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City of San José city council meeting. [Gavel]

>> Mayor Reed: Good afternoon. I want to call the San José city council meeting to order for September 22nd, 2009. We will start with our invocation, and Councilmember Herrera will introduce the invocation.

>> Councilmember Herrera: Thank you, mayor Reed. Today I am really proud to say we're being joined by the Mount Pleasant High School Concert Band. And I'm honored to introduce these talented young students and their music director, Aaron Jensen. The Mount Pleasant High School Concert Band band has been performing for the San José community for over 35 years. These students perform several versatile roles throughout the year. They are a concert band performing classical and contemporary pieces at concerts, competitions and festivals, and they are also a pep band keeping everyone entertained at many school functions. These talented individuals show their dedication to their school and community as the Mount Pleasant ambassadors of performing arts. They perform at local elementary and middle schools to encourage culture and fine arts in their community. Today they're going to be performing The Liberty Bell by John Phillip Souza. Thank you, students, and welcome. [Band playing] [applause]

>> Mayor Reed: Thank you. What a great way to start a meeting! Please remain standing and please everybody else join us please stand for the pledge of allegiance. [pledge of allegiance]

>> Mayor Reed: Thank you. And now we're going to take a little bit of a recess while we give the band a chance to go back to school, probably. So we'll just recess for a couple of minutes. [Band exits]

>> Mayor Reed: We'll now take up the first item of business on the agenda which would be the orders of the day. Are there any changes to our preprinted agenda?

>> Move to approve.

>> Mayor Reed: Motion to approve. All in favor? Opposed? None opposed, that's approved. Today's meeting will be adjourned in memory of retired San José police officer Richard Rocky Bridges. Councilmember Constant has some words.

>> Councilmember Constant: Thank you, mayor. I appreciate us having the opportunity to take a few moments to publicly acknowledge the life of Richard Rocky Bridges. Rocky was a true legend in his time. Not only to the men and women of the San José police department, but throughout all law enforcement circles. Not only for what he did and accomplished individually, but really, for the lessons of his life, that taught so many of our men and women in law enforcement about survival and about the will to live, and ultimately, to never, never give up. Rocky actually retired from the police department just before I was hired as a reserve officer, but I feel like I really know the man, even though I never actually met him in person. I want to tell you a little bit about him today and his story, what made him unique. He was born in 1948, November 30th. And all throughout school he was a standout athlete. He played football, wrestling, boxing. In fact, it was in college when one of his coaches who was recruiting him nicknamed him Rocky, and that was after a very well known Detroit Tiger named Rocky Bridges. Rocky excelled at all sports and even was an alternative of the U.S. Olympic boxing team in 1968, had an opportunity to spar with George Foreman. Before coming to the San José Police Department he was hired by one of our neighboring city departments, Daly City Police Department, in 1972. He was there for five short years but accomplished a lot there. In fact, he earned Daly City's highest honor, which is the medal of valor, because he ran into a burning building, after all the firefighters told him not to do it, he did it anyway, to go in and rescue an elderly woman. He came to San José in 1977 and it wasn't long before he moved up to the elite ranks of our merge unit, which is commonly known as a SWAT team. He worked patrol, vice, undercover and undercover narcotics. One of the incidences that really defined him as an officer and his survival skills occurred not far from here in 1981 in a back alley, back close at San Pedro and St. James streets, where he stopped three suspicious men. As he ordered them to standstill, he was ambushed from someone who emerged from the shadows and shot him with a shotgun at very close range, the bullet went through his vest and into his shoulder, and then he was shot again, and it struck him in the upper thigh, where the bullet split into multiple pieces, in fact one of those piece remained in his body for about 17 years. Fortunately for him, his partner and long-time friend, Henry Bunch, another officer, was very close and able to pick Rocky up, put him in his patrol car, and and rush him to the emergency room, and he survived those wounds. And then, just a very short time later, July 29th, 1985, Rocky and Henry Bunch were working together as partners, and they arrested a drunken driver. At that time, in between the police department and the sheriff's department there was an old trailer, we used to call it the D.U.I. trailer. They went in there to process the drunk driver and Rocky went back to the patrol car to get some paperwork. And the suspect, Roberto Ordonez, took Officer Bunch's gun from him, and murdered him in cold blood. Rocky came running back into the trailer, unarmed, because he didn't have

his weapon with him at the time, and went hand to hand with this guy who had just murdered his partner. Fortunately he was able to wrestle the gun away from Ordonez and was able to shoot him fatally. For that he earned our city's highest award, the medal of honor, for his actions. And what is important is not only those actions that he did in his life, both in Daly City and here, that saved individuals, but really, his message, to the other people, the men and women of not only our police department but police departments all over the area, because his incidents were used as teaching points, to teach officers not only about the real dangers that they faced in the line of their duty, but what they needed to do to survive. And that is something that I'm thankful for, because I received that training, and I wouldn't have received it had it not been for the actions of Rocky. He retired from the police department, but kept working in the community, becoming a teacher. Unfortunately just recently, August 27th, at the age of 60, Rocky lost his 14-month battle with brain cancer, and passed away. And I think it's important that we, the residents of San José, and the elected leaders of San José, we really take the time to honor this man for what he did for everybody. It's my honor that we're adjourning the meeting today in his name. Thank you, mayor.

>> Mayor Reed: Thank you, Councilmember Constant. We honor Rocky Bridges and thank him and his family for their service to our community. Next item is our closed session report.

>> City Attorney Doyle: There's no closed session report.

>> Mayor Reed: We'll now move to the ceremonial items. I'd like to invite City Manager Deb Figone, Director of Environmental Services John Stuffelbean, and Yves Zsutty and Jan Palojic to join us at the podium. Almost two years ago San José adopted the Green Vision, which is our road map to being the world center of clean tech innovation. We made great strides towards reaching our 15-year goals, we have ten of those. Pollution prevention is at the core of each of our Green Vision goals, and San José has a long history of environmental stewardship and we continue to make important strides to conserve natural resources and protect the environment for our residents. And John Stuffelbean has more to say about the proclamation that we're going to do that today.

>> John Stuffelbean: Good afternoon. San José is continually working to create opportunities for residents, businesses and employees to practice pollution prevention. And in fact, this is pollution prevention week, and there are many events this week where residents can do that. For example, there are events where they can take their old mercury thermometers and get them exchanged for free digital thermometers. They can bring in unwanted pharmaceuticals for safe disposal. Pollution prevention week is a great opportunity to recognize the efforts of government, business, environmental groups, community groups and residents to ensure that San José continues to thrive as an environmentally sustainable city. We're proud to celebrate the innovative practices that have been introduced by city operations to prevent pollution. Pollution prevention is a community effort, so we invite San José residents to be part of the green solution by adopting new pollution prevention practices such as using less toxic alternatives when they're doing household cleaning and pest control, to bike, carpool and take public transportation to reduce fuel consumption and carbon emissions, and to bring as I said expired and unwanted medications for safe disposal or exchange mercury thermometers at any of our eight pollution prevention week fairs that are happening this week. So if we take small steps to reduce pollution, collectively we'll improve our environment for ourselves and our future generations. And I'll turn it back over to the mayor.

>> Mayor Reed: Okay. It's pollution prevention week, and I just want to say it's a lot easier, a lot cheaper to prevent pollution than it is to clean it up. So we have a dedicated staff working to prevent it. In addition to this we're commending work that's gone into one of our Green Vision goals, and that is creating 100 miles of interconnected trails. So we're going to recognize Yves Zsutty, Jan Palojic, and the trails development team for their work to expand the city's network of trails. The team recently completed work on a project which significantly improves access for bicycle commuters and recreational users, and their work is a great example of the work of our city employees that are actively working to help us meet our Green Vision goals. That's it. No more speechifying on that one. Thank you very much. [applause]

>> Mayor Reed: Next I'd like to invite Kim Camenellis, local census office manager, and Vince Canna, our census bureau partnership team leader, and Melissa Erickson, Santa Clara County census program manager, to join me at the podium. Today we're working on issuing a proclamation in recognition of San José's commitment in partnering with the census bureau. I'm sure you've all heard that you know, we need to make sure that every vote counts. Well, we don't to make sure that every person counts. And the census work we're about to undertake is very important to count every person in the City of San José so we get a full and accurate count. And it's more than just how many people are here in this city. The census numbers are vital to make sure we're adequately represented in Congress, that we get funding, that gets

distributed by population count, there are many things that are affected by the census. We just want to make sure that everybody gets counted. And we have to work with our census representatives to do that. And I want to thank Vince, Jim and Melissa for their hard work, and present them with a proclamation acknowledging their commitment to the partnership to get it all done, and get it done right.

>> Thank you. Actually, just the people -- councilmembers, mayor, everyone, thank you very much. We have been working very closely establishing partnerships with various faith based groups, various agencies. In the coming months we hope to get down on a block level so that we can really touch the people who are hard to count and we will need every district's assistance for that. So that we can count all people, citizens, immigrants, every person living in the city needs to be counted to make up for the full count. Thank you. [applause]

>> Mayor Reed: Now I'd like to invite Councilmember Constant and Debbie Maria Arambula to join us at the podium. We're accepting Ms. Arambula's very generous gift of her piece of artwork, entitled peaces of a dream. Councilmember Constant will describe.

>> Councilmember Constant: Thank you, mayor. First I wanted to introduce the people that will be joining me here today. First we have Debbie Maria Arambula, who is the local artist, from District 1. We'll talk more about her momentarily. Walking up right now we have Donna Stewart and Jan McKeaton. They are with the Way to Happiness Foundation, and they've been working with the youth at our Starbird Youth Center, fortunately with some of the money that we have utilized from the Mayor's Gang Prevention Task Force Safe Summer Initiative. Right behind me we have Mr. Ken Kelly, with our Blackford NAC, he's our president. Also joined in the audience here by Mark Warlick, who is also with our Blackford NAC. I think I got everyone. So Debbie was inspired by the work that was done with the Blackford NAC community and the youth. And she produced this wonderful piece of art which, at our neighborhood night out, she presented a copy of the artwork to the NAC, and to the City of San José. And I'm very thankful for her presenting that to us, and we are also going to also take an official council action in a few minutes to accept the artwork so we can proudly display it in the City of San José. But she's also well-known for something else, and I hope you don't mind me mentioning, there is a very famous piece of art in District 1. Actually, it's in Campbell. I don't know Evan Lowe is still here, but the vice mayor from Campbell was here a few minutes ago. But right on the San José-Campbell border there was a stucco-type wall that goes right along the San Tomas Creek. It had a wonderful painting, it was pretty long, and it had fruit trees and large piece of the different types of fruit that grow in our valley. It always meant something special to me, because I used to drive right by that every day as I took my kids to preschool. They would pray for us to hit the red light as I was praying for the green light, because they loved to talk about the fruit, and they used to pretend about how they were picking the fruit and having it for breakfast. It was just so inspiring to have my kids so engaged by a piece of artwork that was wonderful in the community for so long. So that's what makes this special to me, not only the artwork but who it comes from, and what you have done for me and my family and other kids in the district, so thank you very much. [applause]

>> Yes, I just wanted to mention, on behalf of the Blackford NAC, the neighborhood action coalition in west San José, that this is one of the outstanding examples of what can happen in the City of San José when people put their mind to it. The Blackford NAC was the first of the strong neighborhood initiatives to begin in 1999. So we're very proud to be part of that process, and we're really pleased that Debbie and her husband Steve have taken a leadership role in helping us be a better community, on the west side of San José. Thanks.

>> I just want to acknowledge the fact that this art was donated behalf of community United and they're an incredible group of people out there helping the youth put the moral fabric back into the community. That's truly why I donated this piece for two reasons. And also to support the NAC in supporting the mayor and the city council member and I just wanted to say thank you for their gang prevention program. Because they're actively deciding to do something about it. And this piece of art, if you don't mind, I'll just tell you a tiny little story. This is a peace sign. It's called peaces of a dream, and the single hearts that go down the center represent you as a spiritual being, you as a person, you as a community leader, you as a mother, whoever you are, but it takes you to decide to create peace first. In this case the mayor had a goal and a purpose and a vision, and he put out there. And then the two hearts that make up the full circle and spread out to the circle represent two cities, two towns, two countries, two people. And these people all around me and everybody that came up and the police officer Rocky are people representative of that purpose. It takes you to decide to create peace every day, and that's how you create peace, every day, and that's how you create peace. And then it takes a team of people to really make it happen. And I really want to acknowledge you and this feat. [applause]

>> Mayor Reed: I'd like to invite Councilmember Herrera to join me add the podium as we issue a proclamation recognizing September 21st as world Alzheimer's day in the City of San José. Councilmember Herrera.

>> Councilmember Herrera: Thank you, Mayor Reed. At this time I would like to introduce representatives from the Alzheimer's association, and participants in the 2009 San José memory walk. I'd like to introduce the following people and ask them to join me near the podium. Dagmar Shildwock, development officer of the Alzheimer's Association, and Eduardo Salas, vice president of the association board of directors, and Laura Lau, a participant in the 2009 memory walk. Today we are recognizing yesterday, September 21st as world Alzheimer's day. This is being done in many cities around the Bay Area. I've asked these individuals to join us today because they've done so much to raise awareness about Alzheimer's. The Alzheimer's association is the leading voluntary health organization in Alzheimer's care and research and I appreciate and we all appreciate the hard work that the association does. Since 1994, communities around the world have recognized world Alzheimer's day to raise awareness about this disease. I'm happy that the City of San José is joining this worldwide effort today. This disease affects us all. Not only are 5.3 million Americans living the with Alzheimer's disease, but the disease triples the cost of health care for Americans over the age of 65. As our country ages, this issue is going to become even more important. World Alzheimer's Day is also an opportunity to highlight all of the good work that Americans are doing to fight this disease. Laura Lau and thousands of others participated in a very special effort to raise awareness on September 12th in the 2009 Silicon Valley Memory Walk at the Arena Green. I was also there, and there was about 1500 people participating. This year their efforts helped raise \$193,000 for the Alzheimer's Association. And we hope to double that next year. Since 1989 the memory walk has raised \$260 million for the cause. I would like to thank the volunteers for their efforts this year, and on a personal note, I'm very proud to be able to stand up here and bring awareness to this, because I lost my mother in May to Alzheimer's. And I know that others in this room probably have family members with it, because it affects a lot of us. So I'd like to thank the members of the Alzheimer's Association for all the work they do year round to raise awareness and work for a cure to this disease.

And now I would like to present Eduardo Solis and Doug Marshalique of the Alzheimer's Association with this proclamation. Mayor, if you would hand that. I think you have a few things say.

>> Again, thank you, Councilwoman Herrera. On behalf of the Alzheimer's Association, again, I'm Eduardo Solis, vice president of the board of the Alzheimer's Association, and chief diversity officer with Intuit Corporation. But I just want to say as a native San Joséan, a graduate of San José High School, San José State, it did me proud to see the Mount Pleasant band here today performing, because I saw so many kids that looked like me when I was going to school here. I want to say that today, currently there are 5.5 million people living with Alzheimer's. Many could be your parents, your grandparents, even folks that are in the boomer generation. There are 35 million people worldwide living with this disease and the numbers will double every 20 years. By the year 2050, there will be over 115 million people in the world with Alzheimer's unless we do something today to solve this disease. So on behalf of the Alzheimer's association, again I want to thank Councilwoman Herrera and Mayor Reed for this proclamation. Thank you very much. [applause]

>> Mayor Reed: We'll now take up the consent calendar. Are there items on the consent calendar councilmembers would like to pull for discussion? I'd like to comment on item 2.8, the arena-Diridon parking meter district. There's a motion to approve the balance of the consent calendar. All in favor? Opposed? None opposed, that's approved. Item 2.8 is the arena Diridon parking meter district. I just wanted to thank the staff for moving ahead with this and coming up with our first solar-powered meters in a way that will allow us to do something new and different, raise a little money for our General Fund and have new technology in meters as well as another application of solar power. So it will be an interesting innovation for us to do over there. Hopefully we'll learn something we can apply across the rest of the city. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I also wanted to stepped our thanks to our team at RDA and D.O.T. for making this happen. I know we've been looking for ways to help make parking more convenient, less onerous. You don't need the change in your pocket anymore, credit cards are accepted and all kinds of other aspects of this just make it more convenient for the users, having all the stalls in one place. So anyway, thanks Jim for the hard work of you and your team. Move to approve.

>> Mayor Reed: Motion to approve. I do want to disclose in preparation of this my staff talked to the representatives of the HP pavilion operators, Silicon Valley sports entertainment, they're okay with this as

well since they're the big kahuna in that area in terms of usage, it's good to know they're supportive. All in favor, opposed, none opposed, that's approved. Item 3.1. Report of our City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. I wanted to give you an update on the ICMA conference that I attended last week in Montreal and shared some of the issues that are top of mind with the City Managers across all cities and counties throughout the country. As you may know, the International City County Management Association is the premiere professional and educational organization for local government administrators from around the world. ICMA was founded in 1914 and has 9,000 members. Based on the main topics of conversation, it's clear that local governments around the country are facing the same issues. These include certainly in challenging and turbulent times we find ourselves in, making our cities sustainable both from an environmental as well as economic perspective, pension reform, succession planning and preparing the new work force, the pressure on cities to deliver more with less, civic and community engagement, wellness programs and ways to reduce health costs, the need to change our service delivery models, including changing the role of government, as well as with public-private partnerships. Many of these topics will likely carry forward into next year's conference, and San José is serving as the host city next year, from October 17th to the 20th. ICMA typically attracts approximately 3500 to 4,000 attendees so we do expect to have a substantial economic benefit in our city through the conference attendees spending their dollars here and hopefully our hospitality and tourism industry will benefit greatly. Many of us have been involved in planning for this conference. We have planning committees from throughout California as well as throughout the country, and so this is going to be a tremendous opportunity to showcase our beautiful city next year and to share our best practices with other governments throughout the region. So I'd again like to thank the council for giving me the opportunity to attend the Montreal conference, and we do look forward to serving as a host city next year. That concludes my report.

>> Mayor Reed: Thank you. Our next item is 3.2, report of Rules and Open Government Committee meeting of September 2nd, 2009. We have a motion to approve. I have one request from the public to speak. Kathy Brandhorst.

>> My name is Kathy Brandhorst, Lisa Marie Presley, Jonbenet Ramsey, John Stele and I'm also the United States president. I'm very concerned about some of the things that are going on in this city. And one of them is, still carrying machine guns and shotguns and bombs. And grenades of course. I heard one person say grenade --

>> Mayor Reed: Ms. Brandhorst, this is a report of the Rules and Open Government committee. If you want to talk on open forum about bombs and guns, otherwise you're going to have to talk about this item.

>> I'm very worried about the Filipinos.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. All in favor, opposed, none opposed, that's proved. Taking us to item 3.4, response to the grand jury report regarding international association of firefighters local 230. Alex Gurza has a presentation. City Manager Deb Figone will start.

>> City Manager Figone: Yes, as Alex is going to make the presentation I do want to set the context for this item, and basically explain to the council and the public why this item is before us today and what our role is. First of all, the item's before the council, because the city council is required to respond to civil grand jury reports within a time line that are specified within the penal code. Staff's role in this report is several. First of all, our responsible is to respond to grand jury requests for information, if we are contacted on issues that they have undertaken. We are required to maintain confidentiality throughout the process, and in fact, when the staff is contacted by the grand jury we don't even know the topic until we've signed a confidentiality agreement. Then it is our responsibility to bring to you a recommended response to the grand jury which is what is before you today. Today what we are asking of council is after our presentation, to confirm whether or not you would like this to be your response to the grand jury or to amend it through your discussion. And before turning it over to Alex let me reiterate what was in the grand jury record, and that is, that the San José firefighters are dedicated courageous and face great risk every time they respond to an emergency call. This report in no way is intended to reflect on their performance or commitment to public service. With that I'll turn it over to Alex.

