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City of San José Police and Fire retirement board. [Audio Difficulties]

>> David Bacigalupi: Item 1 E is a service retirement from police sergeant Jeff Kozlowski. Effective August 21, 2010, with 25.01 years of service. For the record, I do not see Sergeant Kozlowski in the audience. I'll entertain a motion. Okay, I have a motion and second. Any further discussion? Hearing no further discussion, all in favor, all opposed, the motion carries. Item 1F is a motion for service retirement from police sergeant Don Moore, effective June 26, 2010, 28.31 years of service. And for the record, Sergeant Moore is not in the audience.

>> Rose Herrera: Motion to approve.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further discussion, all in favor, all opposed, motion carries. Item 1G is an application for service retirement for police sergeant Mikael Niehoff, effective August 21st, 2010, With 25.01 years of service. Sergeant Niehoff is not in the audience, does not appear to be in the audience. I'll entertain a motion. I have a motion and second. Any further discussion? Hearing no further discussion, all in favor, all opposed, the motion carries. And item 1 H is an application for a service retirement from police sergeant Pete Scanlan, effective September 18, 2010. With 28.58 years of service. And Pete Scanlan's not in the audience. I'll entertain a motion.

>> Rose Herrera: Motion to approve.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further, all in favor, all opposed, the motion carries. Item No. 2 disabilities, there are none. Item number 3, change in status. Item 3A, there is an application for a change of status from service to service connected disability retirement, of -- by retired fire captain Philip Demers. Effective June 27, 2009. With 31.57 years of service. For the record, is retired fire captain Philip Demers in the audience? He is present, and he is represented by Mr. Smith. Donna.

>> Philip Demers is requesting change in status to service-connected disability based on neck, mid and low back, elbows and right knee, 55 years old with 31.57 years of service. Medical reports are listed in your packet. Work

restrictions are he should avoid sustains repetitive forceful gripping with his right and left hands. He should avoid sustained kneeling crouching and squatting. He is currently service retired effective 6-27-09. At the time of separation and at the time of application he was on disability leave and there's no permanent modified duty available.

>> David Bacigalupi: Thank you. And Dr. Das do you have anything further to add?

>> No I don't.

>> David Bacigalupi: Thank you, Mr. Swift.

>> My only comment through inadvertence, I never received a packet but I did receive Dr. Das's report. The department has no modified duty so on that basis I'd ask the application to be granted.

>> Motion to approve.

>> David Bacigalupi: We have a motion.

>> I'll second.

>> David Bacigalupi: And a second. Do I have further discussion on the motion? Sam?

>> Sam Liccardo: .

>> Sam Liccardo: Question for Dr. Das. I know it's very common for us to see essentially prophylactic restrictions that are imposed by treating physician. And the question, to what extent should we -- does the fact that the restriction is prophylactic in nature, should that have some bearing on our determination as opposed to a restriction which is simply prohibiting by virtue of pain?

>> I think it is a legal matter pursuant to the municipal code, what the municipal code describes as a disability. And so that's what I would refer you, probably defer to the attorneys on that in terms of the interpretation of the municipal code. But with respect to prophylactic restrictions, the intention is to protect the individual from further injury or experiencing pain. They do not reflect an inability to perform the duty.

>> Sam Liccardo: Thank you, doctor.

>> David Bacigalupi: Okay, Sean.

>> Sean Kaldor: So following on that, when your restrictions are inclusionary could you reflect on that Dr. Das?

>> They would reflect an inability of the person to do that duty. There is a little bit of a transition between prophylactic and preclusionary. Meaning if someone has significant anatomical abnormalities that correspond to everything in terms of correspond to the symptoms, I kind of defer on the issue of reasonability in terms of does everything match up and then it would be very, very difficulty for that person to do it based on the pathology. So that's kind of where I transition between prophylactic and preclusionary. The treating physician I ask them to describe or provide an indication of why the restrictions are inclusionary. I ask them to provide some anatomic finding or neurologic reasons that describe why it's preclusionary.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Further discussion on the motion? There being no further discussion, all in favor, all opposed, motion carries. Okay item number 3B, it's an application or the change of status from service retirement to service connected disability retirement for retired fire engineer Michael fields, effective January 24th, 2009. 27.41 years of service. For the record, is retired fire engineer Michael fields in the audience?

>> He's here.

>> David Bacigalupi: He's present and he's represented by Mr. Swift. Donna.

>> Fire engineer Michael Fields is requesting a change in status to a service disability based on neck shoulders and lower back. He's 61 years of age, 27.41 years of service. Medical reports are listed in your packet. His work restrictions are, he should avoid very heavy lift being he should avoid sustained shoulder level or above shoulder level work. He's currently service retired effective 1-24-09. At the time of separation and at the time of application he was on temporary modified duty and there's no permanent modified duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das do you have anything to add?

>> No I don't.

>> David Bacigalupi: Thank you. Mr. Swift.

>> Based on the work restrictions and the department's lack of modified duty within those restrictions, I'd ask the application be granted.

>> David Bacigalupi: Okay. Discussion by the board, or I'll entertain a motion.

>> I'll make a motion to approve.

>> David Bacigalupi: Second?

>> Sam Liccardo: Second.

>> David Bacigalupi: And discussion, Rose.

>> Rose Herrera: Just for the record, in terms of -- I'm intending to vote yes but I just want to clarify so. It looks like these injuries were connected to work, they were connected to his work as a firefighter?

>> Yes, the at the end of your packet there are all the, we call them the DW21 claim forms that were filed by the individual with regard to the various work injuries. There were one two three for five six seven eight nine ten, ten from 2005 to present.

>> If I can elaborate, one where he fell through a floor, another one where he was pulling out sheetrock. And falling through a floor is pretty traumatic on the body.

>> Rose Herrera: And that was all while he was a firefighter. I guess I'm used to, since I've been on the board it's mainly been police officers' work that we talked about not as much fire so I just wanted to make that point.

>> No problem.

>> Rose Herrera: Thank you.

>> David Bacigalupi: Another hazardous public safety job. Any other discussion? And board let me just say now I'm still learning the system. So if I miss you don't hesitate to flag me down here.

>> Rose Herrera: I'm still not using the system.

>> Rose Herrera: Okay hearing no further discussion all in favor, all opposed, motion carries.

