporting the annexation. Mike, I hope we can retain our friendship and you'll forgive me some day. I support the planning staff, and Vice Mayor Chirco, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you mayor. Well, there's no doubt I hold the opposing view. I was chair and vice chair and served on Lafco for the last incumbent of years. There's a custom things that concern me, we've talked a little bit about the residents shouldn't have been surprised. But I want to add, I don't think the Campbell staff and elected officials should have been surprised, either. Because I'll tell you, I had conversations with the city manager and multiple councilmembers, who were surprised, and asked me what happened, when the City of San José changed directions on this annexation. Everything, there were discussions going on, there was talk of going down a path of potentially splitting and discussing how that might happen and then things changed. And it was very surprising to them. And I spoke to the City Manager Evan Lowe, Dan Furtado, they all had the same impression, they all gave me the same discussion. So it wasn't just the residents who were surprised by this. When we talk about council policies, there are a couple of things I want to go over. Sometimes we're up here, and we're advised by the city attorney, that's just a council policy, you can change it by your vote, it's a guideline, and then other times it's portrayed to us as staff, this is set in stone, we have to do it. And we have heard here that council policy 6-15 governs these type of things and demands an exchange of property, which I don't think is the case. If you look at my memo, I even highlighted the background, the intent of this is to prevent deannexations. This isn't a deannexation, it's an annexation. There's a big difference. There were references made to the annexation wars. Well, wars happen when people don't compromise. When they stake their stakes in the ground and say we're not going to budge, we're not going to move. And I honestly don't believe that is what this policy says. And I'd like to ask Rick very directly, because I've gotten different responses at different times over the last couple of years about council policies in general, and this policy in particular. And I wasn't here when this policy was crafted. But I can read the plan writing of the policy in the background. And it talks about deannexation. Not just annexation of unincorporated areas. So can you provide me your interpretation?

>> City Attorney Doyle: Let me give you first of all, the general question asked first, which is I think you were suggesting is, is the council legally bound to follow its policies? No, legally they are not. The council should try to follow its policies as much as possible and I think that's consistent with what we've all said over the years. If you talk about the purpose, it takes about to establish workable guidelines to be followed when considering boundary transfer request. It was done in the context of, deannexations I'm going to have to refer to the planning staff, because this predates me, and -- but it is intended to cover boundary transfer requests, and I think, you know, it's something that if you look at the content of what the council considers in addition to the state law governing the annexes? I think there's a like that staff or rational staff is using in making the recommendation.

>> Councilmember Constant: Would you not agree in a legal standpoint, that when interpreting legislation or policies, looking in the maybe background is part of the decision making?

>> City Attorney Doyle: I think when you're coming across legislative intent, yes.

>> Councilmember Constant: I just want to point that out because I think there's a clear difference in opinion on whether we are saying, for unincorporated pockets, we'll only exchange them acre for acre, or whether that means incorporated San José residents who want to deannex. Because it specifically says that. I also wanted some clarity on the county agreement. I've heard we're obligated to take this because of a court settlement. My understanding in previous conversations, there is an obligation that the property be annexed, not necessarily by us, it could be by another city. [applause]

>> City Attorney Doyle: Insofar as the county agreement applies, the county agreement is only with the City of San José. And what it specifically requires is that the council -- that the council will consider annexation of the islands. But, as I have advised you, this is a legislative act. And you cannot contract away that legislative act. So while the spirit of the agreement is that it would come forth in the council as adopted a program to try to facilitate that, at the end of the day, it is the vote up here that makes the decision whether to annex or not.

>> Councilmember Constant: So I guess the more direct answer was no we're not bound contractually that we have to do this?

>> City Attorney Doyle: No just to consider it.

>> Councilmember Constant: But the fact that we're willing to consider this and sit down and have productive conversations with Campbell is totally acceptable?

>> City Attorney Doyle: That is acceptable but that's not part of the county agreement.