>> Alex Gurza: Good afternoon, City Manager, Mr. Mayor, members of the city council. Alex Gurza, director of employee relations. Before you this afternoon is a memorandum from the City Manager with the administration's proposed response to the grand jury report. We don't intend in the presentation this afternoon to go over each item. But to briefly highlight the findings and recommendations in the grand

jury's report. The grand jury's report had nine separate recommendations. The key issues identified are on the list here. Four of the nine recommendations were related to the use of city-paid union time off for local 30 executives. Minimum staffing came up as it relates to the union time off because it is the minimum staffing provision of the union contract that has language related to time -- union time off. They also had a recommendation about the sick leave payouts the city provides that are provided by union contracts. Additionally they noted the volume of grievances and other disputes that the city has with local 230. I want to comment on that item briefly, as part of the City's sunshine reform efforts we provide for the public much more information currently than in the past about many items, and that includes labor relations items. So on the City's Website, we list all of the grievances, pending grievances with all bargaining units. And so that is maintained and is updated so our Website has a current list of those. The other thing they commented on is recommendations related to participation of local 230 and labor management committees and one specifically called the labor management initiative and lastly they commented on the lack of having negotiation ground rules when we engage in contract negotiations with local 230. As the City Manager mentioned, our memo and a recommendation is that council accept the response to the grand jury and accept all of the recommendations that they have made. We are currently in negotiations with local 230 on their contract and several of the recommendations would require bargaining or negotiating with local 230 to effect any changes in those areas. There are three specific ones that definitely would require bargaining and a change in contract language. One is the one about use of city paid union time off, sick leave payouts, and also, any changes to minimum staffing. As we noted in our memorandum we actually have proposals on the first two that we submitted and we actually attached those proposals to our memorandum. I want to go through a couple of the items specifically, and one is the issue of city paid union time off. We noted in the memo and we think it's important to say that the city has 11 bargaining units. The city does provide time off for union officials during mayor -- time off from their normal work duties. To participate in certain labor management functions. So whether or not we had a contract provision that provides for it, we are obligated to provide that time off. So to give you some time off, time off for the union answer bargaining team to negotiate with the city or time off for a union official to represent an employee in a grievance, a disciplinary process or any other administrative type process. Time off to participate in the labor-management committee. All those are examples that even absent the union contract language the city has and will continue to provide that time off. We think it's important to provide union leaders with time off to work with the city on various issues and to represent employees. The issue on local 230 is they do not have a specific article that is called union relief time. Other of the City's contracts have specific articles and provisions that call for that. The issue here is that they have a provision about union time off that's actually contained in the contract minimum staffing provisions. The city has article 33 in the fire contract that provides for minimum amount of staffing for various fire apparatus, depending how, whether it's a truck, reflection a two-piece company, three-piece company, I'm sorry, one-piece, how many are supposed to be on it at any given time. There's for example if a firefighters is absent or takes a sick leave day, that absence has to be filled. It can be filled in two primary way, one is by paying another firefighters overtime to fill that absence or alternatively to use relief personnel to cover that absence. However, there are certain exception in the contract where an absence does not have to be filled. What's on the screen now is it gives the fire chief the discretion to not fill an absence for certain circumstances. And the one that's listed there is the one that specifically mentions union business. As you know, firefighters work 24-hour shifts and so what it says here is that, is the fire chief has the discretion not to fill the absence for a total of three employees who are absent 12 hours or less, so in other words, half of a 24-hour shift, who are executive board members or designees for union business. The union has tried to clarify that language in interest arbitration. That was not successful. We also had a grievance arbitration over the interpretation of that language and what that language actually meant. Whether it meant the minimum staffing exceptions or did it require the city to obligate the city that time off for any union business. The union prevailed in that grievance, and the arbitrator interpreted that provision to say the city is obligated to release up to 3 employees for up to 12 hours for union business, and the union business is defined as whatever the union defines it union business. So it isn't necessarily the examples of the issues I gave you previously, it can be any function that local 230 determines. And the city is bound by that grievance decision until, unless there is a negotiated change in that -- in the language. So what that means is then, is that for a maximum liability perspective the city is obligated to release three executive board members for local 230 for up to a maximum of 12 hours for a maximum of 365 days a year. That is then a maximum of 13,140 paid city paid union time off hours. That doesn't mean they will utilize all of those hours, it just means that is the maximum amount of time that could be used for

union business. And as I indicated, we do have a proposal pending with local 230 to actually provide a contract language specifically on union release time and what would be examples of what it could be used for. The other item that I want to briefly discuss that was mentioned in the report is, sick leave payouts. Sick leave payouts is not unique to local 230. The city does provide sick leave payouts at the time of retirement per the -- what the provisions of the union contract. It has been a subject of media articles about the amount of sick leave payouts. This is from the fire contract and tells you it's a formula. Without going through it in detail, I just want to point out the bottom category which is the one that generates usually the highest payouts. So if an employee retires with more than 1200 hours of sick leave and this is based on a 40-hour-a-week employee, they get to get 100% of the sick leave paid out regardless of the total balance. So that is often what leads to high pay-outs. Just to give you a sense in 2008, calendar year, not fiscal year, the city paid citywide a total of \$7.8 million in sick leave payouts, \$5.6 million of that was for sworn police and fire. And it has been steadily increasing. In 2006 it was 4.6 million again citywide, 2007, 5.5 million citywide. So it has been increasing which I think is what has caused some attention to this benefit and it is something we are negotiating a change, we have a proposal on a change on that particular item. So the next steps. The next steps as I mentioned are pending negotiations on three of the items that are listed and we have proposals on those items, in terms of the status of the negotiations with local 230, their contract expired on June 30th of 2009. The city did declare impasse in those negotiations and we have mediation scheduled with local 230 on September 30th. So be happy to answer any questions, and as the City Manager mentioned our recommendation is to accept the staff report, as the City's response to the grand jury report.

>> Mayor Reed: I have a motion to approve the recommendation. Was there a second? There's a second, okay we have a motion to approve ton floor. We do have some council questions. First, Alex, you mentioned that three of the proposed items nor negotiation are attached to the staff report here. Where would the public go if they wanted to see the rest of them?

>> Alex Gurza: On the city's Website if you go to the City's -- to the Internet site and look for the City Manager's office, and then there's a category of the office employee relations, and with clicking there will take you to that and we're happy to accept our -- I think my phone number is on the staff report, and if anybody has trouble locating it I'd be happy to walk them through it they can give me a call.

>> Mayor Reed: If anybody wants to see them they're posted on the web. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor, thank you for the report. I just want to understand where we're at. Because I remember on Mayor Reed's sunshine romps, we talked about doing negotiations in public, instead of bringing a final proposal to council and voting on it for any bargaining or whatever, but some more of the transparency on what occurs on the give and take. Where are we with that and what needs to be done to push that forward?

>> Alex Gurza: Councilmember Oliverio, issues like that about how negotiations are going to be conducted are usually the product of the initial discussions with a bargaining unit. And essentially those are often memorialized in ground rules which is one of the items that the grand jury reflected. Ground rules can contain a lot of things from the -- how our meetings is going to be scheduled, how many people would participate, how tentative agreements would be reached and also, if others allowed to participate in the negotiation. Are they open, are they closed. With local 230, we did propose ground rules and I think those were also attached to the memorandum. And unfortunately we were not able to reach an agreement on the ground rules as a whole but on that item specifically.

>> Councilmember Oliverio: Okay, I think we burn a lot of time going back and forth and having pointing fingers at each other between management and unions. Very well if the management is at fault, the public should know that. If the unions are being unreasonable, the public should know that. So I really think that maybe the council needs to make it where the ground rules are that's what it is. These are discussions we have in public because really, it should be transparency. This is how much money I have, and these are my procedures, whatever the issue might be, and let it just be out there. If we have good times and a lot of revenue then everyone gets to share. But in times were we don't, whether it's a wage increase or a policy, I think that just needs to be discussed openly, and that way we just get past a lot of these issues, and we don't have to have the grand jury coming down on the city. Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. Thank you Alex for the presentation. I just want to take the opportunity to thank the San José fire department for their commitment and dedication to the residents, the residents of San José. Earlier this month a brush fire broke out on Communications Hill, and it was rapidly contained, pretty much within hours on the same day. This just really shows that

members of the San Jose Fire Department are definitely one of the best in the country, and we should all be proud that we have such a great fire department serving our residents. In regards to this particular item, I receive a phone call on Friday, from the president of local 230 stating that he received the City Manager's response to the grand jury record last Friday at 3:30. So it didn't really give them an opportunity to respond to the City Manager's response to the civil grand jury report. So at this time I'd like to make a substitute motion to defer any action on this item for one week, which will allow local 230 an opportunity to provide a response to the City Manager's response, in an effort to pretty much leave this at that time response for the public record, if anything. I understand that we need to submit our response to the civil grand jury. But at the same time, there's a custom issues in this report that I think is worth mentioning. So if I can get a second I'd like to speak to that motion.

>> Mayor Reed: All right, we have a substitute motion to defer for a week. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. To my colleagues, I have a letter here dated June 19th, 2009, from Randy Sakani stating that -- he pointed out a lot of critical information that was left out of the grand jury report, namely, two items that Alex also mentioned in his presentation, which are the minimum staffing policies in the MOA saved nearly \$1 million a year in overtime. And the second issue is the city and the union voluntarily agreed to the use of city-paid union time off and minimum staffing. Now, this was not addressed in the grand jury report and I just think that if we allow local 230 to provide response to that, I think that mutually it will serve both sides a better understanding of what was agreed, mutually agreed between the city and local 230. And also, as I was reading through the grand jury report I also noted that the information was left out in the City Manager's response. So findings 5B and 5C talk about the need to backfill the positions of the firefighters that are on union time off, and they also left out that leaving out this position also saved the city a lot of money. I think that that should be included so that the members of the grand jury know that this is something that was mutually agreed by city administration and local 230. I think there are a couple of things really line items, that are pending negotiation and we should allow local 230 an stunt for response to that. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I wanted to ask a couple of questions on the process. The grand jury process, just to be clear. The grand jury report came out, and we have an obligation to respond in how many days?

>> City Attorney Doyle: Typically 90 days. Not typically. The law reads 90 days. In this case, knowing that we were not going to be able to get to council with a final response until today, we asked and we received approval from the grand jury or actually, the court, to respond late. If the council decides to defer this, I will -- I can ask the court again for another continuance. I don't expect it to be a problem as long as they know that we're working on a response. So the shorter answer is, it's 90 days unless the court has extended it. The court has extended it once and I don't think it's going to be a problem if the council wants to defer the item.

>> Councilmember Constant: And does local 230 have an opportunity to provide a response to the grand jury as well?

>> City Attorney Doyle: The law really requires the city to provide the response. I don't know if they accept -- the grand jury accepts anything independent of that. But it's not required by statute. And so I think the idea is that the public entity takes whatever testimony and whatever decides the response it wants to make to the grand jury. But I don't think anything that precludes local 230 from responding but it doesn't require a response.

>> Councilmember Constant: Okay. And then just confirming what day this memo was put out. Perhaps Alex, the response that we have.

>> Alex Gurza: Councilmember Constant, this memo under the 14-day rule was posted publicly 14 days in advance.

>> Councilmember Constant: All right. So the assertion that it came out Friday --

>> Alex Gurza: Well, what happened was to ensure that local 230 received it. Because publicly, it's released to anybody 14 days in advance. We sent a courtesy copy to ensure that he had seen it on the agenda. But anybody on the public, it's acceptable to anyone as to what went out in the early distribution packet.

>> Councilmember Constant: That's what I thought, because I know I had read it far before Friday. 14 days is a long time of notice. I'm not sure we necessarily need to wait until week, and I guess I would ask the City Manager, what would you envision, or perhaps Alex, what would happen between now and next week that would be different?

>> Alex Gurza: I'm not sure, I did want to respond to Councilmember Nguyen, at least the second item you mentioned in terms of what was agreed to. That item, that's actually been resolved, and it has been resolved in local 230's favor. We went to a grievance arbitration, it had briefs that -- available publicly, and local 230 prevailed on this contract provision indicating that what was negotiated, and again, it was negotiated prior to my time as a director, means that local 230 is able to take -- to take the union time off as it indicates there at their discretion. So that has been resolved. The issues that the grand jury is making is recommending that the city change that. And in order to change that it's a move-forward issue. It's trying to negotiate a change and the council has had authority is as your labor negotiators, as far as look backwards to what happened in the negotiation that was a product of an extensive process already. And on the first item in terms of the savings ever I think you said a million dollars, I'm not sure where the number comes from but the issue here, if it's different than this however if it says for example that you had to allow union officials to be off this amount of time but the chief had no discussion, must back-fill them, that that would obviously cost money. But that isn't the status quo here. So really, it is an issue of what is negotiated in the future.

>> Councilmember Constant: So I don't think I got an answer though to my question. What could possibly be different seven days from now to what we have now?

>> Alex Gurza: I'm sorry for the circuitous answer. But, especially on this item of union time off is recommending that the city negotiate a change to it in some way.

>> Councilmember Constant: I think that's what I was getting to. Reading the report and the response, I don't know what waiting an extra week would do. I think as a collective body if we have a discussion and we feel we need to modify the language of one of the point, in this particular instance, if the council feels we need to add a line in there, that acknowledges there was significant savings to the city by not filling these positions or something like that, that's something I think we can do. I'm just not sure what we can get out of delaying a week.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Councilmember Constant, and also Alex, just to go back to the minimal staffing policies in MOA, obviously I got the \$1 million from Randy's letter. I think he's here today around we should give him a chance to respond to that and give them a week to respond. Honestly, I don't know where that amount comes from, but I, know that have this letter in my hand and it addresses that particular issue. So now there's a disparity, discrepancy between the response in the city manager's memo versus what I'm hearing from the president of local 230. And so I'm not comfortable moving forward with this unless we get all the answers, all the questions answered.

>> Mayor Reed: Alex, do you have a copy of that letter that Councilmember Nguyen is referred to?

>> Alex Gurza: No, I do not. One of the issues of timeliness, as I pointed out, we have issues on the table, sick leave and union time off. Clearly if there is a change in direction for the negotiators, we still would need time to the September 30th date. I want to point out, we do have a mediation on September 30th.

>> Mayor Reed: Are you done, Councilmember Nguyen? Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to ask a question about one finding and that's finding number 6, in reference to sick leave, and one individual who is a terrific individual, he just happened to -- he happened to get almost a quarter of a million in accumulated sick leave. As I read on page, this is near the end of the explanation. It does say this provision shall not apply to any person who retires after June 30th, 2009. Are we saying that this kind of payout most likely will not happen in the future?

>> Alex Gurza: That was our proposal, I think Councilmember Pyle, and why had a couple of other proposals that were a little bit different. One for current employees and then one for future employees. So the one, our initial proposal for future employees is that they wouldn't be eligible for sick leave payouts. That is simply, however, only a proposal, and it hasn't been agreed to, and there's no agreement yet to make any modifications to the sick leave payouts.

>> Councilmember Pyle: I'm in favor hearing from the fire department in reference to some of the grievances, and other issues, as well. That -- I think they need to get some explanation for. We as a city can't demand that. But if they are willing to do that, I think it would be a good opportunity to get that information.

>> Alex Gurza: So the reply, did you mean the fire department or local 230?

>> Councilmember Pyle: Local 230, uh-huh.

>> Alex Gurza: Local 230.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Councilmember Nguyen, the motion is simply asking for one week, and from what I gather, your interest is making sure there's a complete record going forward, that there's a response from local 230, so there's a complete record, not just given to the grand jury, but so we also have a complete written record prior to moving forward?

>> Councilmember Nguyen: Yes, That's correct.

>> Councilmember Kalra: Okay, thank you.

>> Mayor Reed: I have two requests to speak, we might as well take that at this point. Jerry Mungai and Randy Sakani, please come on down.

>> Thank you, mayor. Looking over the sick leave payouts and comparing those that we find in a private sector, they were beyond generous. I would like to see it, like, restricted to one month paid out at current rates rather than have this thing accumulate all through the years so they can retire at quite a few hours at their retirement age pay rate. And it seems to me that the taxpayers are not having much input into this. If this goes to mediation, the mediators typically will go along with the unions. And I don't know if there's any taxpayer representation on this mediation, is there? Or are you the taxpayer's representative?

>> Mayor Reed: You're looking at that time taxpayer's representatives, that's us.

>> Okay some and if you were to do that, it would go a long ways to bringing the total compensation of city employees a lot closer to that which is experienced in if private sector. Right now, typically about 40 per more total compensation to public employees versus that found in the private sector. So I'm just recommending that you please consider changing that suggested payout to one month at current pay rates. Thank you.

>> Mayor Reed: Randy Sakani and then Ross Signorino.

>> Good afternoon, Mr. Mayor, Randy Sakani San José firefighters, and councilmembers. Firm, I just want to speak on baffle of supporting Councilmember Nguyen's request for deferral. There is, I think it will provide the opportunity for due process for you and due diligence in that it will do what Mr. Constant has talked about. He said if you were going to make changes to the recommended memo, you could do that. What this will do is give you an opportunity to get other information that heretofore has not been provided to you relative to the bargaining history, how we arrived at these current benefits, what values there are, example, the \$1 million. So that if, after you have all the facts that you haven't been given yet, then you can make an educated decision on how you want to modify, if at all, the memo that's before you. So I'm here to support that motion to defer for a week, and of course, I'd answer any questions you have.

>> Mayor Reed: Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. I really didn't intend to talk on this subject but listening to you more than the public, I thought I'd comment on what one of the councilpeople mentioned here, and that's Pedro Arrivera -- Pedro -- Pedro, anyway. But nonetheless, you said something there about right now you want to tell the unions somehow or in other words to this effect, that might not be the right words, or the exact words, I should say, that right now, these are not the times -- these are hard times and we must all share in the hard times and then when good times come along we could share in them. Well, let me tell you something: There is no good times ever. You take care of things when there are good times, want to use that term, you take care and understanding that bad times might come along. You be reasonable at all times, whether they seem to be good or not good. That's what you do. That's how we get into a lot of difficulties if we're not careful of these so-called good times. We have seen the so-called dot-com bust and we're seeing the real estate bust and unemployment and so on. We got to be careful in the times when they seem to be good. Thank you.

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

>> Councilmember Liccardo: Thanks, mayor. Randy, could I ask a question about the document? Councilmember Nguyen was nice enough to show it to me, and I'm trying to understand how what the document says is that the minimum staffing policies in the MOA save nearly \$1 million a year in overtime. Could you help me understand that?

>> Sure. What we did on a preliminary basis is we went back in the fire department to have a computer program called telestaffing and it monitors every day the attendance of every employee, is captured in there and it's coded. The your attendance is normal, you're doing the job that's assigned to you that day. In fact there's no code, that's listed as standard or something. For example, if you are on union time cox they put in UTO. And how many hours, you can track day by day not only how many aggregate hours

but how many people used it. The exception as Mr. Gurza talked to of the union contract rules was proposed by the city of inclusive of three people on union time off, a city proposal to save money for both sides. The union, where otherwise you would pay people to come back in and work for those people who are off on 12 hours, and on the city side, 12 -- or ten spots per day for 12 hours off for the purpose of retaining or being a trainer. And it is -- those spots that what we did is, we went back over telestaffing for five years, identified some but not all of the hours that the city, the fire department used because of that benefit, that portion management side value of the agreement that equated to \$4.9 million of savings. In other words, had that provision for the department to not have to backfill with minimum staffing for those absences for those staff to go fire department related work, they would have to do overtime, that cost would be \$4.9 million and that is a conservative number but we took it out of city data.

>> Councilmember Liccardo: Okay, 4.9 million over several years, is that right?

>> I couldn't hear you.

>> Councilmember Liccardo: That 4.9 is over several years?

>> Five.

>> Councilmember Liccardo: Five, okay. The assertion is because the union didn't insist on back filling for the union time off that the city saved money?

>> The agreement is that the city can use those ten spots per day without having their exceptions to what otherwise would have to be back filled by the fire chief.

>> Councilmember Liccardo: Okay, I think I get it. But my understanding that is city, the taxpayers are paying for this union time off. And your assertion is because the union doesn't insist on having other firefighters backfill, those firefighters are on union time off, that's saving the contaminate pairs money. It sounds like pretty ambitious logic. And I missing something?

>> Yeah, we're not asserting that the absence, that would be -- see, if, prior to this agreement, for those members that were going to be gone for union business, the union had to pay out of union dues for somebody to come back and pay. So when the city came up with this idea, it was Mr. Gurza's predecessor who said, well, we'd like to say we, being the city, would like to save on our overtime cost. So we would like to have ten spots a day that we don't have to pay overtime for if those folks are absent. And you, this woman's now talking to me said, I know you're aware that if union officials are going to be gone, you have to pay what we call paid shift trades. And so we would dole out union dollars out of our budget. So she said this could be a win-win deal. We looked at it and said, yes, you're right. We negotiated the parameters of absence hours, what you could be gone for and we struck the deal.

>> Councilmember Liccardo: Thank you, Randy.

>> Mayor Reed: Anything else, Councilmember Liccardo? Councilmember Pedro Luis Oliverio. [laughter]

>> Councilmember Oliverio: From Italian to Spanish, there we go. Randy Sakani, I have a question for you. And this should be no surprise, my question, would you support public meetings, where your negotiations with Alex Gurza who represents the city council, would those negotiations, instead of it being in a closed room, was actually in the public, where people could attend or watch on television?

>> Yeah, as Mr. Gurza gave you part of this story, we did discuss some of the proposed ground rules, and in fact, we made a counterproposal that would have made it public hearings. But it wasn't acceptable to the city, our proposal wasn't acceptable.

>> Councilmember Oliverio: So again, I want to understand, so you would support public meetings, where they could be viewed on television or watched by citizens of the public?

>> Yeah, I think under the right conditions, and I said we made a proposal back that would have made them public, but the city representatives said our counterproposal on that wasn't acceptable.

>> Councilmember Oliverio: Okay, thank you. And Alex, did you want to mention anything there?

>> Alex Gurza: Yes, just to clarify it. The ground rules, proposed ground rules that are attached that we proposed do say they're public. Local 230's counterproposal is that they occur during if council meeting today. All 11 of you would be here, we consulted with the local attorneys plus, labor negotiation as you know sometimes can go you know hundreds of hours over the term of a contract so that was really our concern, is to have them be at an agendized council meeting as opposed to publicly in the committee rooms where anybody could attend. So that was the issue there, that we couldn't agree to having them during your normal council meetings.

>> Councilmember Oliverio: I would concur with that, Alex, because that would mean that all these people in the public that are waiting for their item to come up would have to wait for ten and 12 hours at a time. So I really don't think that's public meetings. If it's public meetings, thank you, if public meetings

need to be public meetings. As a committee room, as a committee meeting as we have all sort of times. So I've said it, I think we should get there. I think it serves the union's purpose, it serves the residents of San José. Otherwise we're going to have these conversations and the new thing here is defer. It's the policy of defer. Let's just settle these issues and be out on the public with it all. Finally. Alex, the 13,000 hours of union time off, what does that equate to? I forget, like in a dollar amount?

>> Alex Gurza: In a dollar amount, I'm sorry councilmember, I don't have that right at hand because it depends on the rank of the person that has the time off. I could follow up and give you some estimates. Really, the issue is, the person is making the same pay whether they were at their assigned fire station or local 230 office. The issue is the absence of the services of the sworn personnel. I really wanted to briefly comment that one of the recommendations of the grand jury is potentially to reassign people who are going to be going a long time to 40-hour administrative shifts or some shift where they're not at a station, so that station then is not running short a person during that absence. There are many possibilities to address that issue. That was one of the recommendations the grand jury had.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all I'd like to thank the firefighters and the City of San José of doing a wonderful job. I have more than two weeks before the grand jury, the public has at least two weeks to do the grand jury report. So I don't see my reason to defer it for one more week, I will not be supporting the amended motion.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Of course, I forgot what I pushed my button for. But --

>> Mayor Reed: We'll come back.

>> Councilmember Constant: I was so intently listening to my colleagues and Pedro that it really messed me up. But I really think that what really is here is that the grand jury, it doesn't -- in my opinion, it doesn't matter how we got to the current policy. The grand jury is pointing out that the current policy, they believe have inadequacies in it. And we are responding that we are looking and addressing those through contract negotiations with our union. I'm not sure what else, anything else we would say would make any difference. The fact is: They have an opinion that they think it's inadequate for the taxpayers, and the city and the employees, and we are saying we agree we are going to address this issue. We're not placing blame and saying we didn't do it, they did or whatever the case may be. If it makes people feel better I'm totally amenable to saying, let's change our response slightly to say, this particular issue arose in this year, in agreement between the city and local 230. However, we -- it is one of the issues that are on the table that we are addressing in our negotiations. So if this motion does not pass, to defer, then that's what my amendment's going to be to my previous motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I'll support the motion to defer for one week, partly because of what we've seen here. I think that the questions that Councilmember Liccardo had for Randy, and whether the dissent is ambitious logic or not, the reality is there is some explanation, some background that could be helpful to the grand jury and helpful to us at least having it on the record as to the sense that local 230 has to responses to some of these questions raised by the grand jury. It may not and in most cases will not change anything that we're going to do but I think it may be helpful in terms of creating a more complete record and again we're talking about one week to allow for them to have the response, and then it will be off to the grand jury, to -- for further deliberation and for us of ultimately it comes down to us having to work with local 230 and making changes that adequately respond to some of the concerns raised.