>> I'd just like to add one thing. I think your packet is about like this, for this individual. This is the medical file. From risk management. So you'll the medical files are not getting to Dr. Das from risk management. When he reviews the files, this wasn't done, that wasn't done, that may not be true. But if he had the whole medical file, that would certainly help him.

>> It depends, because I do siphon through the file so I try not to give you everything. So if there's stuff that I'm missing in terms of treatment options that the patient doesn't recall, around that happens, yeah, there is that definite possibility but I do try to filter for you though.

>> David Bacigalupi: Thank you. The files that we get are big enough. We need help sorting it down to the information that's pertinent to us. Okay, item number 3C is an application from retired fire engineer Samuel Garcia, to change of status from service retirement to service connected disability retirement effective July 12, 2008, with 32.07 years of service. And for the record is retired fire engineer Samuel Garcia in the audience? Is present and is represented by Mr. Swift. Donna.

>> Samuel Garcia is requesting a service connected disabilities. 58 years old with 32.07 years of service. Medical reports are listed in your packet. Work restrictions are he cannot perform above shoulder work with his left shoulder he cannot perform sustained walkings and can only perform limited crouching kneeling or crawling. He is currently service retired effective 1-13-07, at the time of separation, at the time of his application he was on disability leave, and there's no permanent modified duty available.

>> Motion.

>> Second.

>> David Bacigalupi: Okay I have a motion and second. Any further discussion let me just ask Dr. Das do you have nothing to adds?

>> No.

>> David Bacigalupi: Thank you. Any further discussion from the board? Hearing no further discussion, all in favor, all opposed, motion carries.

>> Thank you.

>> David Bacigalupi: Next item is item number 3D. It's an application for a change in status from service retirement to service connected disability retirement from retired fire captain Martin Hoenisch and that's effective January 24th, 2009 with 25.6 years of service. And for the record is Martin in the audience? He's here and is represented by Mr. Swift. Donna.

>> Martin Hoenisch is requesting a change in status to a service connected disability based on right hip lower back mid back left knee hands and wrist. 53 years old with 25.64 years of service. Medical reports are listed in your packet. His work restrictions are he cannot work at unprotected heights, he cannot squat in uncontrolled environments. He cannot bend his knees in a slow and controlled manner. At the time of separation, at the time of application, he was on disability leave, there's no permanent modified duty available.

>> David Bacigalupi: Okay, thank you Donna, Dr. Das do you have anything to adds?

>> No I don't.

>> David Bacigalupi: Questions by the board or I'll entertain a motion.

>> Motion.

>> Second.

>> David Bacigalupi: Any discussion on the motion? Rose first and then Sean.

>> Rose Herrera: Again, extensive reports here, workers comp claims and a history that this is connected to his work.

>> David Bacigalupi: Thank you. Sean.

>> Sean Kaldor: Add to that, officers versus firefighters, the different challenges they face. This is a classic example we use in the fire department and the training academy showing what can go wrong in simple position of apparatus, the faces downtown. In this case it was a fire in the building of unreinforced masonry. The fire apparatus was spotted well away from the fire on the other end of the building, but over the course of the event the fire grew and grew, ultimately causing a brick wall to collapse upon a firefighter. And it's all videotapes, we watch it every time to learn how to respond, how to position and respond to our own firefighters who are injured. So this is a classic case and I appreciate the service he did and lesson is taught us all.

>> Which did result in a fractured hip.

>> David Bacigalupi: And let me just say it is no criticism on the part of individual. We use training films in the police department as well, I know the fire department does of things that we learn through experiences. There is just no way you can predict. And you know it's a hazardous jobs job things are going to happen both jobs. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries. Okay, item number 3G - - excuse me, 3E -- is an application for a change of status from service retirement to service-connected disability retirement from retired firefighter John Martinez effective January 13th, 2007 with 27.1 years of service. For the record is retired firefighter John Martinez in the audience? He's present, and he's represented by Mr. Swift. Donna.

>> Firefighter John Martinez is requesting a change in status to a service-connected disability based on right shoulder, right knee, back, left foot, and hips. He's 57 years old with 29.71 years of service. Medical reports are listed in your packet. His work restriction are he should avoid sustained shoulder level or above shoulder level work. He should avoid sustained heavy lifting. He is currently service retired effective 1-13-07. At the time of separation and at the time of application he was on disability leave and there is no permanent, modified duty available.

>> David Bacigalupi: I have a motion to approve and a second. Dr. Das, did you have anything further to add other than your reports?

>> No, I don't.

>> David Bacigalupi: Thank you. I have a motion and second. Further discussion by the board, hearing no further discussion all in favor, all opposed, motion carries. Okay item number 3F is an application for change of status from service retirement to service connected disability retirement by retired fire engineer Timothy Miller effective January 24th, 2009 with 32.73 years of is service. And for the record, is retired fire engineer Tim Miller in the audience?

>> No, he had an out of state commitment with his son that he was unfortunately unable to be here.

>> David Bacigalupi: Okay and he is represented by Mr. Sam swift. Donna.

>> Fire engineer Timothy Miller is requesting a change in status to a service connected disability based on mid back, low back, right knee, and left hip. He's 59 years old with 32.73 years of service. Medical reports are listed in your packet. His work restrictions are he should avoid sustained kneeling and crouching, he should avoid climbing and descending stairs. He's currently service retired, effective 1-24-09. At the time of separation he was on modified duty, at the time of application he was on disability leave. There's no permanent modified duty available.

>> David Bacigalupi: Thank you Donna. Dr. Das, do you have anything to add to your reports in the file?

>> No, I don't.

>> David Bacigalupi: Thank you. Any discussion by the board or I'll entertain a motion.

>> Motion to approve.

>> David Bacigalupi: I have two motions to approve. Do I have a second? Okay, a motion and a second, thank you. Further discussion? Hearing no further discussion all in favor, all opposed, motion carries.

>> Thank you.

>> David Bacigalupi: Thank you. Okay next item is item number 3G, it's an application for a change of status from service retirement to service connected disability retirement by retired police officer John Quayle, effective January 31st, 2005 with 25.00 years of service. For the record, retired police officer John Quayle's in the audience and he's represented Mr. Thomas Boyle. Donna.