>> Councilmember Constant: Okay. You know when I looked at this and I looked at it from multiple areas, not only things like we're using and established illogical boundary to justify a logical boundary which I don't necessarily agree with and like I said I've had lots of discussions with logical boundaries in Lafco, when we look at the fiscal analysis, Sam I had the same exact questions as you. And from the answers I heard today there could be more analysis done. I can tell you I've had more recent conversations with the elected leaders in Campbell and they want to sit down and talk about the potential options. Now I know staff says that the diagram with the finger sticking out was a literal translation of my memo but that's not literally accurate because I said to discuss different potential logical divisions that includes but is not limited to the commercial areas. So to draw a map and shade it in, and say this is the result of the literal reading of my memo, is not accurate because it says this is one of many things that could be discussed, and the idea would be to sit down and discuss it. When we look at all the issue we have been struggling with, we struggle to provide services to our residents as it is. We have that discussion over and over. We struggle with our job -- housing imbalance and sometimes we have arguments for hours over a project that will bring in 30 units and what that will do to our job-housing imbalance. Yet we're not having that discussion right now with a significantly larger number of houses. You know -- [applause]

>> Councilmember Constant: We have put a false sense of urgency on this issue that says we have to get this done. Now, I know the community -- the community wants alternative 3. I don't necessarily agree with that. I think alternative 2 is a better way to go say, let's just sit down with the table with the Campbell officials and talk about

what potentials there are out there. I think it follows the spirit of our agreement with the county that we'll consider these annexations and that we will continually move forward with these annexations. We can have a more detailed analysis where we actually do analyze all the different impacts and maybe put some actual lines on the paper and say what if this section or that section? Because there's actually commercial at two opposite ends of that diagram. But the diagram we saw in black and white really didn't point out what the commercial would be in the upper right-hand corner of that diagram. So there are opportunities that we could look at it with the city of Campbell. And I don't think it's unreasonable to say let's have those discussions especially since I know the City Manager and elected officials in that city have told me why can't we sit down and talk about there? It is a reasonable thing for us to do. [applause]

>> Councilmember Constant: And I think it's foolhardy for us to, one, put a false deadline in that we don't have to have. Two, that we don't explore all options. Three, that we don't have everybody at the table who's making decisions. Kind of at the same time and in the same room, not Campbell having meetings that we don't know about and us having meetings that Campbell doesn't know about but some kind of structured discussion where we can go through with this. And then have an analysis of what exactly could and could not happen. Because I could take the exact same analysis and strip out the one strip on Camden avenue that was highlighted on the diagram that was the literal translation of my memo and flip that analysis on its tail. You can do that with numbers, we've seen this over and over with different things that we do. So I just think that we should take the time and do it right. At the end the argument may still be compelling and we may take the same route that is proposed by the motion that's on the table right now. I doubt it, though, based on my discussions at Lafco. I've had personal discussions with Lafco staff. We've had discussions during Lafco meetings, and I've had discussions with people in the City of Campbell and discussions with a number of people that are here in the audience and some that are not. So I don't know how warmly this is going to be received or if I'll even get a second but I would like to make a substitute motion which is my memorandum which sets up a formal public process to conduct discussions with the City of Campbell and a fiscal analysis of different potential logical divisions as outlined in A and B which are additional to the staff alternative number 2.

>> Mayor Reed: I heard a second so we have a substitute motion on the floor which would be based on Councilmember Constant's memo.