>> Mayor Reed: Okay, I'm not going to support the motion. This grand jury report has been out for several months. It's plenty of time for local 230 to respond directly to the grand jury or to us. And so I think we ought to just move ahead because we are just basically trying to renegotiate all of this and that is the answer whether we look back or forward, we're still trying to renegotiate it. So I'm not going to support the motion. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I did second the motion, and I'm in agreement with what Councilmember Kalra just said about having a more complete record. And I think that a week deferment to allow that response, I think that as long as that doesn't create some kind of a real problem with the grand jury, and with other things that we're doing, I don't see why a week would make that much difference. And it also says in this report that there's a lack of trust. That that's one of the things that comes across that's written in this report. And I think anything we can do and perhaps this gesture of

allowing things to come in I think strengthens resolving that issue. So I'm going to support the motion to defer one week.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: I'd like to ask the attorney, I'm not real familiar with responses to grand jury. What is the protocol on responding to the grand jury, if the grand jury report was directed to the city? And I know that they do many other grand jury investigations. Is it acceptable to have organizations other than the one the report is delivered to, to put in a second opinion?

>> City Attorney Doyle: As I mentioned to Councilmember Constant's question, I don't know of anything that prohibits a private party from responding to the report independent of the city. The way the law is set up, in the protocol that you follow, is that the public entity, in this case the city, is required to respond in a certain time period. In developing the City's response you take into account whatever information the city council wants to take into account. Typically it is a staff report, and you accept the staff report. The most recent case in point is the Los Lagos golf report. So you're really advocates, the time period, we've asked for an extension once, there's no problem, I don't anticipate a problem if we ask for a further extension. But it's really is up to the council to decide what information it wants to have to make that response. Is the staff report, as proposed, sufficient, or do you need something more? Is there some new information that you're looking for?

>> Councilmember Chirco: I would ask I think it would be in local 230's interest to supply a response separate from the city. I think the city has a responsibility to respond to the grand jury record. But that does not prevent 230 from also responding. Because it is about the fire department and there are different opinions. I don't -- I'm not comfortable supporting the deferment for one week based on the responsibilities based on the city council and the city, but that does not prevent 230 from taking the same grand jury report and responding in the manner that they feel is appropriate. And I don't think that speaks to distrust or not. I think it speaks to everybody's engaged in this, and I think differences of opinion are absolutely appropriate. We have them up here all the time. So I won't be supporting the motion. But I would ask if 230, you know, would be interested in supplying their own response to the grand jury. Thank you.

>> Mayor Reed: All right, we have a motion to defer for one week, that's the substitute motion made by Councilmember Nguyen. All in favor, that's a -- in favor Kalra, Campos, Pyle Nguyen, Herrera, -- one, two, three, four, five -- that's six I think -- is that six in favor? Five in favor, okay. Opposed, Oliverio, Chu, Constant, Reed, Chirco, Liccardo, that's six. That motion fails on a 5-6 vote, taking us back to the underlying motion which was on the floor, by Councilmember Constant.

>> Councilmember Constant: Which Mr. Mayor, I'd like to amend, if Alex understood what my amendment was. It's just in relation to the minimum staffing that there's just a brief statement of acknowledgment, that it was something that was agreed to in X year, and then our response, that acknowledges that it was a joint agreement.

>> Alex Gurza: Yes, Councilmember Constant perhaps I can work with the City Attorney in a cover letter that makes that very point. There is no question that that provision that we showed you was the product of the 1996 negotiations between the city and local 230. It was not through an interest arbitration, it was negotiated at the table. We have no issue at all in making that clarification.

>> Councilmember Constant: I don't know who seconded it.

>> Mayor Reed: Councilmember Oliverio --

>> Councilmember Constant: I think that's agreed, it's on the record and acknowledged and hopefully it will complete the record and allow us to move forward. Thanks.

>> Mayor Reed: The motion is to approve the report with the modification just described by Alex. Further discussion on that? All in favor? Opposed? None opposed, that's approved. Completing our work on this item. Our next item is 3.5, our executive home loan program. Councilmember Constant.

>> Councilmember Constant: Thank you, Mr. Mayor. On this particular issue, as we know, back couple of months ago, we had I believe it was August, maybe August 4th or so, we had quite a bit of council discussion in relation to the executive home loan program. At that time, the council gave general direction to staffer to take a second look at the executive home loan program and return to the council with a revised policy for us to consider. Since that time, I had opportunity to discuss with the City Manager's office the council taking a freeze on this issue. And I have a memo out which was discussed pretty lengthily at the Rules Committee. And I'd like to make a motion that is just slightly amended from the one that is in my memorandum, and that would be that we pause, stop the home loan program, unless any home loan -- any home loans are approved by the city council, except for those loans that are currently in

the process, and were requested within a two-year period from the employee's hiring date and where the city has a copy of a purchase and sale agreement for proposed loan. And if I get a second I'll explain.

>> Mayor Reed: We have a second to the motion. So motion on the floor. Councilmember Constant.

>> Councilmember Constant: So the reason I brought this memo forward, and as I said had lengthy discussions with the City Manager's office, is I believe we have had a policy in place that has not always been followed by the council and previous administrations. And I think it's important that when we're talking about programs like this, that involve basically taxpayer subsidy to our executives, that we, one, have a very defined program if we're going to have a program at all, and that the parameters of that program are followed. And I think that's important, so that there's accountability on the part of the employee to the city, and accountability on the point from the City Manager's office and the council to the taxpayers that we represent. I really don't want to get in the business of foreclosing on home and taking over properties and paying off first mortgages for people, if we're left holding the bag like we have been in the recent past. I think this is important that we look at it. I have had as I said lengthy discussions with the City Manager's office and I feel that the progress that's being made on this policy is very good and definitely in the right direction, that we need to be going. However, I think it's also important to realize that we have people that are in the process that essentially have been offered this program, and are in the process of closing their home loans, and that we do have to honor those obligations that we, as a city, made. And that's why I made the motion that I did today. Thank you.

>> Mayor Reed: Thank you. I just wanted to double-check and make sure I understand. The motion is different than the language in your original memo. You use the word stop, as opposed to require approval.

>> Councilmember Constant: Yes.

>> Mayor Reed: So you're proposing that we just take a time out, except for pipeline?

>> Councilmember Constant: I'm sorry, I probably wasn't clear in what I meant to say, and that the authority to grant these without council approval should stop. And that any loans that are offered and approved come to the council for approval. That's the added language.

>> Mayor Reed: So you have a exception for those that are in the pipeline in the process. Anything new, we are going to have to approve. All -- well, we have another referral that council has given the manager to work on terms and conditions for modifying the program, and that will come to us in due course.

>> Councilmember Constant: That's correct. And my assumption is that at the point that we review a program or new parameters, then it would go with whatever the new policy is.

>> Mayor Reed: Okay, that is the motion. Councilmember Pyle. Vice Mayor Chirco.

>> Councilmember Chirco: I think you may have answered my question when the mayor asked for clarification. So it's not to stop, it's to require city council approval, except for those that are already in the pipeline?

>> Councilmember Constant: Right. I sort of misspoke. I meant to stop the automatic approval, and that it comes to the council for approval.

>> Councilmember Chirco: Even the ones that are in the pipeline?

>> Councilmember Constant: I added the language, except for those that are currently in process and were requested within a two-year period from the employee's hiring date and where the city has a copy of the purchase and sale agreement for the proposed loan which that language was worked out with the assistance of the City Attorney and the City Manager so it won't negatively impact anything that's currently going through the process.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Just to clarify, I think the intent is right now, with respect to council appointees, the loan has to be approved by the city council. So that doesn't change. In terms of anyone hired by either the City Manager or the redevelopment director, those have been subject to their approval not having to come to council. This motion, if passed, would change it to require it that the appointments by the manager or the -- the manager and the redevelopment director cannot approve the loan. The council would have to approve the loan.

>> Councilmember Chirco: Except for the ones that are currently in the pipeline.

>> City Attorney Doyle: Except for the ones that are currently in the pipeline.

>> Mayor Reed: City Manager.

>> City Manager Figone: and until there is a replacement policy.

>> Mayor Reed: I have request to speak on this item, I'll take public testimony at this time, Jerry Mungai. And Jerry, if I didn't get your last name right, you'll tell me, won't you?

>> If I read the Mercury News article on this correctly, one employee of the city worked for ten years, and was able to get a loan to upgrade his residence to live in Almaden valley. I certainly hope that any proposal that you have Councilmember Constant, that that would preclude that. I can understand a loan as a perk for someone coming to live in the city to do work for the city and finds the housing to be a bit pricey. I also think that the people who get these loans should pay -- get a 1099, that represents the difference between the market rate and their subsidized rate. So if the market is, like, 6% and they're getting something at 2%, they should get a 1099 for the 4% difference. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We do have a motion on the floor. All in favor? Opposed? None opposed, that's approved. We'll now move to item 3.6, report of Rules and Open Government Committee meeting August 19th, 2009. We have a motion to approve. We have a request from the public to speak on this item, Kathy Brandhorst.

>> My name is Kathy Brandhorst, Lisa Marie Presley, Jonbenet Ramsey, John Steele, and I'm also the United States president. I just wanted to let you know, I am talking on the open forum so I just wanted to express myself with the Vietnam war memorial and in San José.

>> Mayor Reed: Ms. Brandhorst this is not the open forum. You're going to have to wait, I'm sorry.

>> Okay, thank you.

>> Mayor Reed: I have a motion on item 3.6. All in favor, opposed, none opposed, that's approved. 3.7 is a report of the Rules and Open Government Committee for August 26th. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 4.2 is a grant application, approval of a grant application for pathways out of poverty. Jeff Ruster is here who is taking a lead on this. I just wanted to make a couple of comments on this. I made a couple of trips to Washington and I talked to a lot of people in the administration as well as in the -- in our legislative delegation. And having this kind of a coordinated effort to ensure that we're not just creating green jobs, we're creating green careers is something that's very important. I want to thank network 2 future and South Bay labor council and working partnerships for work together to try to put together a package. Because when I was in Washington everybody thought this kind of an effort was a great idea, but not many people figured out how it could be done. So hopefully, we've figured out how it can be done. And the people in Washington will look at this and grant us this funding so we can show the rest of the country how to do it. With that Jeff, thank you for putting this together and I'm sure you have a couple of additional comments.

>> Jeff Ruster, Office of Economic Development. It is my pleasure to be here today to ask you for your authorization so we can submit an application in the amount of \$2.5 million that would be ARRA funded to serve 250 San José residents living in high poverty areas here in our community. This proposal comes at a critical time, obviously, and it explicitly recognizes two things, that inevitably Silicon Valley will come out of its economic woes, it will reinvent itself, and it will be the clean tech revolution that will lead the way. But it also recognizes that over the last couple of years this economic recession has hit very hard, particularly those underserved communities. And that is what this proposal is all about, is to connect underserved populations to careers in clean tech economy. The proposal specifically designates two high-poverty areas, areas that have a poverty rate of 15% or more. In addition to being located in these areas, the clients that would be enrolled in this program had to have additional barriers which means they are unemployed, they are ex offenders, high school dropouts or low income individuals to two areas more or less encompassing pass 14 of the SNI areas and about 190,000 people live in these areas. In certain cases there are pockets of poverty in excess of 30%. As mentioned the whole goal is to connect these communities to careers in the green economy, specifically this proposal targets energy efficiency, green construction, and building retrofitting. As the mayor mentioned I also want to recognize the leadership brought forward by working partnerships, and South Bay labor council, specifically Cindy Chavez and Neil Struthers, they were industrial in bringing together a very large group of partners of nonprofit organizations, community colleges, representatives of the trades employers and the workforce investment boards to put together a series of proposals. The pathway out of poverty grant is just one of a variety of proposals that we're working on. And Work2Future is a the lead applicant for the pathways out of poverty program. As was mentioned our ask is \$2.5 million to serve 250 residents. There are really four ways that we've created pathways for people to get out of the situation of poverty that they find themselves. The first is and given the nature of many of the clients that we'll be serving in this program, we'll be looking at basic remediation skills. The basics of reading, math writing and language skills. The second would be a preapprenticeship training program. There is a recently approved and nationally recognized preapprenticeship training program where individuals will receive about 120 hours of overview in the basics of plumbing, electrical and roofing. Third opportunity is to provide them with direct career training,

occupational training in the areas of weatherization and energy auditing for example. Last but not least, none of these are mutually exclusive, is the opportunity for self-employment and entrepreneurship, as a way for these individuals to gain meaningful employment in the green subcareers. So in addition to the occupational training, we through the businessowner.com space where we've served already 70,000 entrepreneurs in the couple of years of its existence, would provide these individuals, where appropriate, with the basics of business planning, marketing support, and other small business support. We would work through our traditional outreaches programs include the SNI network, community and faith-based organizations, the community colleges, I know a few of the city council offices have contacted me to express their interest in maybe helping with outreach, we would definitely welcome that. We of course are going to be held to Department of Labor those wonderfully complex performance outcomes, and again I just want to recognize that this is an important opportunity not only to serve 250 individuals but also, to really create the partnerships, the referral mechanisms, the funding strategies, that are going to be at the foundation so that we can play with our partners an instrumental role in creating those 25,000 jobs in the short to medium term.

>> Mayor Reed: We have a motion to approve. I do have some requests from the philanthropic speak. I'm going to take that now. Luise Arhan and then Jerry Mungai.

>> The war on poverty has cost over a trillion dollars, probably over 2 trillion and we still have poverty. This here, is going to be another government program that the taxpayers are going to have to shovel out dough to finance. And I would imagine, I'd like to know, if these programs are going to require, for these employees, to be paid prevailing wages, or living wages. Do we know that? Is that going to be a requirement since the unions are going to be sponsoring this program on our behalf? Do we know that?

>> Mayor Reed: The federal government sets the standards for what we -- and how we have to spend the money. I'll have you talk to Jeff ruster afterwards because he can give you the the details of it.

>> Do they have to pay prevailing wages?

>> Mayor Reed: Sir, I don't want to get into a dialogue here. Give your testimony to council and can you talk to Jeff ruster for the final points.

>> This is not free money, this is going to come from the taxpayers all over the country. So any thoughts that we will get free money, is just out of the question. So we're going to pay for it one way or the other.

>> Mayor Reed: Luis, or Louise, she's going to correct me if I'm wrong, Aurhan. I'm going to claim I can't read your handwriting very well.

>> I'm sorry?

>> Mayor Reed: I can't read your name very easily.

>> Auerhan. I always said I should have been a doctor just on that basis. Thank you very much, Mayor and councilmembers, and thank you, Jeff, for putting this proposal together and being the lead on it. I am Louise Auerhan, and I'm here also on behalf of Cindy Chavez for Working Partnerships U.S.A. And we strongly support this Pathways out of Poverty proposal. In this proposed program, not only would it help people gain the skills they need to get back in the workforce right now, which is an urgent need, but it also lays the foundation for a new kind of partnership. A partnership that connects training directly to job creation on green projects. So we know, and our research has shown, that a low-income marginalized communities in San José, weren't just hit hard by the most recent recession. They've really been struggling throughout this decade. Even when the economy was growing it simply hasn't been creating enough good jobs that are accessible to people who have barriers to work who need to work. Now the green economy has the potential to change that. There's a lot of studies, a lot of backup showing that those jobs will be there but we need to approach it with clear goals and with innovative strategies, not just business as usual. And that's why working partnerships has partnered with Work2Future with the Santa Clara County building trades council and with other key stakeholders to form the green careers initiative, and this initiative's goals are, one, to grow the green economy in Silicon Valley, to create those jobs; two, to create direct connections between economic and workforce development, to make sure our investments are creating high-quality jobs for local residents and three, to build these career paths ways so that young people and disadvantaged residents cannot just go find some temporary green job but can really build a green career. So this pathways out of poverty proposal creates a critical piece of that pipeline by creating a pilot free apprenticeship program and when that's combined with the basic skills training and supportive services that Work2Future can offer, this training can open new pathways to our low income residents into a life lodge career in the building trades. At the same time it helps provide the foundation and sustainability that our local employers need to stay competitive as the construction industry transforms into a green industry. We're proud to support this project, thank you.

>> Mayor Reed: I'm sorry your time is up. Ross Signorino is our last speaker.

>> Ross Signorino: Thank you, Mr. Mayor. Members of the council. I rushed to fill out that card, with this number. I had no intention of speaking on this but I did hear the first speaker when he was saying something about taxes and finally the taxpayers have to pay for this. Well, you know, what is it that the taxpayer does not have to pay for? There's certain things in this life, we have a moral responsibility to do. And if you, as the 10th largest city in the United States, can lead the way to eliminate poverty, in any way you can, that is a great sign. I think you can really be called the great city, the 10th largest city in the United States. I know it hurts to pay taxes, I know everything eventually comes down to the taxpayer. But we are the taxpayers, we are here and there's no way of getting around it. We have to face the responsibility of poor people out there and people who are in poverty, we have to face that responsibility, that it is our responsibility. And somehow or another, in our imagination, we can find a way to alleviate poverty for people, then we should do so. Thank you.

>> Mayor Reed: That concludes the public testimony. I'm going to support the motion, of course. I just wanted to thank Neil Struthers and Cindy Chavez first for their work to help us find money in Washington and the brain power to help put together initiative that will create the opportunity for green careers and not just green jobs. Councilmember Kalra.

>> Councilmember Kalra: Thank you, Mayor and thanks Jeff for the presentation. I want to thank our staff as well as working partnerships, as the mayor stated these are funds that are certainly competitively sought after nationwide. And it's certainly I think good to see that we have a program set up where we can take advantage of this money and use it in a constructive manner. And so you know, certainly as was stated a couple times, the taxpayers clearly have to pay for this but when we don't, to try to find creative innovative ways to get our workforce active, they will be paid for many times over. And I talked to some of the folks in the trades and there is 30% plus unemployment in this area. It is devastating to what's happening to our laborers right now. And so this is not only a good way to make sure that we can help to train some of our labor force and those that have not had the training and apprenticeship at all, so getting those that may have been trained in 20th century technology to be trained in 21st century technology, to train them for the new wave of union work, labor work that is really going to help us as we talk about the Green Vision and so on, really help us capitalize on some of our other priorities. It is great to have a green syringes of these solar panels and LED lights, it's someone to do the work. This is one step in that direction, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I'd like to echo the thanks to you Jeff, to working partnerships and to South Bay. Just a note, that this is money we leave on the table if we don't get it. It goes somewhere else. And we have got 12% unemployment here in the valley, certainly there are other parts of the country that are hurting as well. But we need to get moving here, and I'm glad you're being aggressive in partnership with our partners in labor movement to get out there and make this happen.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you all. If Rhode Island gets this, shame on us. Thanks for being aggressive and pursuing this, the fact that you're all coming together as a group, working in a united fashion says volumes. Thank you.

>> Mayor Reed: I think that concludes the council discussion. We have a motion to approve, all in favor, opposed, none opposed, that's approved. Good luck.

>> Just recognize the hard work of Javier Vanga and others for the hard work. Thank you. .

>> Mayor Reed: Good luck to you in Washington. Item 5.1 is our next item, that's report from the neighborhood services and education committee from September 10th. Councilmember Campos is the chair of that committee.

>> Councilmember Campos: Thank you, mayor. The minutes are in your packet. If there are no questions I move for approve.

>> Mayor Reed: You have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 6.2 is an agreement with Chevron for actions at the airport fuel facility. I have one request to speak, Ross Signorino. Go ahead and start speaking. I think it will pick up now. You're on.

>> Ross Signorino: One two three four. We test it. Mr. Mayor, members of the council, in regards to the airport, I wanted to mention something. Airplane pilots throughout the United States voted that San José airport is the friendliest airport in the United States. Now, last year, I told you about the bond issue, but this time, I wanted to tell you something that is good news. And I asked Bill Sherry if he would mentioned this but he says he wasn't ready to mention it. And I says well, I better do it. You never know if Bill Sherry

will end up in the hospital, he's had some troubles, we all wish him well in regards to his maladies, so okay, San José airport again, Mineta airport is the friendliest airport, voted by the pilots, as the friendliest airport in the United States. I hope you got it.

>> Mayor Reed: We got it. Bill shear is here, I know he's got some bad knees. But I know he got it. All in favor, opposed, none opposed, that's approve. Item 7.1, recycle plus! pilot programs. John Stufflebean.

>> John Stufflebean: Environmental services, and I have a short presentation. As you know we have our recycle plus! program serves all the residents of San José. It is approximately an annual budget of \$90 million that we spend on this program. And in the year either 2013 or 2015 we will be making major modifications to the program. Every time we've made major motivation in the past we've done some pilots on some possibilities. What we're proposing is to do just that for our program. The pilot program would cost the pilot program is approximately \$1.7 million for three different pilots. The funding is, we have derived it from one-time savings in our 2008-2009 contracts so the funding is available and would not result in increase in rates in the future. We're looking at 18 months for these pilots to make sure we have a nice robust time to really test them out. We'd like the to start in November '09 which is pretty much we have to do it about that time to make sure we're done in time for the new contracts to come in place. We're looking for the -- what we did is we looked at what are the major recyclable or compostable material that is currently going to the trash bin that could go in the recycle bin and that item is food waste and later organic material. So the -- what we're looking at is how could we collect that material and divert it as opposed to putting it in the landfill. This is really critical to me is there a waste or Green Vision goals 70% diversion by 2013 and ultimately zero waste. We're looking to alternatives to waste, what the character of this material are as we pull it out. Here are the three pilots that we're proposing to do. One of them would be that residents would bag their food waste and place it in the yard trimmings, and we don't think that's a good idea to do loose in the street, so they would all get carts for that. The second pilot would be where we actually take the garbage and sort out the organic material so that would require no change in terms of what the resident would see. The third pilot just looking at yard trimmings and entirely in carts because of a kind of control to have that option also looked at. And the purpose of this program of course would be to gauge the behavior and satisfaction of the -- in the pilot areas, are people, did they respond to the changes well, what kind of education was needed and then we'll do surveys before and after how they felt about various pilots. Again, this would divert the organic in the landfill which also has greenhouse gas advantages in terms of AB 32. And again, every time we've done a major change we've done a major -- a pilot program. And I guess that concludes the presentation. Thank you.

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

>> Councilmember Pyle: Thank you, mayor. I think this is a wonderful step, it really is. There's a lot of people that we've heard from in my district that are much in favor of this. I have three questions for you, they're pretty simple so, the first one is, what criteria would you use to select the areas included in the pilot?