>> Police officer John Quayle is requesting a change in status to a service connected disability based on a heart condition. He's 54 years old with 25 years of service medical reports are listed in his file -- in your file his work restrictions are work restriction is, he should avoid -- he should not engage in strenuous physically demanding activities such as pursuing and apprehending suspects. He is currently service retired effective 1-31-05. At the time of separation at the time of application he was working full duty. There is permanent modified duty available and article 39 positions available.

>> David Bacigalupi: Okay, thank you Donna. Dr. Das do you have anything to add to your reports in the file?

>> No I don't.

>> David Bacigalupi: Discussions by the board or I'll entertain a motion.

>> Sean Kaldor: I have a question.

>> I have San José to present as well.

>> David Bacigalupi: Why don't you go ahead, Mr. Boyle, and then we'll --

>> Officer Quayle took a regular service retirement in January 2005. Three years later, developed his heart problems. Dr. ng, the agreed medical examiner which is on page 20 and 21 in your packet says that 90% of his heart problems are industrial even without the presumption Dr. Das has prevented him from doing police work so to question is the availability of modified work which lieutenant Bacias says is available and I would like to ask lieutenant Bacios a couple of questions.

>> David Bacigalupi: Lieutenant Bacios could you come up?

>> Good morning, lieutenant Bacios, you indicated that in your memo that there was the OSSD tow hearing officer's job available at the time of officer Quayle's retirement in January of 2005. And you said you relied on historical data and I just would ask you to tell us what that historical data is.

>> The historical data was, the positions, who was in them, and when they were vacant. I had to do a hand-check to look back in 2005, in 2005 at that time, there was that vacancy and one other which I don't specifically recall at this point. But there were at least two vacancies in the program.

>> Okay. And that was going to be my second question. The position was vacant, it wasn't filled at the time?

>> That's correct, it was vacant.

>> Okay. And also, my last question is, in the position of OSS hearing officer, tow hearing officer, does the officer have to wear their badge and carry their gun, according to the duty manual?

>> I don't know about according to the duty manual but I have a job description if that helps clarify it that I can read out.

>> I read the job description. What I want to know is if he's operating as a police officer does he need to wear his badge and his gun?

>> No.

>> Okay. Officer Quayle has some words that he would like to say to the board before we conclude our presentation. If the board would listen to what he has --

>> David Bacigalupi: Yes, of course, John go ahead.

>> Thank you for taking the time to hear me. I retired in 2005. And I put my first uniform on in 1968. And I took my last uniform off in 2005. I served in the military, and as a police officer. And my years of police work I was injured a number of times. I was hospitalized, a handful of times and I underwent three surgeries. Each and every injury that I sustained, I came back to full duty. In the fall of 2004 I had my last surgery, subsequent to a police motorcycle accident. And I was released to full duty one week before I retired. So I did put my uniform on and I went to work for that last week. I never thought I would be before you today looking for a disability retirement, but yet here I am. The job that was offered retroactively, hypothetically in 2005, I think is admirable for the police department to have those positions for police officers. However, realistically, we have to realize I think contrary to what lieutenant Bacios says, I don't know of any position in the police department that the officers were not required to carry their firearm their badge I.D. card and handcuffs. Having that in mind I would have respectfully declined that position, going back in time knowing what I know now. And I can lay a little foundation for you for that. I was three years into my new career when I was diagnosed with coronary artery disease. I was flying for CBS news. And two days later, I underwent quadruple bypass. So I've recovered from that to a certain point. But my typical day is I go work on my classic airplanes from about 8:30, 9:00 in the morning I get to the airport. Around 1:00 I take a nap. I get up about 2:30, eat my bowl of rice, and I go home. Brown rice by the way. So I can give you a little bit more of a foundation. As a rookie san José officer, back in the day, Sergeant Bacigalupi remembers, we all had to do six months in the information center. That's a job within the police

department, where you meet the public, you're not in the field. You do wear a uniform. And working with Joe Falcao, we were writing reports and an individual bolted over if counter. We fought the individual through the auto theft section, into the records division, before we secured the individual. So my foundation for turning down a position such as what lieutenant Bacios is suggesting is when you're work for the police department if you're in a situation where you're representing the department with a community for example as a tow hearing officer you have to be prepared at any time. The unusual is the usual in police work. So with that in mind, knowing now, if I was back then, when I retired, if we knew about the coronary artery disease I would have declined that position because I would not have been able to perform it. Thank you.

>> David Bacigalupi: Thank you, John. Sean, you had --

>> Sean Kaldor: Thank you. My question gets right to the points you're bringing up and I appreciate that. And I think it's more of a general definitional issue more than one specific case. And here you have somebody who is, even if we took a hypothetical, someone who works full 30 years, five years later is diagnosed with some disease that was directly attributable to a specific incident 100% without a doubt. So five years after they retire is it relevant to say oh there would have been a light duty position available for them had we known back then but now they've already retired, how do we factor, I don't know if this is a legal question or a medical question.

>> So yes, are it's relevant whether or not there would have been a position available for them at the time they retired because that's what our plan requires us to look at, in terms of timing. There's also a separate section in the code that needs to be looked at in this case where a individual files their application more than a year after they've retired from service. They do need to show by a preponderance of the evidence that the disability is due to a disease or condition caused by exposure to workplace factors and/or conditions that at the time of separation from service had no previous medical basis to be considered harmful. That is code section 3.36.920A 4. So there needs to be some showing that the individual didn't have a reasonable basis for knowing that this disease was caused by workplace factors or was harmful because the application was filed so long after the service retirement. And then under the section remitted to whether or not there's a position available, it does relate to the

point in time when they left, when the date that they are seek to have their service retirement back -- their disability connected back to.

>> Sean Kaldor: So then, to those two pieces if I can follow on to that, were there symptoms prior to the incident, in 2008, when you experienced the chest pain and went in for the quadruple bypass?

>> This totally caught me off guard. I had no symptoms but I guess that's why they call it the silent killer. I was fortunate that they discovered that and then I did go through the entire process to be evaluated by Dr. Ng and it was his conclusion that it was a preponderance of the years of service.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Okay, next I have Sam.

>> Sam Liccardo: Thank you. I don't doubt that this was work-related and I don't doubt that this was obviously a very severe heart ailment. So I guess my question really is for Lieutenant Bacios, I think I can assume what a tow hearing officer does. But I don't want to assume. Can you help me understand a little bit about the duties of a tow hearing officer? Sort of the daily --

>> Well, I can read you from the job description would probably be the best example.