>> Councilmember Constant: And I think that's all I have but I'm sure if something comes up I'll try and clarify.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just want to start off by saying that you know there's a lot of comments made regarding what we should do up here either do what you think's best for you or do what you think is best for the residents of the people. I don't think anybody up here is doing anything other than what they think is right for the people. No one up here is trying to find out what to do to make what is in their best interests, I just want to put that out there right away, because we make these difficult decisions a lot. And sometimes we make decisions that a number of community members are happy with, sometimes we don't, because we really try to make a decision that's in the best long term interests of our city and of our residents. And I think that sometimes that gets lost because people walk away and they're not necessarily happy with the outcome. And I also want to say about the staff. The staff has worked tremendously hard about all these annexations there are three dozen that we're approaching. At times again they're following what the current policy is, they're following direction that's given to them and sometimes the answers they give aren't necessarily answers that people want to hear or like to hear but at the end of the day it is our decision to make and not the staff. So I just want to thank the staff for all the time and energy that they put into this whole process. I met with a group of residents of Cambrian 36. And my first instinct after listening to the issue and studying it, was that if there is no reason we can't, I don't see why we can't continue these discussions to see if we can find some kind of compromise that everyone can be happy with. I still think there's room for that to happen. The annexation process certainly has come a long way. We've done a lot of annexations, we have more to come. Even though I do agree with the comment that Councilmember Oliverio made, that we have them in all sizes and shapes, and it's really difficult to ask us to pick one out and separate it out from the others. But there are distinctions that can be made, and in this case I think is the distinction that the City of Campbell has shown a very clear interest in wanting to annex. I think ultimately, at the end of the day, the county just wants to get rid of this property, they want to get rid of these residents, and that's

not their core -- that's not their core service. And so it shouldn't be county, we know that. So in regards to the policy regarding boundary changes you know it's from 1984 and you know this council certainly does its best to comply with policies that we have on our books but we don't always follow the policy. If we can find a clear exception or clear reason as to why we feel in any given case that we can maybe bend the policy or for some reason set it aside for a particular case. The riparian corridor policy we've all debated up here as an example where sometimes we don't agree and we'll sometimes go against what our own policy says in a particular situation. And I think in this situation as well that we still have room to play within the policy in terms of making sure we get some even exchange from Campbell but ultimately the best result is going to be one that the residents in this case will be happy. [applause]

>> Councilmember Kalra: I do think the fact that we're not legally bound gives us some room and I think that ultimately if we can find a way for Campbell as Councilmember Constant indicated sit down at the table with us and make sure that the county understands that we're still taking their obligation with them seriously and we can have our staff sit down with Campbell staff to figure out a way that we can try to make this happen on an efficient manner. I certainly don't want to lose out on the opportunity to gain some tax base. We certainly need all the tax base we can get. And so although Campbell might have a nice farmers market, I'm hoping that as many people will shop in San José as possible, and we want to make sure we can retain some of that potential commercial land. I do see a distinction between annexation and deannexation. Deannexation you're losing something that you have. We don't have this property. It is not ours at this time. We certainly were given assurances to the county we're going to make efforts to annex it. There is one -- as the seconder of the motion I would like to ask the maker of the motion if you would consider an amendment that would allow a little bit more flexibility. I agree with the recommendation that staff alternative 2 should be at least looked into and analyzed, let us have an opportunity to discuss this. However, I also feel that we should give that same opportunity during the same discussion to explore alternative 3 as well, in that Campbell has expressed an interest, and just for the entire area, including that northern strip. If we can find some compromise that makes sense for us, I would like to at least have an opportunity to be discussed. So councilmember Constant, I don't know if you would allow alternative 3 to also be part of the discussion.

>> Councilmember Constant: Yeah, I pretty much thought as alternative 2 would encompass in spirit alternative 3, I think alternative 3 was more limiting and it just kind of gave it away and left it in Campbell's hands to deal with. So yeah, I'll make it more explicit, but that was my intent.

>> Councilmember Kalra: Yeah, I just wanted to make that clear, that it could be splitting it, or it could entirely go to Campbell. There's no kind of restraint or constraint on the ability of both our staff and Campbell staff to sit down and try to find some kind of compromise. So I just wanted to make that clear, so at least we know the option is there for all of them to go to Campbell, but again, it would have to be something that is again in the best interest of San José as well. And finally I just again want to again thank Vice Mayor Chirco, I know she's put in a lot of time and effort into this, and I respect her immensely, and this is no way of any semblance of my sense that she is in any way wrong on this issue. I think that reasonable, hard working people as all of us that are trying to I think can disagree on an issue, and I think this is just one of those rare cases. Thank you. [applause]