>> John Stufflebean: Yes, we looked at -- we wanted to make sure that we had complete coverage over the entire city so we looked at, wanted to make sure we had pilots in each of the council districts. For example we figured that would give us a good distribution. We also looked at where it would have minimum impact on how the trucks are distributed through the area,.

>> Councilmember Pyle: People who want to do this could put in requests, is that?

>> John Stufflebean: We went ahead and chose the areas around the city, we also made sure we covered areas that are more vegetative than others so we can see how that would also affect it.

>> Councilmember Pyle: Got it. Let me ask you this. Do other cities currently require the same kind of sorting of compostables?

>> John Stufflebean: It's a pretty small number of cities that are doing it, are putting food waste in with the yard waste. There are a few cities that are doing it, San Francisco for example, a few others around. It is really a pretty new idea, this is one where we would sort of be on the cutting edge which is why we think particularly the pilot is important here.

>> Councilmember Pyle: We like that. So I want to thank staff for all your work on this project, I think it's a wonderful, wonderful good thing, cutting edge approach. And there are also a lot of yard pile wastes that we would love to do away with if we can, and it's another way to do it and I think you'd have a lot of support for that. So thank you.

>> Mayor Reed: I have one request from the milk to speak, I'll take that testimony anow. Ross Signorino.

>> Ross Signorino: Mr. Mayor, I wanted to speak on 2 instead of 1. Thank you.

>> Mayor Reed: There is no public testimony on 7.2. We'll come back to 7.2. There might be one or two people that want to speak on that one. Motion is to approve 7.1. All in favor, opposed, none opposed, that's approved. That does take us to item 7.2. The reduction of single use carryout bags. Before we get started on this I want to disclose that in preparation of this meeting my staff or I have spoken to representatives of the California Grocers Association, the American Chemistry Council, and Save the Bay. John Stufflebean is going to lead the presentation on this.

>> John Stufflebean: Again I have a brief presentation on this item. This opening slide shows a picture of the plastic bags that were collected on the Coyote Creek near the Roosevelt community center August 15th and in a 300 foot section of creek there were about 80 bags collected, that's about a bag for every step that you take along the creek. Part of the issue here is the litter involved with the bags. This is a summary of the councilmember memo recommendation that came out of the CED committee, basically, recommendation, development ordinance to ban plastic partnership carryout bags, effective in 2011, would apply to all retailers, with exemptions being green paper bags, paper bags that are made of recycled material, restaurants would be exempted, nonprofits, social service organizations so on. We would then -- the recommendation would be that the staff would then evaluate green paper bags for a fee. Recommendation also includes supporting state legislation to reduce bags and also to promote reusable bags. This -- these recommendations would indeed support city policies, particularly the storm water permit as we've talked many times the storm water permit is coming down as it will actually happen some day, currently the language would require a 40% reduction in the trash in creeks. So we're going to have to do a lot of things to achieve 40% trash reduction, this would just be one of the items that -- one of the actions we could take to help reduce the amount of material in creeks. It also obviously consistent with the urban accords and the city's keep it clean partnership. I would put one more policy up here which is, the city has developed the waste hierarchy. You've all heard about the 3 r's, reduce, reuse, recycle. The basic hierarchy says the worst thing you can do is illegally dump material. Little better than that is to put it in landfills. But then you start moving up the hierarchy. Recycling is better than either of those, reusing the material is even better than that, and actually, at the top of the hierarchy is to reduce the generation of the waste to begin with. So this would be consistent with that policy, that is widely accepted. Here is some quick facts about the storm water permit. The creeks in San José have been labeled as impaired by trash with the Guadalupe river, Coyote creek and Silver Creek. As I said there are stringent reduction requirements coming down and it's a Bay Area issue. I would also mention that in terms of how big a -- what partly of the problem are plastic bags, probably the best data we have now is Sunnyvale, at the Remington outfall, they had a plug in the pipe and they pulled out the material and characterized what was in the pipe. And what they determined was that most of the material that was causing the clog in their pipe was indeed plastic. And that the highest percentage in fact it was 82% of the material that was causing the clog in the particular storm pipe was plastic material. And the largest percentage of material of the plastics was indeed plastic bags. 23% of the plastic that was clogging the pipe was indeed plastic bags. This just shows that we are a city of creeks, and so what of course distinguishes plastic bags is that they are light and they blow around. Often they are not located with other litter, litter stays where you put it but plastic bags blow around and roll downhill. Recycle certainly should occur add grocery stores and pharmacies and there are certain exclusion to be if the council chooses to adopt a ban or fee or something of that nature, certainly a ban there will certainly still be bags out there. There are bags that are exempted, dry cleaning bags, clean plastic bags, bags that are just sold. There would still be the need for recycling and so that would be you know certainly take place at grocery stores and pharmacies, think that's a good idea. We do not think that recycling these bags at curbside is a good idea. We tried it others tried it, it just doesn't work, we've talked about that in the past, it is a problematic material for any kind of multimaterial recycling program. The bags gum up the works and become contaminated and become unmarketable in any kind of a curbside program. And generally speaking, our findings of research are that recycling does not have much of an impact on litter. The I guess if you think of who typically litters and who typically recycles, there tends to be not a lot of overlap. People who litter tend not to be recyclers, we don't see that as much of a solution to the litter problem. We have done a lot of stakeholder engagement on the issue. I think I can safely say it's been as much in the five years that I've been here. That's listed in your memo but we've had bimonthly stakeholder meetings, there are about 250 people invited to these meetings, we have had 27 of them. We have had many, many of them, we have truly vetted out all aspects of this issue. This is a statewide national issue, certainly a statewide issue big in the Bay Area because of the impacts on the waterways in the bay. And we've done outreach presentations for all target organizations, nonenglish, businesses of all kinds. Just a target list of all the

differently groups we have engaged with, variety of business organizations, again variety of senior organizations and community organizations, really pretty much anybody we could think of we have engaged on this. And I think I can say regardless of what action the council takes today we will continue this process of engagement on the issue of bags. And as you know, the next big process if the council approves this today or something similar to it would be to implement the CEQA process. This is a very significant issue on this particular -- very significant issue on this because CEQA is important and we need to make sure that we follow the correct process. And so we have engaged an expert in CEQA process and our objective is make sure we will follow that in an ironclad way. That will take a long time, the CEQA process will take us four to six months. If the council this action or a similar action today, then we will undertake the CEQA process, a significant period of time. We estimate that the EIR would be drafted in early 2010. We originally estimated January or February, it could be March or April, to make sure we absolutely follow everything in an ironclad way, airtight. This is a slide that shows what is happening in California. We would be one of the leading cities obviously fanned we were to adopt the recommendation in the council memo, we would be maybe the leading city in the country in terms of the issue. But there are others who have done some actions. As you see, Santa Clara County waste reduction and recycle commission recommended a plastic ban. Los Angeles implemented a ban, if there's no action by the state, it would take effect in 2010. Palo Alto implemented a plastic ban as you know in September of '09. L.A. county San Francisco implemented a plastic ban in '07. So on. Few cities have taken action on this but San José would be a leader if something similar to what the council action is indeed taken and that concludes my presentation on this. Glad to answer any questions you have.

>> Mayor Reed: Thank you, I think there will be a few questions, maybe not for you but we'll see. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. And thank you, John. I wanted to disclose some folks I've met with, I've met with lobbyists from the American chemistry council, including Manny Diaz and Pete Carillo, California Grocers Association, Tim James, and I've also met with representatives of the organizations Save the Bay and Californians Against Waste. I wanted to ask a quick question about outreach John because I know you mentioned it but it has come up a lot in discussion with members from the community in the last week. As I understand from staff memo you've had, you sent notification several months ago, to over 5,000 retailers in the city, is that right?

>> John Stufflebean: That's correct.

>> Councilmember Liccardo: You've had over 50 meetings and evens in which you've been informing people about potential changes and passing out free bags and on and on. You say you're going to continue to do this in the next four to six months while we're going through the EIR process and thereafter? Okay. And I think you've mentioned that you've already gone out in foreign language media and Vietnamese and Spanish as well, is that fair?

>> John Stufflebean: Yes, that's correct.

>> Councilmember Liccardo: Okay, I guess what I'd like to do is to offer a motion that would incorporate the memorandum signed by Mayor Reed, councilmembers Campos, Chu and myself, which also incorporates several provisions in an earlier memorandum, co-signed by Councilmember Campos, Chu, Vice Mayor Chirco and myself. And would I like to add one additional provision, that explicitly, I know, additional outreach is contemplated but specifically if we could include additional outreach to our ethnic chambers of commerce, they can reach people in ways we can't and particularly to leverage their social networks I 30 would be really helpful. So I'd like to make that motion at this time.

>> Second.

>> Mayor Reed: We have a second ton motion so that puts the motion on the floor.

>> Councilmember Liccardo: Thank you for the second.

>> Mayor Reed: Anything else, Councilmember Liccardo?

>> Councilmember Liccardo: If I could just thank a few people quickly. I want to thank John and his team. I know a lot of people have been working on this Jo Zintec, Melody Tovar, and Councilmember Chu has been working on this for a year and a half I think on the recycle waste commission and I appreciate your leadership and your hard pushing on a regional level because we know we have to do this with many other cities. And Councilmember Campos was right there at the beginning, pushing with Councilmember Chu. And I also wanted to thank Felicia Madsen, Brian Schmidt committee for green foothills, Jeannie McLeod, also a member of the recycling waste reduction commission and also Reagan heniger of my staff. Thank you.

>> Mayor Reed: Before at least 40 people who want to speak on this item and we have almost an equal number who want to speak on a later item and we're not there yet. So I'm going to limit public testimony to one minute so that we can get our work done before -- without having to take a dinner break and come back. So while the council was asking their questions, you can be cutting your remarks down from two minutes to one minute. Councilmember Campos.

>> Councilmember Campos: Mayor, I'm not sure how many other councilmembers want to speak but I'll just disclose now and I'll save my comments for after the speakers. I want to disclose that my office has met with California groceries association Tim James, also representatives for PW market, also representatives from Safeway, as well as representatives from American chemistry council which is Manny Diaz, my chief of staff and I both met with these entities.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor, since we initiate a memo, last -- in January 2008, I have talked to almost all the stakeholders, including many grocery stores and chemistry council, and all of the above disclosures. It's been a long slow process but we have been working really really hard, the initial ban of the plastic bags and later I find out how environmentally unfriendly the paper bags are actually to our planet earth. I'd like to share some data here, the energy it takes to produce one paper bag is equivalent to burning a 50-watt lightbulb for 14 hours and it also take ten time more energy to recycle paper bags, compared to recycling plastic bags. Much higher than the plastic bags. I'm really glad that there are leaders from different areas of the county are all coming together to support a ban on both paper and plastic bags. I wanted to also note, to the whatever people are watching, that we're only -- we're banning on the single use plastic bags. So the meat or vegetable wrapping bags are still allowed in the shopping center, and also, those recycle bags, if you take one of them with you, to major grocery store, you got five cents back from the approach store. So take advantage of those issues, I understand there are still a lot of work ahead of us, like Councilmember Liccardo mentioned about reaching out to the chamber of commerce, and -- but I think that many of the foreign countries, development countries already have a ban on plastic and paper. European countries, China, Taiwan. So I definitely believe that if they can do it, we can do it and the timing is now, thank you very much.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I have a few questions, but first I just wanted to make sure that everybody knows that the staff report wasn't linked to the council agenda for this item, so the public didn't have a chance as it relates to today's action, I know it was on all the previous CED memos and stuff, but I had been contacted by someone because they couldn't find the staff report. And it wasn't until a couple of hours before the meeting that it actually got attached. Just so everybody knows that. I do have a few questions. Obviously I've got several concerns and I've discussed with people. Let me make disclosures first. I met with people from the American chemistry council, chamber, save the bay and a number of business owners. I struggle as I go through this trying to figure out where the line is on single-use. It's are we talking about the thickness of the bag, are we talking about -- how do we define single-use definitively, so it's clear what is allowed and what isn't allowed. I know we have a couple of exemptions that are listed but if somebody buys a thicker bag like a hefty bag, is that banned or isn't? How do we draw that line?

>> John Stufflebean: That is something we would come back to the council in terms of a specific definition. The state guidelines do base it on thickness. Any bag less than I think it is 2.25 mils would be considered single-use bag which would fall under the program. So if we were to choose to follow the state guidelines which many others have, that a thicker bag would be then be considered something that is obviously designed to be used over and over. So the thickness is a good way to define what is a single use bag one direction we could go.

>> Councilmember Constant: When we looked at the first picture where you showed the 300 feet of trash in your presentation, a lot of those were hefty bags and other bags that are not typically what I consider to be a single use bag. Now, one of the things that concerns me is, there's no mention anywhere in any of the reports that I've been able to find, about the biodegradable plastic bags. And as you know, there are many, many different types of these biodegradable bags. And my understanding from what I'm reading is, they would be banned as well. And can you tell us why it's silent and why regarding this ?

>> Commissioner Zito: Sure, there are two different issues. I'll express my knowledge and I'll see if staff can add to that. One of the issues of biodegradable bags, it makes that difficult to recycle because then you have two different kinds of materials. So if you have a pile of totally -- of bags that are not compostable, then that's more recyclables than if you get some mixed in that are recyclable or biodegradable or compostable. That's one of the issues, that makes its to the extent you can recycle,

there are still going to be bags out there, that's one issue. The second issue is that the biodegradable bags don't -- most of them do not completely break down in the environment. What happens to a lot of them is they simply break into smaller pieces. And so that is still considered problematic. So to the extent that bags are defined as biodegradable, that often doesn't mean that they completely go away. They simply go into smaller pieces. They can still have an impact on the environment. I want to ask my staff if they want to add anything to that comment.

>> You have probably seen that San Francisco have allowed people to use biodegradable plastic and paper when they banned plastic. We collect it loose in the street the facility that we sent ours to is not able to deal with decomposable plastic bags, within the same system. Whereas, San Francisco using a different facility at a higher cost is. Subsequently, when we deal with food waste composting it might be that such bags would fit into our system. But right now, they would cost significantly more. And they would also mean the output could no longer go to organic farms but could only be used for landscaping.

>> Councilmember Constant: I think that may be correct in those that have some polyurethane but there are others that are 100% starch based where that's not necessarily the case. And I think that's something that definitely needs to be looked at, because as we just spoke about in the previous item, we're looking at food waste in composting and that's obviously going to have to be put in something if we put it in a bag. So I think the biodegradable avenue is something we should be look at. The biodegradable bag is still significantly cheaper than the paper bag. As I said there are two different standards on biodegradable bags. I have a question for our City Attorney. It rears to the recommendation to the CED under I would be B-3, talking about the fee for the recycled content which I understand has been amended to 40% versus 50%. My question for the City Attorney is, how does a city government like us, how do we implement or where do we get the authority to implement a fee authorization for a private business to collect a fee to keep it?

>> City Attorney Doyle: That's a big question and I think that's something we're going to have to look at. I know, we can impose a regulatory fee, but regulatory fees are kept by the government. It's really to pay for the regulatory program. I don't know if we can require a private business to impose a fee, and retain the fee. That's something we're -- if the council gives us that direction, that's something we will be reviewing and we'll respond. But right now, we're looking for direction, and with the idea to come back with any and all issues.

>> Councilmember Constant: That's one of the areas that really troubles me. I just -- there's a lot of things that people that start slapping fees on and before you know it we're going to have businesses lobbying us to mandate a fee that they can keep or collect for whatever the case may be of something. I really don't think we have the authority to do that from the research that I've done and that troubles me. Now, in the area of actual impact to the city, there is one reference in the staff report of a number of \$600,000. Can you expand for me on what the City's budget impact, what's the exact fiscal impact, what we've seen so far that we've spent in the education and the give away bags, I hate to use the word free, because they're not free, base they somewhere an opportunity cost of many other city services. But how much we've spent on those reusable bags, what's the budget, fiscal impact be for this fiscal year, next fiscal year and what our projections are?

>> John Stufflebean: Okay, ask for some staff help on that.

>> We don't have a final tally, we're expecting in year to spends about \$100,000 on outreach including reusable bags for the program. Depending on council answer recommendation today we may need to augment that over time. When we come back, we may come back in the spring with the EIR on the final ordinance, the total cost, including launching the program, the outreach in connection with that and any enforcement cost.

>> Councilmember Constant: One of the things a lot of things my residents and I have had ongoing discussions about this issue and obviously not all of us agree. But even those who are adamantly for an all-out ban are seriously concerned about the amount of money that we'd be spending in the -- given our fiscal situation, when you look at how much \$100,000 pays for essential city services, and when you look at the \$600,000 that's in the memorandum, you look at future years, this could also easily be over a \$1 million project. And I think that's something that we really need analyze more thoroughly because we're talking about spending money on nonessential services giving away plastic bags or reusable bags, sorry, that really was a slip, that wasn't intended, reusable bags and looking at not having crossing guards or whatever the crisis of the particular day happens to be. I have one more question that I'm going to hold, there are a couple of questions for after the speakers, mayor, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor, I thought we were only doing disclosures at this point, I'm going to speak with that think. I will say I met with the California groceries, Manny Diaz, coalition matsen and save the bay .

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor, I will not be doing disclosures, but will be respectful for all the people that are waiting. You talked about cost. The EIR and CEQA cost is that coming out of General Fund or environmental services?

>> John Stufflebean: It comes out of utility funds general services.

>> Councilmember Oliverio: And physical how much is that?

>> John Stufflebean: 60,000.

>> Councilmember Oliverio: I have had emcalls from people who have had past strokes, that are addicted to the light weight and how it fits in their hand, can we tackle that?

>> John Stufflebean: We can try that.

>> Councilmember Oliverio: I would be appreciative of that, on the question of a fee, if we deem the plastic bag not good for the environment for the multitudes of reasons I would be more inclined just to ban it versus setting up a fee system because I believe the -- to create the bureaucracy, to collect, remit and then supervise the program, is not what most residents want to put money towards. They would rather put it towards police or libraries or parks or things of that matter. That's my personal opinion. I know this is not a final vote today as you'll bring back an ordinance to us but that's my comment that I'm not a big fan of the fee, it becomes something to administer, I'd rather it be a ban if that's what we choose. I guess a question for the City Attorney. You're recommending ban water bottles commercially sold bottles of water?

>> City Attorney Doyle: The -- you know, I don't know the answer to that. The city does have certain regulatory police powers and to health and safety, this falls within health and safety. It's logically the answer is yes. But I don't know if there's any state law or any federal law or anything else that would be -- would be -- affect that. But you know if the council wants us to look at that, that's maybe another day.

>> Councilmember Oliverio: Fair enough, I'll talk to you offline. And then I won't have any other documents say on this topic, as we go forward as a topic, we are talking about we as residents of the planet or Americans or whatever, we consume a lot of things and therefore it ends up having externalities it could stretch to other things, plastic bottles for water, disposable diapers, there's going to be an effect on consumers and people and their behaviors and also there's probably people that have a job because of those items. They ship it, they make it, they market it, they sell it, what you have those are the dilemmas we'll have for. We started off with recycle now we're here, I think next decades, local governments will deal with these issues so thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: I want to disclose that I -- my staff and I met with Pete Correa with Silicon Valley advisors and a representative from save the bay.

>> Mayor Reed: I think that's the end of this round of questions from the council. So let Mr. Stufflebean have a seat. I think it's time to take some milk testimony. As I said I have lot of people that want to speak. We're limiting speakers to one minute so please come on down when I call your name so you're close to the microphone. There's lots of spaces down here where you can be close. Carrie Hamilton, Nicole Reynoso, Jessica Martinez Escovel.

>> Thank, honorable Mayor Reed and members of City Council. I believe you all have our letter that you should have received this morning. I just wanted to say, I was sitting back there thinking back in time to when I was a college student and traveled overseas in western Europe in the mid '80s and I was shocked to see that markets were selling groceries in plastic bags, and I was saying gee, I hope that doesn't come our way. And here we are spending all this time and effort to go back in time and make one improvement upon that, which is to make our paper bags more environmentally friendly and hopefully be able to go beyond that a little bit. And it's really sad the amount of environmental degradation that has been caused by all of these bags, getting a single use plastic bag in a store isn't a fundamental human right. But drinking water and eating food from plastics residue should be. Every child should have the opportunity to grow up in a cleaner healthy environment.

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

>> Thank you very much.

>> Mayor Reed: (saying names) if I call your name please come on down and line up down here so we can cut the transit time a little bit.

>> Okay can I begin? Okay. Hello everyone my name is Nicole Reynoso, I'm a student another a local school. I'm here speaking from a perspective of young adult as a student, as a activist and as a member of our global community. I feel it is my responsibility to protect and preserve our environment as much as possible that's why I support article 7.2 to reduce the use of single use plastic bags for that matter. I look around me and I see litter on my street and I want to change that. So I myself joined a club, a recycling club, and we made recycling program at our school to where we separated plastics and papers and that was to be recycled whereas it was not before, it all ended up in regular garbage, and therefore, in landfills. So I'm here today to make it heard that us young people, we really do want change and we want to see this article passed, so that it will have that --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Jessica Martinez Escovel. (saying names).

>> Hi, I'm Jessica. San José academy, cut it short. I've done a lot, I'm not going to say but I live at King Road, that's where I grew up, I've been there for 17 years. So I've seen plastic bags everywhere throughout time. And like in local areas like the Alum Rock Park and Emma Prusch park, you would see plastic bags rolling around in the street, you can't do anything about it and I wonder where they go, people are kind of ignorant where these plastic bags go. In the pueblo, the shopping center at King and story Road, piece need to know, they need to be aware of where the plastic bags are going that they degrade in 10 to 20 years. So by putting a price on these bags, then people would be moved to use the reusable bags, and then will start being aware of oh, what's the reason for this and then --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: McGuire, Megan Fluke, Brian Schmidt. Followed by Tom Leddy.

>> This doesn't give us much time. This is an important issue as far as I'm concerned. As you can tell from my accent I'm from Ireland. One of the things i've come across is their levy on plastic bags. Initially when I encountered that, I was upset with it. Quite frankly my behavior was changed. And now I am very proud of the position that Ireland has taken in banning the use of plastic bag and doing their bit for the world environment. And I'd like the quote what the minister of the environment Michael Cullen had said, he said the levy has not only changes consumers' behavior in relationship to disposable plastic bags, it has also raised a national consciousness about the role each of us can and must play if we are to be collective -- if we are to collectively solve the problems of litter and waste management and I think that's what all this council is all about. Thank you very much.

>> Mayor Reed: Megan Fluke (saying names).