>> Sam Liccardo: Yes.

>> The way we have it codified. Duties and responsibilities, reviewing and processing vehicle reports --

>> Sam Liccardo: That's right in the back -- you've already included that in the report. Thank you.

>> Generally for general knowledge it is located within the office in a secured part of the police department behind the information center which is where the public contacts to get their reports. And they work generally in that office doing follow-up phone calls and then walking over the 14601 sites.

>> Sam Liccardo: Okay. Predominantly it is a desk job?

>> That would be correct, yes.

>> Sam Liccardo: Okay, thank you.

>> David Bacigalupi: The only comment I'd like to make to that is any police officer, no matter what they're assigned a detective sometimes when they're walk paperwork back and forth to the DA's office may not carry his weapon with him at the time, sees a citizen in trouble and they are going to naturally respond. And contrary to what's required of them, they're going to respond like a police officer, particularly like John who has done this for so many years and subject themselves to these dangers. Conrad next.

>> Conrad Taylor: Two things. First of all with a tow hearing officer, it is my understanding also that sometimes you're going to meet with people that are upset because their car has been towed. The hearing officer may meet with that individual and may be involved in an altercation. So he is still meeting with people as a police officer. They're still going to look at him as a police officer. They don't care if he's armed or non-not armed, he could be involved in an altercation and looks like he can't have an altercation. Second question in 2000 Dr. Quayle saw Dr. Ng and Dr. Das just to clarify this, on page 7, on the top of the page, left ventricle hypertrophy. It would disqualify a person from serving as a public safety officer, I would assume that is a safe statement?

>> Not necessarily. According to the guidelines it is one of the things we would look at. But it requires further analysis and review, so if someone has left ventricular hypertrophy, we -- we have to do a due diligence to make sure he can do the exercise treadmill test and pass it. You know I don't have my copy of post with me right now and I can't recall specifically but there maybe something where it is a disqualifier according to post. But I know

that we have hired people with a ventricular hypertrophy in spite of that but that is something we look at very, very closely because it indicates a potential inability to do the job particularly with the issues I've discussed in my restrictions, as far as you know, pursuing and apprehending criminals, because it indicates hypertensive heart disease and it indicates that the pathology attributable to the hypertension is somewhat significant.

>> Conrad Taylor: Thank you.

>> David Bacigalupi: Rose.

>> Rose Herrera: Following on the same line of questioning. I guess I need -- I want some advice from our attorney. If that was known back in 2000, does that argue against the code section 3.36 that it was known? Can you help me out with that? Because it seems -- I'm troubled a little bit. It seems there's some inconsistencies with Dr. Ng. As we're seeing in 2009, it sounds like there is no signs of ischemia. It indicates he must be given restrictions, the presence of left ventricular hypertrophy would exclude a person from serving as a safety officer. I want to understand in terms of I think there are two parts, was there a preponderance of evidence that he did not know this was a problem and that's why there was such a long delay in him seeking disability, and then two, could he, since there's a position open some do we agree that, you know, that there was an opening that he could have fulfilled? So I see it in kind of two parts here so I'm trying to understand the medical side first.

>> So I think -- I think maybe you are asking a question that Dr. Das can help you with, in terms of whether or not this report in 2000 --

>> Rose Herrera: Should we have known about it?

>> -- would have provided a medical basis, or this condition to be harmful and is it the same condition that he is now claiming as his disability, I think.

>> Rose Herrera: Yeah. But I'm asking it as a legal -- I'm really asking it is medical but it is also to answer the legal question you raised with the code so I'm trying to put that together.

>> I want to just elaborate on what Mollie said. I was here when it was adopted and it's a vague recollection. The board may wish more information on what this says. But it's my reading of it now, and my recollection of the legislative history that led to it, that it's not an issue of whether the individual knew at the time. Instead it is an inquiry into the condition, and whether or not the condition giving rise to the incapacity, and whether or not at the time officer Quayle left city service, there was no previous medical basis for knowing that that condition would lead to the incapacity, though I'm not summarizing correctly. And I think it is probably the case, although once you have the legal standards, you have to have the medical information, I think it is the case in 2005 it is known that coronary heart disease would -- was caused by workplace exposure, based on what Dr. Ng indicated in his reports. I'm not sure that's sound public policy. I think it is not an appropriate way to have indicated a cutoff date in the code but that's what's in here now. And perhaps you'd like to table this to actually have a chance to have Mollie and/or myself and Mr. Boyle provide you some written comment on this. But my -- but it's not a function, as I read this, of whether or not officer Quayle had any reasonable basis, at the time he separated to know whether or not he had coronary heart disease or any other disabling condition.

>> Rose Herrera: But if I'm understanding what you just said, you're saying that there's -- obviously you know if I just look at this it looks like there's a history and obviously this developed over time. And that at the time he separated this is probably present, this -- these cardiovascular issues. And if that's true, then the code is limiting us to a certain cutoff date. Is that --

>> It is my understanding that that exact situation, I consider that not a desired result. But I did not write this code language.

>> David Bacigalupi: (inaudible)

>> And yes I do think they'll probably want to speak to, I wasn't here when the code language was written but I do think the question that you're getting to is whether the language had no previous medical basis to be considered harmful means individual medical basis or medical basis in terms of in the field of medicine. And so what Russ is saying, that his recollection -- what Russ is saying is that his recollection is that what this language meant, the no previous medical basis to be considered harmful would have been in the field of medicine, that in the field of medicine, it was -- if it was known in 2005, that coronary artery disease could be caused by workplace factors as a police officer, then that would be sufficient medical basis for it to be considered harmful and you would be kicked out under this code section. Now what he's also saying that that does seem sort of odd because this particular individual didn't know that they had or there is a question whether or not this particular individual knew whether he had the disease. And then you do get into well, what was known in 2000, so we can try to get more history on the rationale behind this code section. Does that help explain the differences?

>> David Bacigalupi: It doesn't help me. That a firefighter or police officer is exposed to some carcinogen prior to retirement and the disease doesn't develop for another year or two or three, I mean, the known exposure and stuff, I mean, you don't necessarily have to know that you've been injured or that an exposure has created a disability injury when you leave service without -- and it can still be considered as a job incurred disability for retirement.