>> Mayor Reed: Since it's getting late I thought I would suggest another alternative to the alternative. I believe Campbell is surrounded by San José on three sides. So why don't we just annex or consolidate and solve the whole problem? Maybe that won't work. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. It is getting late so I want to keep my comments short and plus my colleagues have already articulated a lot of the points that I wanted to make. But I just wanted to thank Vice Mayor Chirco for her thoughtfulness in her deliberation earlier. I can't imagine how difficult it has been for her since I know a thing or two about having to choose to do what's right, by council policy, versus listening to a segment of a community, oh, those days of the Little Saigon issues. But just reading her memo, over and over again, I just felt that she has put a lot of work into this, a lot of thoughtfulness into this, and of course narrating her personal story, it's something that's very moving for me. I think that if you don't know of all the people up here, I would have to say that vice Mayor Chirco listens to her community. And we all do, but I think that every time she deliberates, that's what she deliberates by. And I think that she's one of those people that will vote based on her principle and she's very consistent. And so this is something that's really difficult, most of us up here have been in positions that she's in tonight. We have county pockets that have been annexed in our council district. And it's

been really really difficult. But this is something that should hatch, if we have 42 pockets we have more to go. The services that the city will provide for you if this issue does pass will be something that you can look forward to. I know there's a lot of angst out there tonight but you should give us the benefit of the doubt and really, she's a very caring person. So I just want to thank her and take the opportunity to thank her for her thoughtfulness. Thanks.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, and I won't take too much of your time. Thank you for allowing me to listen to your concerns and your arguments. I need to disclose that my chief of staff met with the residents of 36. And I wanted to say to the Vice Mayor, I appreciate your personal touch within your memo. But as I have been on the other side of having to annex a lot of pockets in my area, which is Alum Rock, the one thing that I think has guided me is, is this going to improve the quality of life for my residents? [applause]

>> Councilmember Campos: So in listening to the residents that currently believe that they're part of Campbell, and that this is not going to improve their quality of life, I'm not going to be able to support the Vice Mayor tonight. [applause]

>> Councilmember Campos: And I will be supporting the motion on the floor right now. And it's not an easy decision. But for me, as a policy maker, it's the right decision. Thank you.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: As I told the residents, on many occasions, I am but one vote. But I would like Laurel to speak to the meetings that we held with the electeds, as well as the City Manager, and also the meetings that were held with the planning staff. We didn't just spring this on the council. I met with both Evan Lowe, Dan Furtado -- who is the mayor that passed away, Don Burr, Burris -- I think Dan Furtado was with him, there was two City Managers, there was a change. Deb was in those meetings. These meetings have been held. And the economic analysis, it's not just hours. If you look at the Campbell meeting, there is a third economic analysis that

shows that there is the positive revenue generated by this pocket. So it's not just San José saying that, oh, goody, there's positive revenue here. So Laurel, if you could speak to the meetings that were held with Campbell staff and department heads and City Manager trying to work out a strategy that would allow keeping San José whole, this is not an easy decision. The young lady who has been celebrating her 40th birthday, I've been quiet, and had to make a decision, one of the most difficult decisions I've had to make in eight years. Laurel if you could speak to that.

>> Laurel Prevetti: Thank you, vice mayor. As indicated in the staff report, on page 6, we first received formal expression of interest by the City of Campbell in October 2006. This was through a letter, the City of San José responded that we were not interested in pursuing the modification to our sphere of influence. Or urban service area. Because it would not be consistent with council policy 615, which was up on the board a little while ago. So we've been in this conversation for quite some time. We did receive letters from the residents expressing interest to annex to San José. They were sent directly to our city council here, and then we did provide an information memo to the city council explaining that while we did get those letters of interest we were proceeding consistent with our county pocket direction that council had given us. Then we did have direct communication between the two City Managers of Campbell and Debra Figone. I was not present in those meetings so I would defer to our City Manager to make additional comments. We had back and forth discussions. There was a period of time when we were open to an exchange of territory. But San José was in fact the one that was surprised when in June of 2009 the city council of Campbell directed their staff to pursue annexation of the entire pocket, as well as the detachment of the additional 21 acres, and then it was subsequent to that, that we had additional conversation our two insertion about what are all the options? It became clear that San José needed to proceed with its county annexation program consistent with how we had handled it throughout the rest of our city. Campbell had offered to make the applications to Lafco, to do all of the environmental clearance, to go through the detachment process. They did not make any of those applications and so San José consistent with our agreement with the county needed to bring forward this question to all of you. And that's why we're here tonight. So we did our best to continue to pursue various conversations when Campbell did not perform we felt we had no choice but to bring this matter before you as we are this evening and I would certainly offer for our City Manager if there's something I might have missed or you want to add.