>> On baffle of Sierra Club, generation engaged and downless generations of residents of Silicon Valley, I strongly urge you to ban single use bags today, ricing our use of non renewable resources is the only serious option to us and our impact on the planet, future understanding that future generations cannot a ban will show that San José is indeed a leader of all things green and a ban on single use bags will make me proud of my city. Please don't wait for another city to take leadership on this. Do what I think you all know is right. And just do it! Vote on it! I believe that the council board of supervisors is just waiting for this and after that, we have all the other cities. Just be the leaders, you'll be in the news. It will be exciting, you'll be famous,, so yeah, thank you.

>> Mayor Reed: Thank you, your time is up. Brian Schmidt, Tom Leddy, marshal woodmancy and Tessa woodmancy.

>> Thank you for all your hard work on this you pass this you will be the lead in the country for doing this. The one thing I would add to that though is two or three years after your enactment you will no longer be the lead. Someone else will step ahead. My you suggestion is you calendar a revisit, for looking at whether or not you can increase the recycled content in the paper bag to address the many concerns that Councilmember Chu raised today and I think that could again keep you in the lead position and make this continuing to be an excellent, excellent proposal. And to address Councilmember Constant's concerns about cost there are significant cost for waste in streams. This will actually save the city money in the long run.

>> Mayor Reed: Tom Leddy. Professor at San Jose State university i'm actually a proper that teaches aesthetics and that has to do with the philosophy of beauty and I encourage my students to go out and look at nature and to appreciate the beauty around us. I hesitate to send them to one of our creeks however, I was recently walking around Guadalupe park and it's really quite amazing how many plastic bags are hanging there, aesthetically interesting, one could say it's a kind of beauty but in fact it is

incredibly ugly and I was quite glad that earlier a picture of our own neighborhood, Rosa park neighborhood, this weekend this Saturday Councilmember Liccardo was with us picking up in that area, that particularly creek is considered one of the most toxically polluted area in the Bay Area, the Pacific gyre which is larger than the state of Texas.

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Marshall woodmancy, Tessa woodmancy.

>> My name is Marshall Woodmancy, I am 11 years old. I think we shouldn't have plastic bags because it makes fish animals and bird life die. Thank you.

>> I'm Tessa woodmancy, I'm a home schooling mom. Dying, it motivated me to come and speak again because I see that the animals are like the canary in the coal mine. They are suffering and our whole food chain is at risk with the plastic. So that's basically what we want the city council to do, is to ban the single use bags and primarily plastic bags. Plastic is a scourge on our environment, land, sea, fish, birds and mammals, and it's even down to the level of the plankton so it's truly in the level of our food chain. The themes are conserve, protect, rethink, reuse and that motto on the San José reusable bags, needs to be what we do today, and that is to protect our environment, by re-- just you know, not having the reusable bags.

>> Mayor Reed: Sorry your time is up.

>> So thank you very much.

>> Mayor Reed: Bruce Wolf, Tim James and Sofia.

>> Hi I'm Bruce Wolf the executive officer of the regional water quality control board, we're the agency that implements the federal clean water act and pursuant to that act we did list a number of San Jose creeks as impaired for trash, we are required now to use our regulatory authority to address those impairments. When Los Angeles regional board had impairments for L.A. river they adopted a rigorous cleanup plan that said they should be zero trash. That's been a regulatory nightmare. We don't want to go in that direction. What we intend to do is use the storm water permit that you have, for the first time this is going to address trash and in that, we are saying that we are going to take an incremental approach that as long as cities are implementing permanent measures such as trash control measures and ordinances such as you're considering, that will be considered compliance with that. So in our mind, this is an efficient way, a cost-effective way to restore the creeks, and comply with your storm water permit. Thanks.

>> Mayor Reed: Tim James, Sovia and Jim Wahl. We are opposed to carryout bag regulation we do believe this is best handled at the statewide level and could create municipal and even regional disadvantage. In the interest of time we have sent you all a letter detailing our position and concerns. I will say specifically too at this moment that we believe the specific fee mechanism needs to be unspecified at this time, and as we move forward through the process, give the advocates and staff a chance to look at that. We appreciate the staff attention. Thank you.

>> Mayor Reed: (saying names).

>> Hi, my name is Sofia and I'm 14 years old. I believe it would be really big if you get rid of all plastic carryout bags. It would help protect birds, fish and hoards of other animals. I believe people already have reusable bags but just forget to use them. You will enjoy carrying out your milk and apples. Thank you .

>> Mayor Reed: James Duval, Keith Dee Phillipus. Adrian Orku. Come on down Keith. I think James is not here. Go ahead.

>> Center stage?

>> Mayor Reed: Come down, center stage.

>> Where is the cheering?

>> Mayor Reed: Good to bring your fan club.

>> My name is Keith de Phillipus, and I'm chairman of the Willow Glen curmudgeons. It works for plastic and aluminum cans and there's no reason it wouldn't work for plastic bags. I thank you for your time.

>> Mayor Reed: Adrian Furcu. (saying names).

>> My name is Adrianna Farcu and I'm here to say I support a ban on single use bags. I really brought one to share, I didn't get it approved, and I didn't bring it up to you. First of all they're noisy but I have one bag I've used many, many times to take my wet shoes back and forth from the pool but however, most people throw them away. I also want to say that I know we humans love to have convenience. But as we go on into the future, we have to be conscious that our convenience is not necessarily a benefit for the future. So I think it's time to weigh convenience against responsibility, and that there are more and more

incontrovertible evidence that single use bags are terribly destructive of the planet, you are unhealthy and therefore I'm so proud of the city .

>> Mayor Reed: Sorry your time is up. Felecia Madsen.

>> Save the bay and I'm also a San José resident. Save the bay has been working in the region for nearly 50 years to protect the bay and waterways leading to it. We are in support today of the recommendation on the table. San José's waterways are severely polluted by trash. As you just heard Bruce wall from the clean water act because there was so much trash in them and in October the water board will consider a new more strict water -- storm water permit that will cost the city quite a bit of money to be in compliance. So it makes a great imperative for the city to adopt measures like this. Cleaning our waterways will make San José a better place to do business and improve all of our quality of life. Thank you.

>> Mayor Reed: Brian early, Brett Calhoun, Gil Chezzo.

>> Californians against waste. First of all, is to thank you for your leadership and taking up this very important issue. As we've heard plastic bags are a problem material light and aerodynamic, they're almost designed to be littered. They're extremely costly for taxpayers. We've estimated up to \$200 per household in hidden cost. San Francisco for example estimated it cost the city \$17 cents in clean up costs. Plastic bags never biodegrade, even so-called compostable claim. It is illegal for people to claim their bag compostable. You can design them to compost. So we would urge the city council to as soon as possible ban this problem material, and find out a way to reduce paper bag use annual and transition reusable bags. Thank you.

>> Mayor Reed: Brett Calhoun. (saying names).

>> Thank you for the opportunity to speak before you. I'm representing director Kwok of Santa Clara Valley Water District, who apologizes for not making it paws our neating is at the same time. Waste reduction commission strongly supports the adoption of a single use bag fee, by the City of San José, the Santa Clara valley Water District, spends, much of this work is accomplished through a partnership with the City of San José, which we collectively remove over 150 tons of trash and debris from our creeks. Reusable bags are now readily available at many stores and are the sustainable alternative. Rampant use of plastic bags and paper bags throughout our system is costing both agencies a significant amount of money. Though I'm sure the manufacturers did not design the plastic bag to be a litter problem, the plastic bag is readily transported by the slightest breeze, it plugs up storm drains --

>> Mayor Reed: Your time is up (saying names).

>> Mr. Mayor, city council members, my name is Gil Chesso, I'm the general manager for allied waste and the Newby island facility and also a resident of San José. I'm here in support of the ordinance reducing the usage of single use bags. Plastics bags, especially on windy days are a major source litter, throughout our facility and our roadways, especially where I live along Bascom Avenue. Our recycling facility has to devote up to 16 man hours a day just unclogging all of the screens that we use trying to process all the recyclables coming into our facility and I think this is a great step for the environment. Thank you.

>> Mayor Reed: (saying names).

>> Good afternoon, mayor, councilmembers, my name is Patricia Luna. Plastic bags. Today you are considering creating an ordinance to ban plastic bags. The right decision is to ban plastic bags. We did not elect you because your job is an easy one. We elected you because you are our leaders. You are not followers. Gentlemen, ladies, the time has come for you to act, to lead. With the environment, we are crossing natural thresholds that we cannot see and violating deadlines that we do not recognize. But they say that time is -- they say that in time, everything is easier in hindsight. I hope that you are proud of your decision today. Please, this is the time to act. Thank you.

>> Mayor Reed: Ty Greaves, Richard Tatum, Richard Soule.

>> Mr. Mayor, thank you for the time today. My name is Ty Greaves. what we are in favor is is the kind of legislation having to do with statewide initiatives to reuse and recycle. We are in favor of the kind of outstanding outreach by the city staff to encourage reusable bags. We are in favor of the opportunity to work with the city to clean up. What we find that this is, however, unfortunately heavy handed policy. If it's bags today what will you ban tomorrow? And we believe that positive incentives such as CRV would make a better outcome for the city. If you're going to pass this legislation we'd ask you to consider, why do restaurants get a pass? Why are their bags any less intrusive, why are they any less impactful of the environment? So restaurants and those nonprofits, why should they get a pass if the bag is so reprehensible? So please we ask for your vote against the proposition, thank you.

>> Mayor Reed: Rich Tatum, Richard Sole, Richard Sole.

>> I'm a small owner, store other than in San José for the last 30 years, and had several thousand people sign a petition against the ban. I don't think they're so much against the ban as they are against being charged for that. They know it's less money on the table for their family. So if there's any way that you can resolve this, with having not to charge any more fees, for most of these families that's already looking for ways to support themselves. Thank you.

>> Mayor Reed: Peter Sole, Jan Sole, peruse Ledsudnia.

>> Mr. Mayor, council, appreciate being here. What I would understand, the 60,000 maybe more to implement in ongoing controls, because you've got moneys that are being charged. As I understand the State of California has raided our local funds and so the city is faced with about a 20 million or so million dollar deficit and given the shortfalls in revenues, given our slow economy and all the other problems we're facing, why are we considering this now, should we not be using our time and energies and moneys on something else? But if people here feel so strongly about the bag tax and that this is the will of the people then let's put it up for a vote by the people. And so it would be a clear decision by the people that this is what they want. Thank you very much.

>> Mayor Reed: Jan Sole, peruse Medsudnia and Rickey Tatum.

>> First of all I got a really nice bag out of it but I also learned that the only supplier of the single woven polyester bags is China. And I actually also learned that there's probably not any other multiuse bags that are not -- that are manufactured in this country. So my concern is, with double digit unemployment, why is the City of San José mandating that we use reusable bags, that are not -- that are manufactured somewhere outside of the United States? And so I would strongly recommend that any proposal you put together would eliminate bags that are not manufactured in the United States, and let's keep American workers employed.

>> Mayor Reed: Peruse medsudnia. (saying names).

>> My name is peruse medsudnia. I'm here plastic lobby, their misinformation campaign and their threats. The plastic lobby effectively killed the proposal to limit plastic bags in Seattle by calling the proposed fees a tax and spending hundreds of thousands of dollars to kill the proposal. The plastic lobby is putting every excuse on the table not to limit plastic bag usage because they want to produce more plastic bags. Please limit the use of single use bags and do the right thing. Thank you.

>> Mayor Reed: Rickey Tatum (saying names).

>> My name is Rickey Tatum. it just encourages customers to come in with back packs and duffel bags and we just can't monitor those bags when they come in. I just fear when I go to the grocery store somebody might come in with a shotgun now in their duffel bag, I want all the cigarettes, all people's money and walk out with you'll that stuff in their bags. So what's the deal with that, you know, and what are we going to do with that? Just more police involvement, it's just going to cause more phone calls. So I don't even know if you guys realize the fiscal -- the potential of the, 000, police being more involved because there's more phone calls from that. Thank you.

>> Mayor Reed: Eric Hahn, Joy Ishimura.

>> Good evening, councilmembers, I'm Eric Han, I manage the enhanced service district called the property based service district more commonly referred to as the Pbid. In addition to jamming the recycle machine, these bags also jam our sidewalk sweepers causing a dramatic increase in our time spent on the streets. We've got a large area to cover and we do our best every day but during windy days we chase down a lot of these bags as well. As -- we are pleased that the councilmembers are having a thoughtful discussion on the reduction of plastic bag litter. Groundwork's cleanteams has spent a great deal of time working on maintaining the downtown streetscape, and we appreciate all of your help and support in providing enhanced services. Plastic bag litter has already been seen on highway 280, highway 87 --

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Joy Ishimura, (saying names).

>> I was recently in Japan for the first time where plastic bags are available. But there's no litter on the streets. I think that we need to activate, activity enforce litter laws and punish those who litter rather than take away bags from everybody else.

>> Mayor Reed: Fred villa, Jean Najelski and Kevin Notello.

>> Good afternoon. What I have to say is very simple. There are multiple uses for bags, plastic bags, the problem with litter in different places in this area is lack of discipline. There is multiple money being spent

on other things. There are moneys to be saved on other things, I agree with Peter Sole who said we should be focusing on those other things and not focusing on other stuff. All the stuff in the different creeks and all that volunteers clean this up every year for the last four years, they've done a good job and they can continue to do that. I would encourage you to also, before you do anything, get in touch with the people that are in other cities, find out what they're doing so you can have a --

>> Mayor Reed: Sorry your time is up.

>> Togetherness area, response I think.

>> Mayor Reed: (saying names).

>> Mayor Reed, councilmembers, good afternoon. My name is Gene Snigelski, retired live in San José. Many of my neighbors, friends have lived out of the United States because cost of living here is very difficult. I feel that this piece of legislation, if you pass it, is rather Draconian, and you're trying to use a shotgun to kill a fly. And there are other means that are more economical, to deal with this issue. There are industries that depend on jobs, and as you know, California's jobless rate is the second highest in the country. And this is going to continue for a good number of years. Think of the economics when you make these decisions, please. Because industries and people's jobs may be in the balance. Thank you.

>> Mayor Reed: Kevin Petullo. (saying names).

>> Good afternoon, Mr. Mayor and city council members. I want to let you know, I'm holding up one of the bags that you guys claim needs to be banned. I am telling you, I'm not asking you, I'm telling you, vote no on banning plastic bags. We need plastic, we need these plastic bags. I am as much into green as the next person. But I am tired of people trying to tell me how I should try to force this stuff down our backs to get rid of the plastic bags. Thank you.

>> Mayor Reed: Eugene Imperado, Laura Casa, Patty Moore.

>> Mayor Reed, members of the city council, City Manager, I'm Eugene imperado, I'm representing Links Recyclers. We are a local recycling company that recycles many plastics items in this area, including plastic bags and plastic film and I just have a simple message today, that there is a viable market for the recycling of plastic bags and film, both domestically and overseas. And that we can currently recycle all the bags and film we can collect. And just to repeat myself, there is an existing market to he recycle plastic bags and film. And as a member of the community, I feel that recycle, a coordinated recycle effort would be much better than either taxes or bans on plastic bags and film. Thank you.

>> Mayor Reed: Laura Casa, Patty Moore, Megan Minnow.

>> Good afternoon. I'm Laura Casa, president of executive shores in Santa Cruz we have adapted a bring it your own campaign. Bring your own card which tells them that Americans use 100 billion bags a year . I'm here to speak for the turtles because they can't be here to speak on their own behalf. They love jelly fish, jelly fish look like plastic bags. What cost than the loss of this beautiful species? Thank you. (saying names).

>> My name is Patty Moore. I've been actively involved in the recycle movement for 20 years. I'm here to oppose the proposed measure. I oppose the dissolution of the only existing effect plastic film bags and wraps, I support retail base dropoff recycle because it is more resource efficient than bans. Recycle creates jobs, it improves the economy and it improves the environment. In fact last week I sent you letters from 14 recycling companies that want to buy San José's plastic film and bags from retail dropoff programs. Bags are the base of these retail dropoff programs and the trailers will no longer provide that service if you ban it. So I find it very discourage that you are considering a regressive feel good action that will plastic bags, bread bags toilet paper wrap and newspaper bags rather than improving San José's recycle system. Thank you.

>> Mayor Reed: Megan Minnow.

>> My name is Megan Marino, I'm a local business consultant and I oppose this tax and ban. I think it's going to hurt our customer bays and inconvenience them. As a personal note, I use plastic bags, and I reuse them and I reuse them and I think there's a better solution. I think we need to educate the public on thousand recycle. That's it, thank you.

>> Mayor Reed: Faith Connoy, Nancy gallardo (saying names).

>> Good afternoon, I'm a small business person over here in San José. And my question is basically, in our small businesses, where we have a very small clientele based, where the average tendency, I think we propose to charge the average customer 25 cents a bag. That's a little bit out, we should concentrate and eliminate the throwing away of the trash bags on the street and litter, that's where we should be concentrating rather than charging the milk. Thank you.

>> Mayor Reed: (saying names).

>> Good afternoon, my name is Nancy Gallardo and I'm a resident of San José. As a consumer or resident I oppose any ban or tax on bags, which will result in any additional cost, already, consumers of business during an obvious difficult time. I urge the council to collaborate and find a win-win policy that encourages recycle and education, thank you.

>> Mayor Reed: Clement Nauriel, Sandy Taylor, Christine Denda. Intermy name is Clement Auriel. I work in a small business in San José. I'm more nor recycle thank you for your time. .

>> (saying names)

>> my name is Sandy Taylor and I'm a manager for several small businesses in the area. I strongly encourage you to go with the recycle plan, a ban and a tax is not the answer for this. I recently just turned 50 years old, and I know when I was a kid, we still had litter at those creeks, there wasn't no plastic bags. I still remember that one Indian with the tear going down. Recycling is where we need to be. Banning and taxing, where does it end? Thank you. [applause]

>> Mayor Reed: Christine Denda, Ann Webb, Heather O'Malley.

>> Thank you. My name is Christine Denda, I'm here from the diocese of San José, Catholic initiative of Santa Clara County. We have partnered with Catholic charities, Santa Clara University and the Presentation Retreat Center in an effort to encourage initiatives, the green bag initiative is one of those. I represent a community of 600,000 Catholics, encompassing 33 parishes we support the county wide efforts ever significantly reduce if not ban single use carryout bags encourage shopping with reusable bags and on October 4th we're distributing 10,000 of our own reusable bags and once again, we support any legislation that favors acting in a way that works on God's creation and that is reducing the use of single use bags.

>> I'm Ann Webb resident of San José. 1 million plastic bags a year into our basis point that is a horrifying statistic. To quote the editorial in today's Mercury News, in Europe, canvas bags are the rule rather than the exception. Surely Americans too would find it worth the trouble to leave future generations a healthier environment. Ireland is a country that is often held up as a yardstick on any discussion on recycle programs and I can personally attest to its success. I make frequent trips there and accompany my friends and relatives on their shopping trips with their reusable bags in hand. I got into the habit of doing that myself here and while at first I would forget I now retrieve my reusable bags from the car on most shopping trips and I have them here today but the security guard wouldn't let me bring them up here. I can assure you that when I was being levied 10 or 25 cents a bag in the store that would be a great incentive to always remember my reusable bag.

>> Mayor Reed: Your time is up. Heather Lomelli, Ross Signorino, Michael La Rocca. Come on Ross, Michael La Rocca (saying names).

>> Ross Signorino: Thank you, mayor. I brought up here my nickel bag, my nickel hit. People are irresponsible with the bags, they throw them in the waterway, in the creek and everything, they get under the Bay Bridge, there is a spot in the Pacific ocean not too far from here that's the size of Texas that's where the plastic because of the waves they all gather there and so on. And then even lawn chairs, they found out there! And the plastic breaks down to small particles and the fish go there and bite on it, very tempted they want to eat and they eat plastic, and instead, they die a miserable death in the Pacific ocean. This is killing the wildlife in the ocean. This is good we do plan plastic instead of promoting them and we do need to use recycling bags. Thank you.

>> Mayor Reed: Michael La Rocca, Debra Arantz, Emily Hanson.

>> Mayor and council, Michael La Rocca. I'm here to speak on the ban of single use plastic bags. Thank you.

>> Mayor Reed: Debra Arant, Emily Hanson, that's the last card I have on this one.

>> My name is Debra Arant, I'm here to speak on the ban on plastic bags. It is time for us to do a different thing, remember to bring our own bags. Thank you very much.

>> Mayor Reed: Emily Hanson.

>> Good afternoon Mr. Mayor members of the council, my name is Emily Hanson I'm here with Greenwaste recovery and also here on behalf of Zanker Road recycling, we're a loyalty recyclers, we own and operate a collection and processing company here in San José. One point I do want to make is while there's an existing market for film plastics. San José city council taking action to ban single use recyclable bags will not eliminate that market, that will still exist. The second thing we process at our recovery, is all the solid waste from San José's multifamily dwellings, I will leave you with that irony, plastic bags contaminate that garbage that we process. Thank you for working on banning that.

>> Mayor Reed: One final speaker.

>> James Duvall. I don't think desperate economy we have today. Regulatory constraints to small business is an excellent one by the State of California I'm happy to send it all to you and needless to say California ranks very low as a place to do business, this is one of the reaps. If you insist on going this direction, I advise you you conduct a very strong process task force with a focus on CEQA study and the completion of same on outreach efforts on education and lastly I'd like to stress the importance of respect for the work environmentalists but not the respect for the poor or low socioeconomic strata of San José. If you see a plastic bag in San José pick it up and quit whining, thanks.

>> Mayor Reed: That completes public testimony on this item, we'll now bring it impact for council discussion. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. First of all I wanted to thank everyone who came and spoke today on this issue. I also wanted to thank Mayor Reed and my colleagues for the leadership and vision on this very important public policy. Like many residents in San José I'm also very interested in helping our city to reduce waste. As a matter of fact this weekend my office will be participating in an event sponsored by Siren, a local nonprofit organization to go out to clear Coyote creek and remove trash, debris and other recyclables. In an effort to prevent these recyclables from going into the bay where aquatic life would be in danger and I think a lot of speakers spoke to that effect. For me, the ban on plastic bags is not simply a good public policy, but it is -- it's going to have to pave the way for us in the future. I believe that if we all do our part and take care of the landscape around us, we will see that the community we live in will be cleaner, more vibrant and free of plastic litter. If we are serious in our efforts to reduce waste then we need to be serious in our action as well, and creating a ban on single use plastic bags is the way to go. So I'll be very happy to support Councilmember Liccardo's motion. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, Councilmember Liccardo, I appreciate that you were able to add to the motion, to include additional outreach to ethnic chambers. I think that's important, and as we move forward. Staff, I also know that there have been several small businesses that have spoken today, as well. And I'm not sure what the scope of your outreach, if it includes small businesses in moving forward. But I would like for you to also include that. And I don't know if that has to be in the motion as well.