>> I really suggest that we put this over and provide to the board, or Mollie could provide to the board not only a chance, not only the code section so you have a chance to read it as your leisure but the various memos both to this board and to the council that might give us a better background, whether it's a subjective or an objective test. I read it as an objective test and that's not -- I really shouldn't use the word subjective or objective. It is to deal with exposure to chemical X at the time of separation of service it wasn't clear that that would lead to cancer. But since, but after that date, due to other medical research, it became evident that exposure to medication X led to cancer. That is my understanding that that is what this refers to, although I don't think this is a very appropriate measure in situations like this. Now, Mollie in a separate possibility for the board and for Mr. Boyle to address is whether there's notions of equitable tolling that can be used in some circumstances, including in the workers comp situation, I'm not familiar with it being applied in the retirement -- disability retirement context

where you can toll certain statute of limitations. But that's sort of going beyond the municipal code and it may not be appropriate to do so.

>> David Bacigalupi: Okay, thanks Russ, hold on a second, I'll get on to Sean and you later, Mr. Boyle you've been waiting for the opportunity to speak.

>> I think some practical information might be appropriate. Officer Quayle was the police helicopter pilot. And had to take a fly physical once a year to be able to be able to drive and fly his helicopter. If there was any medical problems or disabilities, they would have come out in the flight physical, and he would have been prevented from flying and getting -- so it's not just that he had to take that fitness for duty physical every year and he passed it until he retired. And his problems didn't develop until 2008.

>> David Bacigalupi: Thank you. Okay, Sean.

>> Sean Kaldor: You remain one step ahead of me. My exact question was going to be upon leaving the department, you flew helicopters; is that correct?

>> Yes I did.

>> Sean Kaldor: And to do that, there is an FAA medical evaluation that must be conducted annually?

>> Yes, I maintained a class 2 medical which allowed me to fly as a commercial pilot.

>> Sean Kaldor: And was anything in all those examinations after leaving that department that gave them any indication to deny you a license or suspect that you might have a sudden cardiac condition in the air?

>> No. It was as I was preparing for my next flight physical in 2008. All of this was discovered.

>> Sean Kaldor: Okay and then just a comment, thank you very much, sir. A comment that as we talk about conditions that we should have known or could have known might have led to something some we have the issues with all our presumptive causes and our jobs by nature exposing us to a lot of different chemicals and conditions and I think every fire a firefighter goes to you might say well clearly that would have led to a lung condition. So it's hard to draw such a sweeping, for me to draw such a sweeping conclusion that here you have a police officer who's engaged in a stressful job and so he should have assumed that he would have a cardiac condition and therefore we have to consider that there would be a light-duty position available for him back when he was going to retire. I get lost in the logic behind that.

>> Well, I think you have to think of this in terms of this is an exception. The general rule is you can't file an application more than a year after you retire. That's the rule. So this is a -- is an exception to that rule. It is not a -- it is not a wide opening. The general rule is that if you've been retired for more than a year, you don't file an application for disability retirement. The exception to the rule, and I -- you know, clearly, the exception to the rule is intended to mean that, as Russ indicated, if there was some exposure to some carcinogen, for example, that wasn't known previously to be harmful, you couldn't possibly have filed your application within a year. So that part is, I think, relatively clear. What I think you know is -- whether or not you can go beyond that and say whether no previous medical basis to be considered harmful is also something that you look at on an individual level, is what Russ is saying, he does not -- his recollection is, this exception was not supposed to cover looking at it on an individual level.

>> David Bacigalupi: Okay, Conrad you're next and then Rose.

>> Conrad Taylor: Okay I want to clear this up. So for this exception, if we have filed before the one-year period and they knew about this problem in 2000, we would not be having basically this discussion. So what we're looking at is because he filed beyond the one-year mark, this is where it's sort of cloudy.

>> Correct.

>> Conrad Taylor: We know it's attributed to work, it's because of the filing date, that's what the hold up is here.

>> Yes.

>> David Bacigalupi: Okay, Rose.

>> Rose Herrera: I think that's one part of it. The other part of it is part of our rules is to consider whether this was a job at the time. Whether we like it or not that's routinely how we decide things here. And oftentimes there wasn't any job available. And so it's clear if the medical connection to service is present, and there's no job available, then our decision is fairly straightforward. So in this case what you're saying from what I'm hearing is that the individual aspect of this, the code doesn't contemplate that. So if we were to strictly go by the code we would have to -- we would deny this, based on that. Or we would be on legal grounds to do that. (inaudible)

>> David Bacigalupi: Turn your mic on.

>> -- is authorized to apply the principles of equitable tolling to this kind of proceeding. That is the only thing I can think of, as a way to get out from under this. And notice that I'm -- that by suggesting that, it would in a sense be putting a little exception into the what I consider fairly clear language of the code. And that raises its own problems. But notice, you know, there might be certainly the appearance and maybe the actuality of injustice if we don't do that. But I think it's something again the board needs more information on, both including legal analysis of the code section and the legislative history of the code section and the possible application of the doctrine of equitable tolling.

>> Rose Herrera: Have we done that before? Is there precedence for having done that before? Okay, so that is another question. I have one other question in kind of a different angle. So it is clear back then, or at least from this 2000 physical, what happened with regard to physical examinations that might have been conducted through the city? I mean if we noticed this did we have any -- was there any outgoing physical conducted or anything picked up by the city that would have indicated that there was disability present? Because it seemed like there

was this history and there was some concern. Just wondering if there was -- you know why were we -- was there any question that he should have been working in that position with that potential there? I mean it goes back to 2000. That's just --

>> If I understand, he was diagnosed with hypertension in 2000 and received treatment but retired full duty in 2005. Is that correct? And so the -- and I'm not -- did you get an exit physical retirement?

>> No I did not, I just had my annual flight physicals that the city supplied me with.

>> They paid --

>>> In the medical.

>> We don't do the flight physicals to, I'm not sure he came in for his annual like he was supposed to. But -- and that's where we do the EKGs and we follow up on the cholesterol levels. However, you know, the problem is, he had -- if he was -- you know, the medical records from the flight physicals would actually be quite helpful in terms of delineating the presence of hypertension and documenting treatment because that would show the coronary artery disease or atherosclerotic disease was probably present at the time that he separated from city employment. In and of itself it is not disabling but obviously the disease process progressed over a five- or a three-year period after he left the city to where he required an -- you know, required significant intervention. So that's -- so to me, if there -- if the hypertension is documented that would indicate to me that there was atherosclerotic disease likely present at the time that he separated.