>> City Manager Figone: No, that's very consistent. Of course you and Joe were closer to the details than I but I heard you problem solve to try to bring forward another recommendation and you really struggled with that and I think a really defining changing moment was when the Vice Mayor took a look at Campbell's fiscal analysis and in fact brought that to my attention and really at the end of the day, all things considered I really do believe that the staff could not find a way to bring any other recommendation forward. And they really did wrestle with that decision.

>> Councilmember Chirco: As a matter of fact I happen to find out about Campbell having taken this to our council without notifying the city and how did I find out? It was on the Internet. What makes that more unbelievable, I'm so nontech savvy, it takes my breath away. But I found the minutes of their meeting because not only did they vote to proceed to annex Cambrian 36 but also to proceed to annex a finger of San José. But we had not been notified when I checked with the staff that this was even a topic of discussion in Campbell. And when we approached Campbell about doing the swap, quite honestly, they expressed zero interest other than to annex Cambrian 36. So with all due respect, Councilmember Constant, I hear your concern. But I also think that all of them were acted on. And unfortunately, that leaves Cambrian 36 where they are. And I will not be supporting the substitute motion.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Yeah, just one final comment because I think Laurel's response clarified something for me. And that's the -- it did not work because the city, our City's position, was that council policy 6-15 applied and was rigid and could not be modified and that we must move forward with annexation according to our agreement with the county. Both of which I've asked the City Attorney, and neither one of those are rock-solid, and the difference now is, council, if my motion were to pass, council would be telling planning that they can go discuss dividing and potentially logical divisions of this parcel versus saying it has to be a swap or an exchange or handled as if it were a detachment as outlined in policy 6-15. That's the difference. I think the discussions failed because they were constrained to this artificial box. And that's what I'm saying, let's at least given a one-year

opportunity or even six months if you just want to give it six months, you have an opportunity to have a discussion with this possibility being a possibility, and I think we'll find a solution. [applause]

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to thank all the community members for coming and patiently testifying in front of us. And I'm sharing your concerns, and I think that all of us here have heard them. I have sat through a few annexations and I don't think I've seen anybody be happy about being annexed by us. Never seen a group come and be happy about that. I want to commend Vice Mayor Chirco for the way she has analyzed this issue. It sounds like for me even though I've heard the objections and I've heard some of the suggestions of delaying it. I'm convinced by what I've heard tonight that we have made attempts with the city of Campbell and staff has gone to great lengths to try to look at options. And so I will not be supporting the substitute motion.

>> Mayor Reed: All right, I think that concludes the discussion on the motion on 11.4. We have a substitute motion on the floor made by Councilmember Constant, based around his memo with the addition of clarifying that alternative 3 would be considered as part of the process. So that's the motion on the floor, that's the substitute motion. If this motion fails, then we'll have the other motion, we'll consider that next. So on the substitute motion, all in favor? Opposed, Oliverio opposed, Reed opposed, Chirco opposed, Pyle, Nguyen, Liccardo, Herrera opposed. That fails on a 7-3 vote, is that the count? Okay, then we have the motion in front of us which would be the motion made by the Vice Mayor based on her memorandum to approve the staff recommendation. That's 11.4. Hope there's no further discussion on that motion. All in favor, opposed, Kalra opposed, Campos opposed, Constant opposed, that passes on an 7-3 vote. So the initiation of the annexation is approved. We now need to look at 11.3, which is first to consider the protest of the rezoning, which was filed pursuant to a whole bunch of rules, I don't have to read them all, that's the -- in order to overrule the protests we need eight affirmative votes, is that correct, City Attorney?