>> Councilmember Liccardo: I'm happy to incorporate small business outreach.

>> Councilmember Campos: Thank you. And what I'm hoping comes out of that, as you start focusing your efforts as well, continue to move forward on the people you've been focusing on. But if you focus on ethnic chambers and small family owned businesses, I'm hoping that as you come back they will be encumbering some of the costs that the council may or may not put upon them. It would be helpful as we deliberate the final proposal, what the true cost would be to them. I hope that's clear. I'd like to thank Councilmember Chu for originally introducing this proposal. I know that few people have said that it's been a year and a half. I think it's about 20 months. And I'm hoping that as we continue to move forward on this proposal, is that it doesn't Fay as long as we anticipate that it will take. By the time this proposal really is implemented, we will have been working on this for three years. And I heard from a lot of the speakers that we need to act now, we need to move forward. So we still have time to wait some and I'm hoping that in that time that we're waiting, I know that in your proposal, and you were talking about the legislators, looking at this proposal, and that L.A. moved forward on passing this proposal pending on what happens in Sacramento. And I'm hopeful that Sacramento will actually be able to come up with a solution on this issue where I think it's most appropriate. Today was a good day because I believe that we had not only the City of San José that stood firm on banning plastic bags, but we also had other cities that surrounded San José that stood very firm with us, as well. So this issue is not just a San José issue. But we are the largest city in Northern California. And we do need to take a leadership role on this. So I am very excited to be a part of this discussion. I'm excited about moving forward. And I hope that we can come up with a solution and a proposal when you come back that will make the majority of the people happy. We're not going to be able to make everyone happy. But I'm hoping that the majority of the community will be happy. We know one thing, that this is an issue that does affect our environment so we need to act soon. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. This is the right thing to do. And San José needs to show the leadership that we can and should and have here today. I can't believe some of the comments that I heard, in that there were things that were mentioned that aren't even in the proposal. We are not saying anything about a fee. What is said that if there is a fee passed by the state, it would then come back to

our council. It also says that nothing's going to happen before December of 2010. I'd like to give everybody here a challenge. 2010, that's a little more than a year away. We can be the example or the change that we want to see. Nobody's saying well, wait 'til then and then we'll start recycle. Let's do it now. My husband is a good example. I'm really proud of him. He takes to bags in and he takes in whatever plastic bags we've taken in during the week. Those go back to the store and they get recycled there. We can do it. Remember when people smoked all over the place, in restaurants and everywhere we've gone? People are better off and they're healthier as a result. People decided, you know, it's probably a good time to quit smoking. That's a health hazard. That's a health hazard to our wildlife, to our ocean life and to our planet life if we don't get it together and clean it up. I want to tell you something that happened to me, right on Santa Clara Street. Because someone said it's going to take more than this ban, and this ban, not a tax, we're not talking tax here, it's going to take responsibility of ever single one of us. As I was going down Santa Clara Street, coming here, I was stopped at a light. Somebody took a plate of food half-full of food, and threw it out the window. It hid my windshield. It happens out there. People throw things out of their cars. Those are the things that wind up blowing all over the place. We also are bag-crazy, do we need to have a bag for everything? Does somebody going to the 7Eleven need a bag? They don't need it for their slurpy or anything else in there that could beesly transported out without any bags. I'm totally in favor of this however, I'm against any kind of a tax or a fee. I don't think that's the police. I have great faith in the ability of all of us to do what our conscience tells us to do and that is show respect for our planet and each other. Thank you.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: Thank you. I need to disclose that my office has met with the California grocers association, the American Chemical council and the save the bay people. I will be supporting this motion. There is an extremely manageable solution and it is the reusable bags. The time is now and the place is Silicon Valley as evidenced by the leaders of the other cities that joined with the City of San José at that time press conference that was held today right before the council meeting. It's an old adage but it's certainly true that we are stewards of our environment for a very short time. And I want the world that our children and our grandchildren will inherit to give them something that they will be proud to inherit. So I think this is the proper thing, and now is the proper time. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I want to thank my colleagues, mayor and councilmembers for putting forward the memo as well as the previous memo. The question regarding item 4 on the new memo, relating to 2C, from the August 24th memo, regarding the content, level of recycled content in these, quote, green paper bags, and the suggested amendment to reduce the amount of recycled content to 40% in order to conform to industry standard. Now, it can be -- any of the councilmembers I know or staff, when it says 40% recycled content formed in these centers, is that what the paper bags used are currently, are they 40%?

>> There are bags on the market that run from 100% virgin content to 100% recycled content. The greenest bag that's readily available in citywide quantities, appears to be 40% postconsumer bag made by among others international paper which is the largest maker of paper grocery sacks in north America. We've heard an argument that going to 100% requirement would be difficult to meet at our scale, reliably at our point. In regards to CEQA.

>> Councilmember Kalra: Also in regards to CEQA and the environmental review and in terms of the plastic bag ban, if at a later point there's a discussion, rather than having this percentage of continue tent and so on, just a ban on paper bags, as well, to what extent will we need to have -- have we had this similar environmental review on that or would you presume that as well?

>> John Stufflebean: Yes, I believe that would be the case.

>> City Attorney Doyle: Councilmember, I think the analysis, I'm looking up the Planning director, that the analysis would have to include a complete ban as well. So I think, would I expect that while various alternatives are part of that analysis.

>> Councilmember Kalra: And so the analysis going forward also a complete ban on paper bags as well? Yes, okay, that was the main question I had because -- you know and personally I just want to thank all the people that are here from the community and the different interests that are here that spoke and I appreciate the time that our representatives from save the bay took to meet with me and the work that they do for the community, as well as Manny Diaz, Pete Corillo, American chemistry association representatives taking their time and the respectful McEnergy in which Tim James last advocated on behalf of the grocers association. I bring up the issue of paper somewhat along the line of what

Councilmember Chu was discussing about the fact that it's by allowing paper bags, it's in some sense the lesser of two evils and we're kinds of going back to just when we had paper bags and not plastic which may be a good thing in that we don't have plastic. But still, allowing for the paper bags, certainly still causes an environmental hazard and certainly many resources in order to create those bags. Additionally, the suggestion of looking at a recommended fee for those paper, those green paper bags is something that I would be much more reluctant to do because I think that would have the potential of having an impact particularly on the smaller businesses whenever there's something of that nature that's there. And I think that if we're going to do, or consider, these bans, an especially if we're looking at it for the long term, that we should certainly not rule out the possibility of an all out ban on both. I understand as Councilmember Oliverio indicated earlier, this is the first step and let's get the EIR going and let's see what results we get from that and we can always at a future date try to determine if there's a better way to reform the policy. But I do think this is a great step forward and you know, there's several things that are mentioned regarding -- which are true in the fact that it would cause an inconvenience certainly at first. I do agree we have plenty of time to educate but it's still going to cause somewhat of an inconvenience but you know, I think that the greater -- the greater good, particularly given the damage that these plastic bags causes, certainly overrides I think convenience. And I use those reusable bags and they're great and they hold a lot more stuff than those little plastic bags and I think it's something that we all can get used to and appreciate, as they do so many other places in this world. Regarding economics I think it costs us already to have these plastic bags and paper bags certainly but just in terms of the cost of production and the hundred billion bags that are used in this country every year but the cost to clean up, the cost, when it interferes with recycle efforts and so on, that cost money and that money we end up paying for one way or the other. And I completely agree with Mr. Deron and Councilmember Liccardo followed up and had more outreach on the entire community on this issue, and as far as the impact on disadvantaged communities, those are the communities that are going to suffer from the pollution that those bags create as well. It's really about behavior change. Not so much about -- to me it's not so much about being a leader or making a stand or anything like that. Really it is about what the next generation is going to have to put up with and the most compelling speaker was Heather Marshall and Sofia, and these young people that are here speaking three won't know what it's like do get a bag at a grocery store. They won't know what it's like to have a smoking section in a restaurant. Or a land line in their home. Hopefully things will change for the better and I'll strongly support this motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I wanted to respond to some concerns that were raised. I think Councilmember Constant quite properly raised a concern about whether or not it was lawful for us to be imposing a fee that would only be collected by businesses. Since the time that original memo was drafted we've had conversations I know with Rick, there is obviously significant concern about that. Let me explain a little bit about the origin of this provision. There was certainly a discussion about certainly a flat ban, that's going to be considered in the EIR and I think we're going to be able to make that final decision when the EIR comes back. Conversations with the grocers association and others, there was a concern raised, whether or not there would be some mechanism for retailers to be able to recover some cost impacts. If they were going to be providing high recycled content paper which we know are more expensive to provide than plastic, so if that was going to be the case is there a possibility there could be a fee? I went back and looked at the memo and thought it was -- the large was on enough to allow us to consider the option of splitting a fee if there is such a fee that's considered. If that language does not look permissive enough, I'm sure there can be that option. I just want to be clear I'm far from committed to having any fee on high recycled content paper and I think it may be quite possible we come back and look at this and say flat ban across the board is the right way to go. So -- and I think given the direction we have and knowing we're going through an EIR certainly staff has the freedom to be able to look at those options and present the best recommendation on those details. I also just wanted to address concern about the money issue. I think it was indicated that the funding is coming from various utility funds, not from the General Fund. We have enormous costs that we're facing in the future, complying with our regional regulatory requirements, the water permit, those are around the corner, knowing what's come out in recent news in the what's few months that those costs are going to be enormous. And the ability for us to be able to get out there with proactive measures like this could substantially reduce our public cost dealing with some of these regulatory requirements. So you know Kim know many of my colleagues have heard this pitch before, because we've been doing this for so long since Councilmember Campos and Councilmember Chu came out with this proposal. But you know my pitch is the same which is there's no

such thing as a free bag. We pay for it as consumers. We pay for it as ratepayers and we pay for it as taxpayers. And the point is to get beyond that, that we all recognize there's a price to pay. As consumers we pay for it once and we don't pay it again. That is certainly a better option. So I should give a plug now, Zanotto's got two bags for a buck, and even better, you can get them free. I know the Catholic diocese announced that they're going to give out 10,000 of them that the grocers association is giving out 75,000 in August. We're giving out thousands of them. If you're worried about the cost, in the meantime, don't forget to pull them out of your trunk.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I still don't support it, I don't think that's a surprise to you or anybody else. I do think we've made considerable progress in the development of the policy. I do really have a problem with that fee situation. And you didn't officially amend your thing to consider a shareable fee, I hope?

>> Councilmember Liccardo: I'm sorry,, a shared fee?

>> Councilmember Constant: You mentioned it but you're really not making that motion, are you?

>> Councilmember Liccardo: My understanding of the language as it exists now is, I'm going to go back to the text that I have on the screen, of the original memorandum that passed CED committee was, direct staff to work with retail industry and return to council with a recommendation on whether a 10 or 25 cent fee for retailers to cover additional cost of green paper is appropriate. I think that leaves it quite appropriate as to what share goes to retailers or not or whether or not a fee is even recommended or not.

>> Councilmember Constant: That's okay, I just wanted to make sure I understood what you said. I want to make sure that everybody understood. I know Councilmember Pyle said, we are not talking about a fee at all, that is a state action. That could be a fee, because the language here does definitely have the ability for a fee to pop up.

>> Councilmember Liccardo: No fee will pop up without a very public meeting. The crux is a ban.

>> Councilmember Constant: Right.

>> Mayor Reed: Just about done but we have a lot more work ahead of us. Let me just close this out then with a comment or two. It's not enough to be the first in order to be a leader and the fact that we're moving ahead of other cities doesn't necessarily make us a leader. What we're really going to do is the work that's necessary to figure out some of the problems. A lot of work has already been done. But legal work needs to be done. Environmental review needs to be done. Many other cities have tried to move ahead and gotten sued successfully because they didn't do it right. So we're going to figure out how to do it right and that's how we're going to be a leader on this in the region and I want to thank the other councilmembers and vice mayors and mayors that came to the press conference indicating their support to move ahead in other cities. Because San José standing alone on this will not solve our litter problem or any other issues that we're trying to deal with here so I'm looking forward to working with other cities recycling and waste reduction commission the county cities association in which we have representatives and I'm sure that our councilmembers will take this to them as well, and I think we'll get their full support after we figure out how to do it. The other important thing I think in getting other people to follow that we have some system of measuring success and a baseline of data so we can demonstrate that what we're doing actually works. That will make it a lot easier for other cities to follow our lead so I want to thank the staff for the work they're about to do, to figure it out, so that we can take the lead in a way that will allow us to convincingly get other cities to cooperate, and then finally I just wanted to say that I have voted against this in the past when it's a bag tax. I still don't support a bag tax. I don't think that's the way to go and I don't think that's the way we're headed. So with that Councilmember Liccardo wants to get the last word in.

>> Councilmember Liccardo: I'm sorry, I just want to thank you mayor for your leadership in gathering all the local leaders earlier today, that that's important, this is just not San José alone.

>> Mayor Reed: I think you made most of the phone calls, Sam, late at night. It's good to have those personal phone numbers. With that we have a motion on the floor that incorporates the two memoranda with the additional outreach, the ethnic chamber of commerce and the small businesses that the councilmembers wanted to have added by friendly amendment. Any further discussion on there? All in favor? Opposed? Councilmember Constant, opposed, so this passes on a 9-1 vote with Councilmember Herrera absent, she went home, ill. All right, that concludes our work for today on this item. We have a few more items before we get to the other alarming item on the agenda. So we're going to be here for another hour and a half is my best guess. In case anybody wants to come down and join us. We'll now take up the redevelopment item, in a joint session, we have one item, 9.1, that is a purchase of insurance

policies. Motion to approve that item. All in favor, opposed, none opposed, that's approved. Now, we can take up items 4.3 and 4.4. This is a somewhat of a replay, we had a hearing on this last week, but we deferred it for a week in order to take up a protest of the zoning that we were considering. And I want to disclose before we get into this, that since the last meeting, my staff has spoken to Craig Mann of the Board of Education and their council, Rojilio Ruiz and I think staff needs to give us a little bit of explanation of the items that are in front of us, we have the zoning, the protest of the zoning and the rezoning, all related, and we want to try to make sure we get it done in the right sequence. Joe Horwedel, do you want to straighten this out?

>> Joe Horwedel: Try do that in quickly. There is a map that's coming up on the screen. Tonight we have two items that we will be dealing with. The first is the protest to the rezoning. We did have a 95% protest, filed for this site. It is understood that the county Board of Education has withdrawn their protest. Assuming that the county office of education withdraws their protest and they are the parcel the large shape at the top of the map, parcel 261390 90, there is a number that we're looking to be less than 50% would be a protest line of 811 feet and another 260 feet of property owners, so we would need an eight-member council majority override the protest to get to the zoning item itself.

>> Mayor Reed: If I understand it right, we need to first consider the protest.

>> Joe Horwedel: Correct.

>> Mayor Reed: And if the protest is not overcome by 50% we don't have the zoning.

>> Joe Horwedel: Correct. First is to hear the protest if there's not eight votes it stops right there. If there are eight votes you would be overturning the protest by the property owners. Then vote to approve the rezoning or conversely you could move forward with the motion if Councilmember Oliverio made it the last council meeting a similar motion for just denial of the rezoning, that is the third option you see on the screen or the third bullet.

>> Mayor Reed: But in either case.

>> Mayor Reed: The annexation stands alone as an additional issue.

>> Joe Horwedel: That's right.

>> Mayor Reed: We're going to consider all the testimony at one time on those and then we'll vote in sequence first on the zoning protest and if that's approved we'll take the rezoning itself and vote on that. I'm sorry, if the zoning protest is overridden and then we'll take testimony on the annexation of the other -- the entire 56 acre, we'll take that testimony separate. So anybody who wants to get in on item 4.4, we're going to take that after we resolve 4.3 and we'll take separate testimony. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. I want to proceed with the applicants and the members of the public to speak. They've been waiting for several hours and you know, it's the -- when you're having a meeting during the day versus nightly it's difficult, especially many people took the time off of work so I want to thank them all for working together and attending meetings in the past week but I think it's important we hear them and it's really important that we realize that a majority protest of rezoning is rare. And it's something why that's why it requires eight votes so let's go on with it.

>> Mayor Reed: Yes, this is a replay so we have heard from lots of people already, that will help you be shorter I'm sure in your comments. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Joe, is the application denied under protest upheld, the same as the council denying it without pursuing the project? Is it the same end result?

>> Joe Horwedel: If the council is unable to achieve eight votes to overturn the protest, the rezoning is denied at that point. I think it would be the same action as denying. It's kind of a pocket denial.

>> City Attorney Doyle: The code reads you cannot proven the deny unless I overrule the protests. You can't move to approve it, unless you override the protest.

>> Mayor Reed: This is a continuation of the previous hearings, all of that is part of the record. So I think we'll maybe take testimony first. But Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I just had two questions for clarification. One, Joe or Rick, I'm trying to understand what the standard is for us to decide. This first hurdle, of overcoming the zoning protest, is it simply whether or not the zoning complies with the general plan and Specific Plan in this case, or is there some additional criteria that we should be considering?

>> City Attorney Doyle: There is no -- this is not a quasijudicial matter, this is a legislative act, and so you have discretion, in your legislative discretion based on whatever factors you want to decide whether to -- vote one way or the other.

>> Councilmember Liccardo: Whatever you think about the project on its merits can be considered as part of this first evaluation, that's helpful.

>> Joe Horwedel: That is why we suggest we hear them together is the ordinance doesn't provide any guidance about why you would overrule, it's really to set the higher standard that it's a supermajority not six votes that the council thinks this is a good idea.

>> Councilmember Liccardo: Okay, the last question for clarification I'm looking at the midtown specific plan now and I'm hearing a lot from the community that this doesn't comply with the specific plan. I may be getting the zoning or the land use designations wrong. But I think as I see it, is the portion that would be bordering San Carlos would be the general commercial but then the portion behind it would be transit corridor residential. So that I think of the latest iteration of this project proposal we're seeing is somehow splitting the project, that the portion in which there would be housing would be located where it says transit corridor residential, is that correct?

>> Joe Horwedel: The site does have a split general plan, it's transit corridor residential with the commercial out along San Carlos street, combined commercial residential with the live work overlay on the balance of the site.

>> Councilmember Liccardo: Okay.

>> Joe Horwedel: So the Specific Plan provides a lot of flexibility what could occur on this site. Both of them, both general plan designation allow residential uses The portion where the SRO is predominantly located, allows live-work uses and how staff has looked at this, that SROs are types of uses that we have provided more flexibility in where they've been located in the city. They are allowed in commercial zones also residential zones as a conditional use, and therefore we've allowed transitional uses as parts of that interpretation.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just had a question, I know this was a continuation from last week and I wasn't here last week. I did want to state for the record I did watch the entire council meeting on the broadcast, the replay streaming from the web and just to note I did meet with the developers, Chris and David Neil, actually my office did in my absence and they also met with neighborhood leaders, Randy Kidman, Chet Lockwood debra Arant I want to make sure I can vote, right?

>> City Attorney Doyle: Yes.

>> Councilmember Constant: Okay, thanks.

>> Mayor Reed: All right, preliminaries out of the way, I think we'll take the public testimony. Remember, it's one minute. We want to get done before we have to break for dinner so we don't have to get back. Mary fortune, Sam Blackford, car Lowe America.

>> I'm Mary fortune, it's a 270 Sunol court. In addition we don't support dividing the components of the project . The project does not comply with economic development goals of the midtown Specific Plan, Burbank Del Monte a formal protest was signed by 90% of the business owners and residents. the project will not provide immediate housing as there is no intention to break you ground in the future. You can't compromise the fact that there already exist many housing projects on San Los proposed in the pipeline under construction and completed. We need our commercial industrial land to be able to support fiscal opportunities, your decision will allow business to operate and grow and our United group supports saving the land for future opportunities to grow our tax base.

>> Mayor Reed: Sorry your time is up. Sam Blackford, car Lowe America Daniel fortune.

>> Good afternoon, thank you very much for your time. My name is Sam Blackford, for over 20 years we have owned and operated a business adjacent to the Sunol court project. We hope the council will agree it would be best to maintain this area as zoned commercial. This past week we met a number of times with core the potential developers to consider a compromise to their original plan. Unfortunately due to time constraints and other issues we need to maintain our opposition to this project. We have seen orchards that provided jobs turn to canneries that provide jobs that turn into high tech R&D that provide jobs. We understand change is ongoing, we need to ensure that jobs --

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Carlo America, Naples Naples.

>> Mr. Mayor, council, my name is Carlo America. I came to America in 1968. I have 25 cents in the pocket and work hard for start of my business. Now, I have this property, pizza Jack on Sunol San Carlos I wanted to keep. I wanted to more business around me. Here in San Carlos and Sunol. This from block in front of the school circulate stay commercial. We should bring a big commercial zone here. To help with

the job for surround neighbor. Keep this zone commercial. Please, listen to me, honor this protest. Deny this project. Thank you.

>> Mayor Reed: Daniel fortune, June Chine. Norma Copernick.

>> Good afternoon, my name is Dan fortune. I'm speaking for the fortunes who have a great deal of the frontage of 758 through 850 West San Carlos street. we appreciate our meeting with the developer but we realize the proposed project is not compatible with our property and the neighborhood businesses, housing should not jim Marcus's property should be preserved as commercial. The property should not jeopardize existing businesses, we need to protect our commercial and industrial land and take advantage of fiscal opportunities that support plans being formulated by the Diridon area and implemented for the downtown and midtown areas of San José. We support councilmember Oliverio's statement that in this case, it's best to just say no. Now is the time for the council to take advantage of the opportunity to decide, not only on our future, but the future of our entire community. Thank you.

>> Mayor Reed: Sorry your time is up. June Chine. Norman Kopernick.

>> Thank you for hearing me. My name is June Chine. I am a property owner other than across the street and part of the protest that could support some housing above. As a property owner, from across the street, from this, I support that, too. The particular site in question breaks up the great potential for that commercial land. I ask that you uphold our formal protest, deny this project, just say no. Thank you.

>> Mayor Reed: Norman Kopernick (saying names).

>> Mr. Mayor, members of council I'm Norm Kopernick. I hope you support this protest, I'm against the project. I hope you had the opportunity to drive by this area. Recognize the potential you have in maintaining this commercial and retail type zone to support the community and the rest of the residents around the area. I would like you to remember back councilman Oliverio's comments last week. It takes courage to be a visionary. I strongly believe and along with the five and six other community neighborhood community associations, the businesses in that area and adjacent property owners, the benefit you will receive will outweigh any type of benefit this will receive, thank you very much. .