>> Rose Herrera: So clearly if we didn't have this code section we'd be -- well, other than the fact there was a job available, I think we would still need to look at that piece, he would be getting this disability. So I would like more information, I personally would like to take the attorney's advice and have some other understanding of this. I'm not comfortable just making a decision to change code on the fly.

>> David Bacigalupi: I have one more question too of Dr. Das. Do you when you get a disability application do you go back through the individual's medical examinations that are done periodically through the City's medical office? I mean do you just review that to see if there's any indication if it relates to what the application is claiming on the disability?

>> Not routinely, unless there is significant question about causation. In terms of with this particular case it would probably be somewhat -- be valuable in terms of looking at the blood pressure readings as he came in for the annual. So I can definitely pull that record out of archive to look and see if perhaps he had elevated cholesterol levels, or something like that, that would also be a risk factor for coronary artery disease as at present, but his EKGs were obviously normal for a long period of time. So the only other issue would be the blood test. (inaudible).

>> And so yeah, and so then, the issue would be the ratio of the good cholesterol to the bad cholesterol so we can look at that and we can also look at the blood pressure readings. The other issue would be in terms of how adherent Mr. Quayle was to coming in for his annual.

>> I responded to all my requests as a policeman. So if you guys sent me the notice, I'm sure I went in there. I've been in there a number of times.

>> Okay, good, good, so --

>> David Bacigalupi: You're better than most of us.

>> That is why I had to put that in.

>> David Bacigalupi: Scott.

>> Scott Johnson: Dr. Das, so you referred to the blood test. Now, on page 7 there is a reference at the year 2000 of high blood pressure. And so would those blood tests indicate that there's any potential heart disease?

>> The only thing that I would be able to tell you is that if he had added risk for coronary artery disease based on his cholesterol levels or particularly the ratio of the good cholesterol to the bad cholesterol. And that would indicate added risk. And then the other thing I could provide is his blood pressure readings at the time. If there was something where it was 140 over 90, what we would consider back then to be borderline hypertension, that would kind of indicate there was something there. Not necessarily something would you treat, you would recommend that the person exercise and eat more, but it could be a harbinger of what came.

>> Scott Johnson: Okay, and the other thing I think relevant would be, if the annual physical examinations and the tests that were conducted while he was employed as a pilot to look at those tests as it compared to the test that Mr. Quayle indicated that he recently -- well, he took in 2008 that indicated that he had this heart disease, I am a little confused because in the report on page 7 it references that Mr. Quayle suffered a heart attack when he was visiting his mother and then subsequently had some tests done. But I thought I heard testimony that he found out about the heart disease from tests that he was taking in 2008, related to him, you know, his flight physical exams.

>> As the --

>> I could answer that. My mother had a heart attack in October of 2008. And that same evening when I went home, I thought I was having chest discomfort. So I ended up going to Kaiser emergency. And they ran the tests on me and I had no enzymes, they didn't think I had a heart attack. They thought I was stressed out because my mother had one.

>> Scott Johnson: Okay.

>> So they didn't find the coronary artery disease until they put me on like a CAD machine and then they did a catheterization. And when they put a catheterization when they put a probe into the heart that's when they discovered the coronary artery disease.

>> Scott Johnson: Okay, so it wasn't while you were getting a physical exam and test related to continuing being a pilot?

>> Well, subsequent to my mother's episode and what I thought was pressure, every year I go to Kaiser for my prephysical before I go to the FAA doctor, and during that time they -- I told them everything that had happened, and they went through the extra steps to check me out, which is admirable for Kaiser. And that's when all this was discovered.

>> Scott Johnson: And just a follow-up question. So the type of tests that were done while you were working for the city were these tests similar to that or were there additional tests because this problem was detected?

>> When I worked for the city I would have every year a class 2 FAA physical which the city would pay for all the pilots. And you know, they didn't discover anything. I mean I brought these up too because both my surgeons were pilots and they said that this is many times the only time you discover you have coronary artery disease is sudden death. It is the silent killer. So I was just fortunate.

>> If I can elaborate. He did an exercise treadmill test where they identified ischemia which is decreased blood flow to the heart then he went to the catheterization then they discovered that there was a significant obstruction. So he didn't suffer a heart attack per se. But during the evaluation, it would be more akin to angina or chest pain on exertion. And then with the treadmill test they found he had chest pain on exertion, which indicated decreased blood flow to the heart and therefore they proceeded with the cardiac CAT they arization, found the blockage and tried to remove the obstruction.

>> Scott Johnson: Dr. Das just a follow-up it was the treadmill test that indicated there was a heart problem. So when the FAA test is conducted does it go to that extent of having treadmill? Would we have been able to have known that if he had a stress test of that nature while he was employed?

>> If we had done a stress test at that time, and exercise EKG we would have probably been able to -- if he had the problem then we probably would have been able to identify it. If he didn't have the problem we wouldn't have identified it. But the stress treadmill test would have definitely assisted in terms of increasing the sensitivity to diagnosis. Because the EKG alone wouldn't have been enough. Now, I mean, every test has a problem with sensitivity, meaning it does -- there could be disease present, but it doesn't identify it. So that's within -- but it's a better likelihood of identifying it if you do the stress treadmill test.

>> David Bacigalupi: Sean.

>> Sean Kaldor: Two questions, one for you, Dr. Das. The routine physical we do at the fire department. Does that include -- or at the police department, does that include a stress test or is it a simple EKG?

>> It is a simple EKG, and we'd like to get to the stress treadmill test, absolutely.

>> Sean Kaldor: And so that routine test that would have been done for him with a simple EKG, what is the percentage chance of it detecting left ventricular hypertrophy? In the documentation submitted it says it's only seen by EKG on 5 to 10% of cases, those people that have it that are -- only have hypertension underlying; is that approximately your experience?

>> We -- you know, there's -- the EKG is very is not a great test for these kinds of abnormalities, it generally has to be fairly significant left ventricular hypertrophy for the EKG to identify it. Because the gold standard would be an ultrasound where you actually observe and measure the thickness of the muscle, whereas with an EKG you are actually measuring the electrical field that that muscle projects or sends out. So that's why the EKG would not be as sensitive.