>> City Attorney Doyle: That's correct.

>> Mayor Reed: So If we overrule the protest, then we'll move to Item B, which is considering the rezoning. Vice Mayor, do you want to make a motion on 11.3 A.

>> Councilmember Chirco: I would move to deny the protest.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion to deny or overrule the protest, however you want to call it. That requires eight or more affirmative votes, City Attorney.

>> City Attorney Doyle: I just want to remind the council, it's in the staff report. If you fail to get the 8 votes to override the protest, you can still go forward with the annexation proceedings, but then by default the Cambrian 36 would come in as agricultural.

>> Mayor Reed: Okay. So on the overrule of the majority protest motion? All in favor? Opposed, Kalra opposed, Constant opposed, Campos opposed. We'll note that councilmember Chu is absent. He had to go get on an airplane. He's going to Taiwan tonight, but he will be back on Saturday.

>> Councilmember Constant: Mr. Mayor, I would reconsider my vote just so that people don't have to be stuck with agricultural designation, because that leaves us one vote short. So if someone on the prevailing side -- there was no prevailing side. Whoever asked to make the motion for reconsideration. I would do it to ensure that there is appropriate rezoning, even though I don't agree with the annexation.

>> City Attorney Doyle: I think you're on the prevailing side, given the fact that it needed eight votes.

>> Councilmember Constant: I make the motion to reconsider the vote so we don't stick people with farms in their back yard.

>> Mayor Reed: Second, so we have some questions on that. Councilmember Kalra.

>> Councilmember Kalra: And one question on the rezoning. Regardless of whether this is annexed by San José or Campbell, this zoning would be consistent with the surrounding neighborhoods? In other words, if this went forward in the previous motion, the vote went the other way and there was an opportunity for Campbell to annex it, the rezoning could still go -- the vote was the other way, we still could have gone forward with the rezoning, is that correct?

>> Laurel Prevetti: That's right, the rezoning is an independent decision. If for whatever reason San José did not ultimately annex, then the property would still have that rezoning, and then annexation, if it gets resolved in some other way, the other jurisdiction would need to rezone. So this is really just to make sure that there is a zoning in place, so that way the neighbors and the property owners would know which rules would apply.

>> Councilmember Kalra: Just to be sure it is an appropriate zoning for the neighborhood that it is?

>> Laurel Prevetti: That's correct, and consistency with the general plan which governs in this area, which is San José.

>> Councilmember Kalra: Okay, well, I'll support the motion, given the fact that annexation vote already occurred. Just so there is appropriate zoning for the neighborhood.

>> Mayor Reed: All right, City Clerk, I just need to make sure I know where I am here in the process. I think we still have the motion to reconsider in front of us. That's the motion that's on the floor. The motion is to reconsider on that. All in favor? Opposed, nobody opposed to reconsidering it. All right, vice Mayor, would you like to make a motion?

>> Councilmember Chirco: I'd like to make a motion to deny the protest.

>> Councilmember Oliverio: Second.

>> Mayor Reed: All right, the motion is to deny the protest. All in favor? Opposed, none opposed, that's approved. So having overruled the protest with enough votes, we had ten, we needed eight. We'll now consider the rezoning, which is 11.3 B, the rezoning of the property, well, we all know what we're talking about here.

>> Councilmember Chirco: I would move staff's recommendation for the rezoning.

>> Mayor Reed: Motion is to approve the staff's recommendation of the rezoning. Further discussion? I hope not. Getting late. On the rezoning, all in favor, opposed, none opposed, that passes on a 10-zero vote with Councilmember Chu absent on the way to Taiwan. I think that concludes the agenda. City Clerk, is there an open forum or a list of matters that we still have to do? There is. I have no cards for open forum.

>> Lee Price: Just checking. Did we do the public hearings on consent? Do we have any?

>> Mayor Reed: I didn't have any listed under there. There were none. Okay. Anything else we have to do? Okay, everybody tells me we're done so we are adjourned.