>> Mayor Reed: I think I have all the owners and then I have the applicant to speak and then we have a bunch more people to speak as well.

>> Yes, Mr. Mayor, I'm James Marcus, I'm the other than of the property. I've owned the property for 32 years and I would like the council to go along with the planning staff and Planning Commission's recommendation to go along with this particular project. There's been no investment in this particular area. It's -- the properties are not supporting many businesses at all. And I think that this will be a great improvement for the city and low income housing is definitely needed for this area and it would support students, low income people, even people for the stadium. And I think that we can -- we can exist with the existing neighborhood, and I think it would be a very good addition to our city. Thank you.

>> Mayor Reed: Okay. Then Chris Neil who is the applicant.

>> Just to confirm my amount of time, one minute as all the public speakers?

>> Mayor Reed: Yes.

>> Mr. Mayor, councilmembers, in the last week we have accomplished a lot. We have an agreement with the school, the county office of education, that must be ratified by the board. We've held five meetings, we've met and set down with a number of the property owners. A significant concern was impact on the west San Carlos, we are in agreement to not develop that portion, to not impact the businesses, not impact the parking and just propose to develop the portion that is off Sunol which is general planned residential. If this project doesn't go forward it is still going to be general plan residential. We are agreeing to lower the building, reduction the number of units, increasing the park ratio, address almost all the problems that addressed by the neighbors, but we couldn't find a middle ground to understand what their concerns were. It was found in conformance with the midtown specific plan, I ask to you override the protest and support the project. Thank you.

>> Mayor Reed: Now I think I've heard from all the people who hold the protest, I've layered from the property owner and the milk, all right. Then we'll take the rest of the testimony. Richard Nisset, Debra Arant, Michael La Rocca and Randy kinman.

>> Good evening, Mr. Mayor councilmembers thank you for the opportunity to be here. My name is Richard Nisset, I live at the Shasta Hanchett neighborhood area. I urge you to uphold the protest and I want to point out again that 69% of the protest line is upheld without the school and 95% of the protest line is upheld with the school. I understand that the applicant has penciled in an agreement with some of the consume board members but that's not been ratified yet and I believe that as it has not been ratified as it stands today they are still counted as part of the protest line. In addition, the majority of the

homeowners in the area, the homeowners association agree with the protest and this protest is rooted in the idea that this area should remain a strong commercial area. So I would urge you to support the protest and thank you very much.

>> Mayor Reed: Debra Arant, Michael La Rocca, Randy kinman.

>> My name is Debra Arant and I'm vice president of Shasta Hanchett neighborhood association one of the associations that would like you to uphold the protest. Without the school it is still 69%. We have met with the developer and we have not come to any formal agreements, some of the suggestions we agree with some we do not. Bifurcation of the property leaves West San Carlos without any development of any kind. Preuphold the protest and keep this development commercial, thank you very much.

>> Mayor Reed: Michael La Rocca, Kelly Snyder, (saying names).

>> Michael Larocca member of the Burbank Del Monte NAC. I urge the council to uphold the protest. I agree with the comments of the previous two speakers. Also, I request that the council deny the proposal to rezone the property. And maintain the commercial zoning of the site. In addition, we do not support dividing the components of the project, retail/housing because it will not solve the underlying problems of maintaining the employment lands. I urge you to uphold the protest. Thank you.

>> Mayor Reed: Randy kinman, Kelly insider Nick Roocovich.

>> Thank you mayor and council. After completing last week's homework to meet with the applicants, the neighbors, business owners and property owners, planned policies, existing land use, existing and future transportation plans. We came to realize that the fundamental flaw with the project is replacing commercial land with housing. As with all homework we learned a lot including the conflict created when you only look at a project and not the plans and existing policies. Because you're being asked to rezone the site the question should be how is the land historically used how sit currently used what is its best potential and how can we support this? Don't think of this as saying no to a project, think of it as saying yes to San José. Say yes to the economic development strategy, say yes to the framework, say yes to vibrant residential and business districts say yes to supporting housing with jobs, say yes to saving jobs, creating jobs and economic growth, say yes to the future of San José. Excuse me.

>> Mayor Reed: Kelly Schneider, Nick RADkocivh and Bob Sipple.

>> Hi my name is Kelly and I'm a home other than and a resident in the Shasta Hanchett neighborhood. And I'm going to be one of a minority of voices you hear tonight of local voices who work and shop and recognize ready around the San Carlos San Carlos, it should be a fantastic opportunity to embrace the future, infill, mixed use housing integrating our socioeconomic neighborhoods and introducing a much needed affordable housing component to an already intensely used transit corridor and one which is undoubtedly going to get more intensely transit focused in the coming years so I encourage you to support the project. Thank you.

>> Mayor Reed: Nick Radcovich Bob Sipple Shiloh Ballard.

>> My name is Nick RADcovich. I'd like to start off by commending the developer for a sense of community engagement that he's undertaken over the last week and I'd like mainly to say that reducing appropriately dense development by 25% does not cause housing needs to evaporate but rather displaces it elsewhere oftentimes to places that should be maintained as open face. This particular development in urban core, if developers can't build here, where can they build densely? I encourage you to be more consistent in your application of policy, by allowing density where it is supposed to be, in the urban core close to services and transit. Thank you.

>> Mayor Reed: (saying names).

>> Good afternoon mayor council and City Manager. My name is Bob Sipple, I'm here representing the rose garden neighbors association and the smaller rose garden neighbors association some 1,000 members. While we're not directly next to the project we made in our bylaws a situation, we think this is a common cause this entire project goes any and all any of the already approved economic goals the city has already approved and put into place. Since living in this area over 40 years I have never ever seen the neighborhoods, the neighborhood associations and businesses get together at a 95% signature base. So that alone should tell you how we all feel about it. While we are sensitive of course to low income housing and in fact in most occasions support it this particular project makes no sense. Particularly if nothing else because Diridon station, the beautiful Alameda, the ballpark and high speed rail are right around the corner and we should put all of this into the same thought process so it becomes one body to make sense.

>> Mayor Reed: Your time is up.

>> We urge you to support our council Pierluigi and not support this project, thank you.

>> Mayor Reed: (saying names).

>> Good evening I'm Shiloh Ballard, I'm here on behalf of the Silicon Valley leadership group, we support building more housing for our workers and the ability to recruit and retain the best and the brightest. First and foremost we want to commend the developer on the extensive outreach he's gone through in the past week and the community for also stepping forward to make a good faith effort to make some sort of agreement. On the concerns that have been raised, we've heard many talk about why this site is not appropriate for affordable housing. In fact I'm not sure ever have I in my time doing this sort of work ever heard anything different, no site is ever right. There's always reasons why the site is just not quite appropriate for the particular use in question. That said, affordable housing location and that is transit. It is walk distance from the Diridon station and one at the Diridon station the world opens up for you and for folks who are transit dependent, folks who may live in this housing, not having to have the extra cost of owning a car is tremendously helpful in moving folks to a more financially sustainable living situation. Thank you for your time.

>> Mayor Reed: Gary Olympia, Mike Daly, Ross Signorino.

>> I am in support of this prompt. The need is obvious. The location is very reasonably suited for the use. The developer has experience. He's competent, responsible, and flexible. I have the privilege of going to one of the outreach meetings last week. And witnessed their changes and modifications which are thoughtful, and it shows that they are listening and providing a project that will be very successful, and will enhance that neighborhood. You only have to drive by the site on Sunol, and you will say, my God, almost anything, a vacant lot would be better than what's there. To expect that there will be any sizable commercial in any short benefit is not realistic. This project and the rezoning will further the long standing social policy and public policy of this city to advance affordable housing.

>> Mayor Reed: Sorry your time is up. Mike Daly, Ross Signorino, Lester Fontec.

>> Thank you Mayor Reed and city council I'm Mike Daly. Before coming to EH housing I spent four years working for the Sierra Club as transportation and land use, those are my main issues. I'm currently a Sierra Club member, to transform. My I main comment is the transit around this area is really incredible. The person a couple of minutes before me who was in opposition, as Shiloh says it opens up the world to you at the Diridon station. Further I left you a packet which you might look at later but I think it's telling you things you already know. In West San Carlos we are ten minutes from bus from thousands, we're ten minutes, if we manage, our market willen ten minutes away thousands of workers are ten minutes from this, tens of thousands I believe are less than an hour by transit, if you get on the train or you get on the light rail.

>> Mayor Reed: Sorry, your time is up. Ross Signorino, Lester Fontag, Phyllis ward.

>> Ross Signorino: Thank you, many, many members of the council. I am a member of the affordable housing network, this seems to be a good project. I don't remember if it was Mayor Gonzales at this time or Leslye Krutko, that done more for affordable housing than the whole state of California. I might be wrong in that statement but it seems wonderful/wonderful that the City of San José can do that, I know people who live in affordable housing, otherwise they wouldn't have a roof over their heads so I think it's great. Again, Mayor Gonzales who worked for affordable housing real hard, I think he should be commended and not forgotten in this regard, and then Leslye Krutko who comes up here and speaks on affordable housing, thank you.

>> Mayor Reed: Mr. Fontak, Phyllis Ward, Jerry Less.

>> I'm Lester Fontak, I'm here representing affordable housing. I'm here to ask you to override the housing protest, Noll court development we'll provide with SRO is basically, housing for young working professionals who are just on the other careers and finding their interim wages in today's economy. We have people who are working in the helping profession which is nursing assistants, health age acknowledge childcare professionals, all can be found in our SRO, I have a resident her name is Lucia, nursing assistant who is just barely making it, will definitely need more housing that can accommodate these types of residents. Thank you.

>> Mayor Reed: Phyllis Ward, Jerry Lefsch, Susan Dutton.

>> Mayor and members of the city council, my name is Phyllis Ward with the affordable housing network. And first of all I'd like to ask you all to vote to protest the overturn of the zonings? First of all. So confusing what's going on. But affordable housing network supports the housing development on Sunol. The housing would be for extremely low income people, and very low income households. And this is the income group that needs housing the most in this area. As you know, it's very difficult to find housing that people earning eight to \$10 an hour can afford. And the development is near public

transportation and also near walking distance of employment opportunities. The planning staff recommended approval, and the Planning Commission voted, as you know, 6 to 1 to approve this housing. So I'm asking that you all vote yes to confirm this housing project. Thank you.

>> Mayor Reed: Jerry Lepsch, Susan Dutton, Carey Dritz.

>> Good evening, mayor and city council members, I'm here to support Sunol court. And please vote to override the zoning project and approve the rezoning. I have lived in art arc, which is a part of core properties, for four years. It is part of affordable housing. Now, I've lived half my life in San José. I was born here. Before that I've worked over 20 years with the restaurant field. But then I was stricken down with a deathly illness. And if it wasn't for the art arc and the affordable housing, I'd be homeless right now and I thank God for art arc. Thank you very much.

>> Mayor Reed: Thank you. Susan Dutton, Carter Dritz, Chet Lockwood.

>> Thank you for hearing us all this evening. EAH is the management partner for core in the Sunol court project and we're so very excited about this multigenerational project. We've been doing management for 40 years, we are in 42 municipalities from families to seniors to SROs, we expect Sunol court to not only be multigenerational, but to be the perfect location as, as we said thousands of jobs from all areas, 15 minutes from the university, federal building. Our resource coordinator, one of the things we wanted to address is the resource coordinator that we will have there will design a custom resource and services plan to fit the residents. We have -- we have relationships with almost 75 San José organizations, in Santa Clara and San José and everything from the Salvation Army, institute on age, Santa Clara social services, Asian law alliance, the second harvest food bank. We are committed to serving --

>> Mayor Reed: Sorry your time is up. Jeremy Dritz, Chet Lockwood, Brian Ward.

>> Good evening Mayor Reed, councilmembers and staff. I am Carey Dritz, the deputy superintendent of the Santa Clara County office of education. I'm here to let you know that the office of education has passed a formal motion to take no position on the Sunol Court multifamily development. The Santa Clara County Board of Education was concerned that the adjacent school to the approached development was not addressed in the mitigated negative declaration. Since the last council meeting, the council board and core, the developer, have engaged in discussions and have reached a tentative agreement, pending Board of Education approval that addresses the environmental impacts of the construction project and the project itself. Therefore, the county Board of Education withdraws its protest. Thank you.

>> Mayor Reed: Chet Lockwood, Brian Ward, Terry Bellandra.

>> Thank you, Mayor Reed, city council, Chet Lockwood. Tonight I'd like you to uphold the protest, there is a valid protest of the majority which is regulation and they have been met. This property if you look at it there, the compromise that the developer has come back with is to eliminate frontage, that's a 90 foot frontage from the curb line to the building line. If they do that you're condemning this property to no future viable retail in the future. Allowing the property to sit vacant for two years during the moratorium would be advisable, we don't know what's going to happen in the area, we don't know what the requirements will be and we definitely need support for the housing that's already online and in the pipeline. Please uphold the denial. Thank you.

>> Mayor Reed: Brian Ward, (saying names)

>> Good evening, my name's Brian Ward, I'm vice president of the Buena Vista neighborhood association which has voted to oppose this development. I was against the development last week. And after hearing the developer on Saturday, I'm dead fast against it. Because it's quite clear that they only have their interest involved and not that of the community at large. Among the proposals, they decided to exclude the retail which would violate the midtown Specific Plan. Additionally, the developer is saying he doesn't need that much park because everybody will take transit, however, he balks at paying any type of impact fee to VTA, which is facing a \$57 million deficit, and at that time service reduction hearings, have said that only developer-paid improvements will be made. Midtown area needs more retail. All that has happened is, the retail has been replaced with different retail, and not the -- not new retail.

>> Mayor Reed: Sorry, time is up. Terry Bellandra, Dixie boss, Helen Chapman.

>> Do you overturn 69% protest or do you honor their concerns? Along with a letter of opposition and formal protest endorsements from the boards of the Burbank Del Monte NAC, SHIPNA, SONA, Rose Garden Buena Vista, and newhall neighborhood associations. Let us compensate for investments we've lost in the pass. We have an opportunity for a grand gateway project that will sustain and support the upcoming Diridon area. This area must maintain its commercial zoning, to generate revenue to sustain our future. Where will the surrounding high dense city residents work and shop if all of our commercial zoning disappears? Why must San José's high density housing always be at that time expense of the

land that provides the jobs? San José can no longer afford short term gains when we have long term goals. Just say no. San José's economic future is at stake. Thank you.

>> Mayor Reed: Dixie boss, Helen Chapman, Lorna Chang.

>> Hi, Dixie boss, core affordable housing. What a week it's been. I think the stakeholders and all the other persons, who weren't immediate stakeholders coming in and having very productive dialogue with us. It is clear we had a lot of work to do and it was very clear that we made a lot of strides in this. We heard the neighborhood stakeholders and protecting preserving the opportunity for a larger stake commercial development on Sunol Street -- I'm sorry on West San Los street. We heard the neighbors when they said increase the density, increase the parking. We heard the neighbors when they said, please respect the school next door. We have made an opportunity we have made advances. This green building, this sustainable building meets both the framework, the employment lands framework in that it is general plan high density residential. So for this we ask you to overturn the protest and please vote for the project. Thank you.

>> Mayor Reed: Helen Chapman and Lorna Chang.

>> Thank you. Helen Chapman, president of Shasta Hanchett neighborhood association. Let's call this what it is. This is about the midtown Specific Plan. A plan that was adopted by council in 1992. Our neighborhood association was involved in that plan before 1992. Part of that plan included housing, retail, commercial, and office. We've seen the housing. We've seen a lot of housing. What this is about is, this is about jobs. I know you have a hard decision in front of you. Do you choose between affordable housing or do you choose between jobs? Working people need affordable housing but they also need a place to work. That is who this is about. Your decision is going to be tough tonight. But I stand with the rose garden, the newhall neighborhood association, the Burbank Del Monte knack, my neighborhood association and many others keep the protest, thank you.

>> Mayor Reed: Lorna change is our last speaker.

>> This is Lorna Chang. The concern I have is not that the -- they haven't done a good job looking at things and whether or not affordable housing isn't something that's necessary. The concern I have is that we have over a 100 million dollar structural deficit. Cities normally need to have jobs because we no longer have an adequate property tax base. Yet the City of San José has this humongous deficit partly because we don't have affordable jobs not every time but frequently whether we have commercial properties, properties that are job related we make a transfer over into residential property where people can have housing, without having allocated properties to compensate that will be only designated for making up the difference in commercial or job related properties. So until we actually come out and say, yes, we'll do a transfer here but then we allocate properties there, to make up the difference, I am completely against this.

>> Mayor Reed: That includes the milk testimonial on this item. [applause]

>> Mayor Reed: We'll bring it back now for council discussion. The first matter in front of the council is whether or not to override the zoning protest. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. So, here we are. It's been a week. There's been a lot of activity going on. Because we the council said we'd give you that opportunity. So of course there's going to be attempts at dialogue to get people to see it the other way. With that said, though, I think the community has spoken loud and clear. I think we've heard it directly from neighborhood associations, and the adjacent property owners. We cannot deny the fact that the adjacent property owners are protesting, fact. So with that said, how do we proceed as a council? This is very uncommon for us. It does not happen often. And this has nothing to do with affordable housing. It's about a lost opportunity about taking a gateway parcel and removing its economic engine opportunity from this city that suffers from an infrastructure deficit. We all know there's potential for this ballpark. It's been mentioned by people in the audience, won't this become more valuable. Isn't this a piece of the puzzle? Why would you have a block that is industrial and interject this residential in it? When we have received so much housing in this area, that where it is where it wasn't supposed to be, in fact about 1600 units that was converted from commercial-industrial to housing. So now you kind of have the community here sitting at their last stand. We've seen it before, we've seen it every time but yet here the adjacent property owners, the people most directly affected are saying, that should stay industrial. The fact is that piece of property used to employ 100 people. The current property owner cheese to keep tonight a manner that isn't productive so he can sell it is not our problem. The problem is it's zoned industrial and that's what it should be there for. Again this is for the opportunity. I know the school district has said they're withdrawing. I think we should also point out that core has made the project more amenable to them but guess what they're

already doing? The additional parking for the foundry school by extending the existing parking lot, to a depth and in line with existing building improvements. It seems like they've got their fee. The school district hey, you know what I needed some improvements, you're going to take care of it for me. But even with that we still have a 69% rate, which I've never seen on this council before. I think it's indicative of this council to listen to this strongly. We chatted about this at length last week, again the lost opportunity, the amount of people on this, the other property owners wondering where people will work in San José. There's no way you can take this industrial land use and try to locate it somewhere in your district. Because you know what? Then we'll be back here again because there's going to be a community in some other part of San José saying I don't want that noise from that industrial use, I don't want that truck traffic. Where here, it's there, it's there right now and it fits the neighborhood because that's what it's been with. Again general plan got to be strategic, thinking of the ballpark possibility. We've done being strategic before with tax dollars using redevelopment money, we spent over \$100 million to parcel land together for development and again, the council has the power to land bank without spending a dime by saying, we recognize this is a special area. It's in the radius of the downtown core, the Diridon station, et cetera, and let's make it something really special. Dividing this lot, and the fact that the retail is gone is make it even worse, there is no income coming to the city at all, the retail somewhere of 140 and over but inevitably it allows you so much more potential to have a full lot of development. And that's what the community is asking. They're not saying they're against housing here or affordable housing. They're saying give me a project that gives me both. Because the current project doesn't give me that. They get more of the same. Modifier a conversion of the canneries which allowed for 600 units, the Sobrato, and Lou's village we bring up the amount of affordable that is in the area, that's coming to the area. There's a lot of different things here but what's more important is this zoning protest. I'm certainly not going to make a motion to overturn that protest. I think that protest is valid, the property owners have a right. I will not make that motion. One of the other councilmembers if you choose to make that motion here in the public and be remembered for it is more than welcome but in the end it's going to take eight of us to overturn it. So I really would ask that you know, whatever the motion comes that you do not support it, voting no will in turn in fact leave this an industrial parcel that will give us commercial opportunity.

>> Mayor Reed: Let me see if there is going to be a motion or not. If there is no motion to override the protest, then we'll move on to the next item. But is there a motion to override the protest?

>> Councilmember Liccardo: I'd like to make a motion so we can at least consider the issue. I don't want to move on, I think we should at least consider this so I'll make the motion.

>> Mayor Reed: There's a motion to override the protest, around seconded by Councilmember Pyle. On the motion Councilmember Pyle.

>> Councilmember Pyle: Thank you, there's been a little confusion about the designation of the property at this time. What is it, Joe? The property is general plan transit corridor residential for the majority of it. It does have a general commercial overlay along West San Carlos street and where the former rail spur came through on the East side of the site has a combined industrial commercial designation on a sliver of it with the live-would be overlay on it. The majority of it is transit corridor residential which is 25 units to the acre or more.

>> Councilmember Pyle: So by not --

>> Joe Horwedel: I'm sorry, 12 units to the acre or more.

>> Councilmember Pyle: So by not incorporating the piece on West San Carlos, that fits the area that will be considered into residential? So we're not talking about employment land per se.

>> Joe Horwedel: The site is not general plan for employment lands.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I had a few questions, just so that I'm clear. The change that we're looking at now is basically the parcel is a T. There's a big block, small rectangle that faces San Carlos, when I'm looking at the big plans on the second page the part on San Carlos is the darker hatch work of gray.

>> Joe Horwedel: Correct.

>> Councilmember Constant: What we're talking about, that darker hatch-work area would stay commercial and not be actually built on now, is that correct?

>> Joe Horwedel: That's my understanding what the developer has offered.

>> Councilmember Constant: Sounds to me the adjacent San Los parcels would remain for assembly.

>> Joe Horwedel: That's correct, that's why staff asked the developer to leave that piece out.

>> Councilmember Constant: Nancy had a question about the larger section, zoned already for residential.

>> Joe Horwedel: Correct.

>> Councilmember Constant: We heard conflicting things about the midtown Specific Plan. We heard I believe Sam brought it up first and he said he was looking at the plan on his computer. And that in the plan this project conforms with that plan. But we heard from residents that it doesn't. I just want to be real clear from you as the director, what's up?

>> Joe Horwedel: Yeah. I think there's a couple things going on. One is, that the base residential use does conform to the general plan of transit corridor residential 12-plus. The Specific Plan does build in it a number of overlays, recognizing that there are existing businesses that are in this area that can continue to operate. It recognizes that mixed use is an important component of the division of the Specific Plan, so that's why it has the commercial along West San Carlos street. From the staff's position it very much does conform to the general plan. There are a number of other policies within the Specific Plan and I think what you were hearing from the neighbor is a lot of concern that over time, the jobs pieces of the Specific Plan have eroded, the only thing that's happened with the Specific Plan has been the housing, very little of the other features of the Specific Plan have occurred. That you have a site that has been in this neighborhood a viable industrial area, and in fact, the zoning that we're proposing for the annexation of the balance of this area is combined industrial commercial rather than residential because we recognize that in the short term, this area is very much a viable industrial area. And we wanted to preserve those options. And so there is a bit of tension I think from that end of it of, quote, consistency.