>> Sean Kaldor: So EKG not so good, a stress test might have picked it up, and an echocardiogram would have --

>> Well, we're talking about two different things now. Left ventricular hypertrophy is the size of the heart due to it working a lot harder because of the increased strain on it due to the presence of high blood pressure. And whereas with the coronary artery disease, basically the EKG looks at the presence of damaged or dead cells on the -- due to diminished blood flow. So the EKG would help detect whether those muscles are firing properly or carrying an electrical field well. So we're looking at two different things. So the stress treadmill test would identify Atherosclerotic heart disease, and since there is an EKG done at the same time, you might be able to detect the LVH, left ventricular hypertrophy. But they are subtly two different things.

>> Sean Kaldor: Okay, thank you. And then just understanding the restriction placed upon him and whether this light-duty restriction would have been appropriate, the restriction I see says that the -- this is page 16 -- the patient activity should be restricted to activities of daily living since his bypass surgery and Guianne Barre syndrome. The restrictions I see summarized later say he should not engage in strenuous physical demanding activity such as pursuing and apprehending suspects. Where is that translation between those two?

>> Well, once again we get back to the preclusionary versus prophylactic restrictions. He is subsequently done exercise treadmill tests and performed well so from a physically -- from an aerobic capacity standpoint, he is pretty good. However since there's underlying heart disease he's had a coronary artery bypass graft, I would prefer that he didn't engage in physically demanding activities like that particularly in a stressful situation. So I would highly recommend that he, you know, run or, you know, engage in aerobic activity to protect his heart but not in a situation where, you know, in a stressful or difficult situation like apprehending a criminal and that's where I make the distinction. And then, too, if you will also notice his physician mentions the Guianne Barre syndrome, and residual from the Guianne Barre, which is not on the application but definitely would play a role in terms of fatigue or having residual from that particular diagnosis.

>> Sean Kaldor: Could you expand on that briefly? The Guianne-Barre and its appropriateness to a tow officer hearing position, hearing officer?

>> Oh, the Guianne-Barre syndrome is what we would call -- it's a poly -- it's a peripheral neuropathy or a polyradiculopathy, which just means the nerves are attacked by our immune system. It is an autoimmune disease, disorder and individuals have a wide degree of symptoms associated to it. But at its extreme people are bedridden, have poor sensation, and cannot walk, have poor bowel and bladder control, and they even require a respirator. It is a very significant disease. People do recover from this problem. However they still continue with residua in terms of having a decreased exercise capacity, a little bit more fatigue than they experienced before, and it's hard to quantify exactly what it is, but it's a very trying and disabling disease and there are individuals even after quote unquote a full recovery still are not the same.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Okay, any other discussion? Mr. Boyle, did you have anything else to add?

>> Nothing further.

>> David Bacigalupi: All right we're at a point where I'll entertain a motion.

>> Conrad Taylor: If I may add something, I know Russ and Mollie said they would like to provide some additional information before we make a decision on this. I mean, in my mind, I don't think there's any doubt that it was work related. But what I would like to do is at least have -- before we make a decision, have Mollie and Russ come back -- it looks like we're tied up with that one-year exception.

>> If the board's motion is to continue this item to the next meeting, in order for us to come back with some information on the code section, 336.920A 4 and specific, what the exception means, I would suggest that you keep the hearing open in case you do want to accept additional testimony at that meeting. I would have a

question for Dr. Das, in light of the language in the section, about whether or not the hypertension which the coronary artery disease, which is the disability in this application, was a -- was a disease that, in 2005, workplace factors of being a police officer were -- did have some medical basis to be considered harmful, getting at the objective standard. So I think we do need that piece of information to, I guess, in addition to understanding what the code says and what it means I think we do need to have that piece of medical information.

>> David Bacigalupi: So Conrad are you making a motion to continue this?

>> Conrad Taylor: Continue it and defer it until next month.

>> Rose Herrera: Second.

>> David Bacigalupi: I have a motion to continue and hear back from both attorneys and Dr. Das. Mr. Boyle anything you would like to have included as well as this is continued on to next month, would be helpful.

>> Okay.

>> David Bacigalupi: There may or may not be but I want to give you the opportunity.

>> All right.

>> David Bacigalupi: If there's anything else you would like to have included or considered.

>> Thinking on my feet as a lawyer is very ego boosting but I would rather have at least a week to give you a letter if I have something further rather than rely on my own intelligence at this time to be able to ask you a question that I consider important.

>> That's why, I suggested continue the whole hearing and just keeping it open.

>> David Bacigalupi: Scott, do you have something?

>> Scott Johnson: I was also wondering if Dr. Das can scan the medical records, to -- I think to strengthen the exception in regards to what would be in the medical records that we're aware of or not aware of because they're not in our packet of when Mr. Quayle was employed with the city and at least one year after if there are any medical records that would indicate that there were any heart problems during that window of time in accordance with the Muni code.

>> I'll put in a request for the archived records.

>> And perhaps we can help because he continued to work as a helicopter pilot. So he continued to take his -- he had to do his medical. So maybe we can help with that, too.

>> David Bacigalupi: Anything that can help the board make itsing decision that would be helpful too. So Rose.

>> Rose Herrera: I'll be supporting the motion, because I think it's not just this case, we have to look at setting a precedent. So I think it's important we understand what we're doing when we make this decision, if there's some way to make an exception here without doing something that would have unintended consequences, I'd like to be able to do that.

>> David Bacigalupi: Okay any further discussion on the motion? Okay, hearing no further discussion, all in favor, all opposed, motion carries, unanimously.

>> Thank you.

>> David Bacigalupi: See you next month, John. Okay. Next item, item number 3H. Is an application for change of status from service retirement to service connected disability retirement by retired fire engineer Gordon Snyder

effective July 12th, 2008, with 25.08 years of service. And for the record is retired engineer Snyder in the audience? He's present and he's represented by Mr. Swift. Donna.

>> Fire engineer Gordon Snyder is requesting a change in status to a service-connected disability based on left shoulder and lower back, 57 years old with 25.08 of service. His work restrictions are he should avoid sustained above shoulder level work with his left arm, he should avoid sustained repetitive very heavy lifting. He's currently service retired effective 7-12-08. At the time of separation at the time of application he was on disability leave and there's no permanent modified duty available.

>> David Bacigalupi: Thank you, Donna. Dr. Das do you have anything to add to your file?

>> No, I don't.