>> Councilmember Constant: Just to be very clear, this does not violate the midtown specific plan?

>> Joe Horwedel: That is my opinion, correct.

>> Councilmember Constant: Just to get that clear. I had a question for the City Manager or Joe, I'm not sure who would be the right person. I don't know who would be the specific person. I know councilperson Pierluigi Oliverio, I pronounced that right, multiple times, I believe about a year ago maybe a little bit longer, we had a memo to bring back for council discussion on that specific issue. Were we going to change it or not, and I really think that's a policy discussion that we have to have because we're getting right into this conflict on every single affordable issue. So I'd just like to know what's the status of that, when is that coming back to us so we can have that policy discussion.

>> Councilmember Liccardo: If I might speak to that, mayor, my understanding this is coming to the CED meeting very shortly. I can't tell you which meeting.

>> Joe Horwedel: My staff is doing calculations of the fees for different types of affordable projects in order to do that.

>> Councilmember Constant: It's a reoccurring theme that we keep having. Just my last editorial comment. We are going to see the same kind of tension I think a lot more frequently especially as the general plan finishes up and we start implementing what I believe I'm seeing as the direction of that general plan, and that is more density, really emphasizing the transit corridors building up and I really think what you're going to see eventually is from downtown all the way up to my side, of district 1 on Stevens Creek, it's going to be one dense line of -- and I think it's something we're going to continue to see tension on. But I think we have to go back and really think about those specific plans and the general plans and what we're doing here conforms with both of those. That's important to keep in mind and I think it's also important to acknowledge that the developer has made I guess the best word is progress in addressing a lot of the concerns. Now, he hasn't answered all of the concerns. That's clear. Because there is still opposition. But I think we've seen a demonstrated willingness to see what we can do to make this type of project better for the community that surrounds it. So all that's basically to say I think it's within what we've already done with the general plan and with the midtown Specific Plan and we should overturn the protest and go forward.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Now, I'm trying to compartmentalize my focus first on the protest of the property owners. And with the information that I've gotten, I met with some of the community members and thank them for their time yesterday and the letter that we got from core indicating the response over the past week to some of the concerns, both of the protest as well as some of the community concerns. And Councilmember Constant as well as Liccardo when he asked earlier about the zoning, I think that helps to clear up at least what the general plan is for the zoning for that portion, and the -- if he had a chance to look at the letter that core sent and I guess each of the items that I just wanted to go over the items which core has indicated some change that they were willing to

make. And includes building height and the parking ratio, I wanted to ask especially about the parking ratio, that was certainly one of the major issues, particularly from the folks that filed the protest. And so can you explain the, in any discussions you may have had with core, what the amend is to the parking ratio that they're proposing?

>> Joe Horwedel: Councilmember Kalra, I have not been speaking with core, they have been spending a lot of time with the community work through the issues. In their letter, as it relates to the park ratio, increasing the size of the units, they are providing parking that would meet our normal standards for this at a one space per unit ratio. One of the thoughts that staff had in suggesting that the commercial front be removed, was one that we expect would be better to build a larger in the future but it also in the future provides an opportunity for surface parking for the residents, park can work but if there is need for the parking it can hatch off the street and not impact the neighborhood. So from staff's standpoint we do think that the parking proposal that's coming back would address the -- any potential demand for parking for the project. The decrease in height as Councilmember Constant noted, the issues that we're going to be facing around the city are really looking for appropriate development, we're looking at a 14-story project across the street. The concern about height of development adjacent to schools, I think, is an issue that is one of evolution that is going on. Since we need to work through as we see with an example across the street with the Horace Mann school, that is a very urban school, bigger than the neighborhood that's around it, very appropriate for schools and urban development to coexist next to each other. So from staff's standpoint we weren't troubled with the 65 foot height adjacent to the school, we didn't see that was an issue. But if the applicant is proposing it's not a reason that staff would recommend denial because of the lower height, we are concerned that the number of units lowering on the site, as we are losing opportunities to build as we scale back projects, that is a typical or a normal thing that happens in negotiations with community. But too much of a good thing is I think counterproductive to the longer goals of the city or the larger goals. So it is one that I haven't gone back you know just having this letter today to really assess what that means to this project. But it is a bit concerning.

>> Councilmember Kalra: The 25% reduction to 90?

>> Joe Horwedel: Correct.

>> Councilmember Kalra: And the commercial, referring to that, in speaking with Councilmember Constant that --

>> Joe Horwedel: It's a future development site as how staff looks at it.

>> Councilmember Kalra: Future development site?

>> Joe Horwedel: Correct, could be combined with one of the properties in the East or West.

>> Councilmember Kalra: As I mentioned one of my first comments I'm looking first at the protest and the protest of the surrounding owners, land owners and of course still over the viable amount to require two-thirds vote. But some of the major protests that I heard from last week from the actual property owners and even what we heard from today is that it should just remain -- it should not be residential at all, which controverts general plan, or we're worried that some our parking should be taken, or frankly if the commercial or the front part isn't developed soon, that takes away that protest, and the impact on the school, regardless how it was arranged, somehow it was arranged where the district has come in and at least said they don't have as much of a problem, I think we should at least vote on the underlying application itself based on what we've heard today and what's happened in the past week.

>> Mayor Reed: I think City Manager has an answer to a question that was posed earlier.

>> City Manager Figone: Yes, thank you, Leslye Krutko has sent me a message that the PDO item is scheduled for the end of October, the CD meeting and the matter will be scheduled for the parks and housing next week.

>> Mayor Reed: Let me say I'm not going to uphold the protest, I think we should be following the thinking of Councilmember Oliverio. Councilmember Liccardo .

>> Councilmember Liccardo: I don't blame them, the neighbors of the area, they've been the victims of the midtown Specific Plan, we have seen an enormous the amount of industrial conversion. As I understood this project from the start this was not an employment lands issue because this has been, the general plan designation here, and I'm looking at page 127, of the specific plan, general plan designation is transit corridor residential. And there is no stronger advocate for our industrial lands conversion policy, which I think is probably one of the strictest if not the strictest in the state. And I don't think I've ever voted for an exception to that policy. And since we enacted it in 2007. We knew that we had an enormous amount of conversion going on that was killing us fiscally and we stopped it in 2007. The problem is we've got a general plan here and that's an issue where you've got a general plan that says it's industrial. Here

we've got a general plan that says it's residential and high density residential. If we don't go forward with this project, there will be another residential project there. I can tell you, it can wait for commercial at that site but if we're talking about the site being the site off of west San Carlos, that ain't going to be retail any time soon. We can wait for commercial just like we're waiting for godot and it's not going to happen. That's going to be a residential site, that's how it's zoned and that's how the economics have worked in this city for the last quarter of a century. So I don't understand how this gets sort of characterized as an employment lands issue, clearly it's not and we've tried to create some reasonable expectations for developers, whether they're for nonprofit affordable housing or for-profit, so therefore, everybody has clear expectations for what gets built here. In this case, we have got a developer who came to the table admittedly late but came to the table and saying I'm going to reduce the density, reduce the height, going with ecompasses, and reduce the fringe from San Carlos, so that can be developed for larger commercial development. It seems to me a large number of concessions were made. It was my hope that one of the locals would have come to the microphone and said, this is what we wanted the developer give us, and now this week, I hear we don't want housing period, this needs to be an employment location. I don't believe we ought to be pulling the rug out from under people when we create a general plan or a specific plan, we've got to follow it. And for that reason I believe -- no, I'm going to vote to overcome the protest, if we get to the point I will be voting to support the project. It just doesn't make sense to me, that we would change the rules mid stream. Undoubtedly those who change the rules, in past decisions, involving the midtown specific plan, five years ago, eight years ago, whatever it may have been I'm certainly not going to defend those decisions but I'm also not going to change those rules now. So for that reason I'll be voting for the motion.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Joe, you were talking about this in the general plan. It has a high density residential with what type of overlay?

>> Joe Horwedel: It has a general commercial overlay. It's really hard to see on the map. We've tried to bring down the color map to give a little better sense. Along West San Carlos street. Essentially in the area the applicant has pulled out of his project, it projects a little bit further deep along the edge of the site where the housing's proposed. But the majority is just 12, 12 units to the acre.

>> Councilmember Chirco: And what is the density of this project?

>> Joe Horwedel: Going into tonight's hearing it was 88 units to the acre, so with the reduction it would be somewhere around in the mid 60s.

>> Councilmember Chirco: So --

>> Joe Horwedel: It would conform to the general plan.

>> Councilmember Chirco: But there has been an increase in the density over the general plan?

>> Joe Horwedel: The general plan warts 12-plus, it recognizes that it was transitional, much higher density would be adequate.

>> Councilmember Chirco: My concern is not with the builder. Core is a quality builder and they've built fine projects that make a big difference. My concern has to do with one of the main corridors into Downtown San Jose, San Carlos, anticipated already and is already. When I drive down San San Carlos, it seems to be a collection of overly small businesses which we need a place for them. And I look at the depth of this lot that will not be developed at this point, and also, the lack of access to it. I know that in the initial plan, core had talked about parking in their housing. We still have a problem. Where does this particular parcel park? I know, being on the general plan update for 2040, one of the ideas is that we broad vision of what we want our city to look like and my concern comes from what is left. It's not the general plan but by taking the very large parcel behind it, turning it to high density which I don't -- it leaves something which doesn't really lend itself to a visionary downtown corridor. And as we look at what we intend to put into this area, in the not so distant future hopefully, I have concerns. And because -- there's been a sense that this has been probably rushed a little sooner than ready for prime time, because it is going to be annexed, I'm not sure this wouldn't be well served to be in the process for a couple of more years as so we get kind of the vision that our general plan update will allow us to have. And I just -- I really want to repeat, because I know the Neils have done SROs affordable projects, quality projects that make a difference in many, many people's lives. But I think we need as a governing body to be respectful of the future for housing, but also, for a community of a thousand. And this seems like it's a key parcel on a major corridor, as people will come into our downtown, which has been the heart and soul of the renovation and rejuvenation of San José. So I won't be supporting the motion to deny. I think there's more work to be done. I think the project will be better if we allow it to mature to its right time. And also, to think

not just of meeting the affordable housing goals but also to meet a retail, a commercial, or corridor, and what will this area look like in the next five to ten years as we look at the Diridon station, hopefully a baseball stadium, and all the things that we will be asking our community to partner with us on. So thank you very much.

>> Mayor Reed: Councilmember Nguyen. [applause]

>> Councilmember Nguyen: Thank you. I wanted to thank Councilmember Liccardo for pointing out all the things that I wanted to talk about. But I think that the key concern for me here is that the rules tend to shift from last week to this week. A lot of the things we heard last week is not mentioned again, and I wonder why? I think the reason why is because the developer has been able to communicate extensively with the residents who live adjacent to this property. So today we're hearing another concern that I don't think is legitimate because according to the general plan this is zoned for residential. And Councilmember Liccardo, said if we're not going to approve this project there is going to be another developer coming in with the same request. This is not zoned for commercial. And that's a fact. I have an opportunity to drive to visit this site over the weekend and needless to say it is in dire need of development. There are so many things going on there that's so beautiful and you have this piece of land that is really sore to the eyes and core has built many, many affordable developments, some of them are in my district. They provide housing for so many in our city. The hope is that they will build something across the entire city and not just in district 3 and district 5 in district 7 and here is a unique opportunity to have family living closer to downtown. So I'm going to support overturning the protest. And if given opportunity I think I'm going to support moving this project forward. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I just wanted to say that I agree with the Timbre of the argument that has changed I think from one week to another we can't make those changes and be accepting of the ruling. I have to look at the fact that we did get approval not only from the staff but also from the Planning Commission, that means a great deal me. And I do agree, especially having been a part of the liaison for the disability group, these are the very kinds of things that are needed. Not only by those of us that may have a disability, but all the young teachers, all of the young upwardly mobile people out there that would be good, gracious tenants. So thank you. I am in support.

>> Mayor Reed: I think that concludes the council debate on the motion on the floor which is to overturn the protest, that is the motion which requires eight votes in order to -- eight votes in favor in order to overturn the protest. So on the motion to overturn the protest, all in favor? Opposed? Oliverio opposed, Reed opposed, Chirco opposed, so seven votes in favor. The motion fails. So the protest is not overturned. [applause]

>> Mayor Reed: So the council will not consider the zoning. We do have item 4.4 which is rezoning of 56 --

>> Councilmember Liccardo: Mayor, my understanding is the Muni code requires eight votes of the council or two-thirds vote. We have ten members present.

>> City Attorney Doyle: Two-thirds of the entire membership. So eight votes.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Eight votes whether we have eight people or eight people here. Eight of all of us.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: We need to take up 4.4 which is a rezoning of a larger area located between Mcevoy and Meridian. I do have can cards from people who want to speak, not asful as the prior. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Jo. Did you have annexation to keep this CIC versus RM?

>> Joe Horwedel: The staff proposal does have combined industrial commercial on the property on Sunol street. We did show the project site, that we just talked about, as RM zoning as a multifamily, to reflect the general plan and we did have a application on file. The council does have the ability to go and direct for combined industrial/commercial or RM zoning on it.

>> Councilmember Oliverio: Well it certainly seems strange at this point to inject housing on commercial industrial. CI C --

>> Joe Horwedel: For the east side of Sunol street was recognize while the general plan was transit corridor industrial, the general plan, look back in this area, we didn't expect development in two years, so we thought CIC was a fairer way to treat this property so they wouldn't be legal nonconforming.

>> Councilmember Oliverio: The next two years until the general plan task convenes?

>> Joe Horwedel: Correct.

>> Mayor Reed: I think I'll take the public testimony at this time. Please come on down when I call your name if you're still here. Debra Arant, Richard Nissit, Michael La Rocca.

>> Did I just hear that this is going to be CIC?

>> Mayor Reed: You just heard a description of something there might be. There is no motion on the floor.

>> There is no motion on the floor.

>> Mayor Reed: There is not yet a motion on the floor.

>> Okay so I'm speaking on 4.4 which is the rezoning, right? Okay.

>> Joe Horwedel: Correct. It's all the rezoning on the map shown up on the screen, the large area.

>> Will it be CIC since the PD --

>> Joe Horwedel: The PD is not there.

>> So it's all CIC?

>> Joe Horwedel: The staff recommendation is RN. Our ability to do CIC.

>> Can I speak to whether CIC or RM?

>> Councilmember Oliverio: Mayor I'd like to make a motion to annex this county pocket into the city, all that we talked in law, where it was marked PD to CIC and the white box should be commercial pedestrian. That's the motion. [applause]

>> Mayor Reed: All right, we have a second to the motion by Councilmember Constant. Okay, now we have a motion on the floor. That doesn't mean that's what's going to be what happens. You don't know what the council is going to do. You you have one minute.

>> I'm Debra ARANT. Just as you are I am working to make San José the best it can be. I understand it's a bad fit. I understand it's quite hard to understand, your vote today is significant you can choose housing that could be placed elsewhere, or you could choose to support the future potential for United commercial tax producing development. The jobs and tax revenue that would occupy this space could be lost forever because this project splits the parcels. I quote from city council framework for preservation of employment lands. Variety of employment lands is essentially to San José's economic development. I would like to point out that the Monterey highway has a much higher occupancy rate than any other in San José. We need more of this commercial industrial space and not less, thank you very much.

>> Mayor Reed: Richard Nissit, Michael La Rocca, Randy kinman.

>> Okay, thank you. Thank you once again mayor and councilmembers. This chart that I've put up is, neighborhood association members and I have looked carefully at the midtown specific plan quite closely over the course of the last many, many months actually years and I've done my own tally and I'd like to see you take a chart like this one or do your own tally into consideration. This shows from the midtown Specific Plan the requirement for housing where nearly 57% of that housing requirement quota already met. Excuse me, we're at 61% of the buildout and we used 57% of the land to accommodate that. As far as new retail is concerned we've contributed only 40% of what the midtown Specific Plan calls for by building out 134,000 square feet. We've contributed nothing to office space in fact we've gone backwards. We've contributed nothing to new industrial, in fact we've gone backwards, as far as parks and on space are concerned with this residential load we should be in the area of 13.5 acres, 36% of the open spaces we have in short if we net the quotas that were called for by the midtown specific plan we would need 132% of the available remaining land.

>> Mayor Reed: Sorry your time is up.

>> Thank you very much.

>> Mayor Reed: Michael La Rocca, Chet Lockwood. (saying names).

>> Michael Larocca, I'd like to expand on what the previous speaker was talking about, I do agree with Debra's comments and his. One thing I'd like to point out it's specifically going back to the question you asked Councilmember Liccardo if I may if it's not appropriate tell me so. But you asked you didn't hear community members say, what we wanted from the developer, I was out of town for the last two weeks, out of state, so I didn't attend last week's meeting.

>> Mayor Reed: Michael we're done with that issue. You should talk about what's in front of us.

>> Thank you, I won't go there. But I think I would like to see that they do move forward, and create the things that the two previous speakers talked about. Thank you.

>> Mayor Reed: Andy kinman.

>> Thank you it's a long afternoon here. The Burbank Del Monte NAC as part of its original plan wanted an economic development study, that was in 2002. Several years later, the West San Carlos business district conducted that oops adopted its policy in 2005 which called for a commercial pedestrian zoning

along most of west San Carlos. That also allows us to build housing over the much needed commercial district so I urge you to continue to support that and for the record we do want more housing there. We think that we need more affordable housing there and we think that the affordable housing groups do the work of angels so maintaining this as commercial pedestrian is best use of the land, it honors what's going on there and it still allows us to increase our residential units. Thank you.

>> Mayor Reed: Chet Lockwood, Norman capernick, Terry bellandra.

>> Thank you, I'd like to thank the mayor, Vice Mayor Chirco and Councilmember Oliverio for their protest. I think Vice Mayor Chirco hit it on the head when she said there was a vision, a grander vision for this area, one that we'll all be proud to share in the next 20 to 50 years and to just be a one trick pony and put in one type of development is short-sighted. Please keep it commercial industrial.

>> Mayor Reed: Norman Kopernick.

>> Norm caper96, I'm a property owner other than in that block. I echo the previous speaker however, if you split that block into anything but commercial residential, you're going to have problems when the commercial industrial wants to go in with the residential around it. So keeping that as one unit, I think will be more beneficial and for more benefits to the city. Thank you very much.

>> Mayor Reed: Terry bellandra, Brian Ward.

>> I too believe that commercial or CIC is what we need to keep the portion that was to be the residential housing. So there could be a real gateway project. I wanted to say thank you for having the vision that we all have, we all want West San Carlos mysterious at the gateway to the Diridon area with pedestrian oriented commercial development. Perhaps this is a lesson we all need to work together before the color renderings are drawn and all talk from the very beginning. Thank you.

>> Mayor Reed: Brian Ward, Robert sippel.

>> Good evening. Regarding zoning designations, James Bell when he was the chairman of the Board of Supervisors, specifically stated in no uncertain terms the county does not provide urban services. As such they do not do anything with zoning and any zoning changes would have to be done by somebody paying for the residents paying for the zoning changes. This opportunity, we need more retail. Over the years, midtown has received over 3,000 units proposed or in the pipeline of residential. 1468 are proposed along San Carlos alone which has level of service B. We need the commercial properties. We do not need more residential without the commercial. We need the jobs here so please, I urge you to have this CIC commercial pedestrian.

>> Mayor Reed: Robert sippel and Jim Marcus.

>> Robert sippel, I don't need to introduce myself. Two firsts for me, my speech will be very short. One is a short speech, two times in one night I agreed with my politician, Mr. Oliverio, I hope that you support him and thank you very much.

>> Mayor Reed: Jim Marcus.

>> Yes I am the property owner seems like I'm standing alone here. But as the plan states, I still want that property zoned as it is in the plan as RN. I hope the city council won't change the plan every time somebody wants to have it changed. That's my take. I'd like to keep it the same. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion on the floor, as outlined by Councilmember Oliverio. Further discussion on the motion? Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Per the attorney, I need to disclose that my chief of staff met with various district 6 neighborhood leaders as well as Chris Neil from core and this is also for the item that was previously voted on.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Just wanted to ask Joe a question in regards to the current recommendation from staff as to this parcel which is a recommendation for CIC, just from staff to get your thoughts on the staff recommendation as opposed to what's being proposed right now.

>> Joe Horwedel: The staff recommendation for RM zoning on the core development site was reflective of the development application, that was proposed is reflective of the current general plan. Staff has based on the current general plan, has the assumption that this would be developed with residential. That's why we put forward that recommendation. If for some reason the applicant was not able to design a project in time for tonight's meeting or last week's meeting that they would have the ability through a conditional use permit process to potentially do their project. As it relates to the combined industrial-commercial that the councilmember has put forward in the motion it is a reflection of what existing uses are going on. I think as you're all well aware the financing for any residential project in the near term is pretty much nil even for affordable housing projects. I think the housing department has

four projects that they're going to fund. So from an impact of approving it, for CIC, short term for the ability for the applicant to lease the property and generate revenue will have that opportunity. There is no opportunity to develop residential in the next several years.

>> Councilmember Kalra: What about long term in terms of CIC versus RM implication?

>> Joe Horwedel: In terms of the longer term, what we want to do with west San Carlos street as the Vice Mayor noted is a challenge. As you heard from one of the neighbors, Mr. Ward, we've had a lot of challenges on West San Carlos what we wanted to accomplish. We've thought of trying to extend the depth of trail, the 100 foot is not deep enough, this one's only 90 feet in depth. You really can't do parking behind a building. If our thinking is to do something grand on West San Carlos street we have to rethink what we have in the general plan today. If our goal is to build out from the framework we can do that but in areas like this it will be much less than what I think we will look like a couple of years from now is what we would really like to do.

>> Councilmember Kalra: In your estimation will CIC zoning give you the same real flexibility in going forward and determining what kind of the grand plan is as RM would?

>> Joe Horwedel: What staff's looking at is essentially a holding zone or interim zone. It matches what the uses are rather than what the vision for the future is.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: I think this concludes council debate on this. We have a motion on the floor made by Councilmember Oliverio, all in favor? Opposed? None opposed, that motion is approved. That concludes item 4.4. [applause]

>> Mayor Reed: I believe the only item left on the agenda is the open forum. I have no cards for the open forum. We are adjourned.