>> David Bacigalupi: Okay, questions by the board or I'll entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: Okay, I have a motion and second, Mr. Swift anything you would like to add?

>> No.

>> David Bacigalupi: Motion and second Hearing no further discussion all in favor, all opposed, motion carries. Thank you. The next two items, item 3I, 3J were deferred at the request of the attorney for those two gentlemen. Next item, item number 4, deferred vested, 4A we have a request for a deferred vested retirement with reciprocity from police officer Rod Chin effective August 28, 2010 with 14.89 years of service. And for the record, Rod's not in the audience. Entertain a motion. Okay, I have a motion, do I have a second?

>> Second.

>> David Bacigalupi: I have a motion and second. Any discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries. Okay. Next item is item number 4B, it's an application for a deferred vested retirement from assistant police chief Daniel Katz effective August 14th, 2010 with 28.2 years of service with reciprocity. I have a motion and second. And for the record, chief Katz is not in the audience. Okay. Any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries okay, next part of the agenda is an unfortunate part, it's death notifications and item number 5 will be note and filed, it's the death notification of retired fire engineer Gary parks, he retired November 2nd, 1999, passed away July 15th, 2010. Survivorship benefits will go to Joni parks, his spouse. For that for the loss of our fellow member I'd like to have a moment of silence, please. [Moment of silence] thank you. New business. Item number 6 is an Approval to rescind retirement application of Oscar D. Barzurto. which was approved at the June 3, 2010 meeting. I'll entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries with one abstention. Item number 7 is an application to rescind the retirement application of Harry L. Jackson, Jr. approved at the June 3, 2010 meeting. I have a motion and second. Any discussion on the motion? Hearing no further discussion, all in favor, all opposed the motion carries, 5-0. Item number 8 is the request to rescind the retirement Application of Paul A. eden, approved at June 3, 2010 meeting. I'll entertain a motion. I have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries. 5-0. Item number 9 is the Approval to rescind retirement application of John A. wells, approved at June 3, 2010 meeting. There's a report in your file. I have a motion and second. Any further discussion on the motion? Hearing no further discussion all in favor? All opposed,

the motion carries, 5-0. Okay, item number 10. Approval of lifetime monthly payment option to be paid to Mary steele ex spouse of retired fire captain Philip Demers, to be effective September 9, 2010 under part 17 section 3.36.3600 of the San José municipal code. I have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries. 5-0. Item number 11. Is the Adoption of resolution 3676 denying the service connected disability retirement application of David Santiago Jr. Item number 11 in your file. Entertain a motion. Okay, I have a motion and second. Hearing no further discussion, all in favor, all opposed, motion carries. 6-0. Item number 12. Review and recommendation on ordinances to implement retirement board governance changes. A, amending section 2.08.130 of chapter 2.08 of title 2 of the San José municipal code to revise provisions for removal of retirement board members. and, B, amending part 12 of chapter 2.08 of title 2 and section 3.36.330 of part 3 of chapter 3.36 of the San José municipal code to revise the structure of the board of administration for the Police and Fire department retirement plan, adopt minimum qualifications criteria for public members of said board, revise provisions for compensation of board members and revise the definition of a board quorum With that, you have a lengthy packet. I think the original packet was amended incorrect so there was a second packet that should have gone out to everybody. And Mollie.

>> Yes, hopefully everyone did receive the full packet with all of the pages. And there is a brief memo to the board, on top of the packet. The rest of the material is the backup information behind the governance ordinance. And then of course, the markup of the code itself at the back. So I -- I'll be glad to answer any questions on the ordinances that the board has. It's basically to implement the direction that our office was given by the council back in February.

>> David Bacigalupi: Okay, Mollie I have just a couple of questions and they may not be major. But the first one is, in the ordinance, as I read it, and this may or may not be the intended. This is the first I'd heard about it reading through here. But it looks like the way the ordinance is written there's a change in that, only the police retirees will elect the police retired representative. And only the fire retirees will elect the fire retired representative. And previously, the one retired representative was elected by both Police and Fire. And I don't know, was that discussed and negotiated to that? Is that what the council agreed to or -- it is the first I've heard of it.

>> You're right and that's probably maybe another area where I -- I sort of had to interpret the direction. There wasn't any specific direction in terms of -- there was a direction for there to be a police representative, and a direction for there to be a fire representative. But there wasn't anything specific about whether everybody elects each of those people. So if it's comment that the board wants to make back to counsel, you can certainly made the comment back but you're reading the ordinance correctly. I wrote it so that the -- or we wrote it so that the fire employees would elect the fire representative and the police employees would elect the police representative. I don't know if there was no discussion about it, whether there was discussion that I'm not aware of. It wasn't addressed in any of the public memos that I had access to so --

>> David Bacigalupi: Okay, despite my personal feelings that that's the proper way to be done, I'm not sure that the city agreed to that and the POA and the local 230 agreed to that. If the retirees association had any discussion into that. I don't want to make a recommendation to council to approve this as-is based on my personal desires, when I'm not sure what was the intent.

>> Well, the reason for posting an ordinance and an ordinance has been publicly posted for the council agenda. So the reason for posting an ordinance is so that people can take a look at it and make comments on it. So even beyond the board this ordinance has been 94 milkily posted for the council agenda. And owners you know go through a two-step process. They get posted for the agenda and then they get passed for publication of title and there's another 30 days after that before the ordinance would actually get adopted. So the ordinance can be changed in that time period. It's out there until council finally adopts it. There were as I pointed out in my memo a couple of other areas where you just -- you have to kind of interpolate what you think was intended. So I would invite any of the folks that were more involved in the stakeholder meetings and discussions to provide input on that particular issue. It can be drafted either way.

>> David Bacigalupi: Okay, and probably it goes to item number 2 on page 2 of your memo. The residency requirement was a little bit different than what I had understood it to be.

>> Right.

>> David Bacigalupi: I wasn't in on the negotiations so I --

>> Right. And we recognize that we drafted that one differently and that's why we pointed it out in the memo. And I have received some comments because my name's on the council memo so people call me to ask me about it. I have received some comments on this, about the fact that there will be some -- there will be some fairly -- there are questions about I think specifically Monterey County, Stanislaus County and Merced County and whether or not those entire counties would be pulled in. So that's also something that, again, we wrote it to make it simple, but --

>> David Bacigalupi: Well, we've learned that sometimes things get passed and years later something comes up and we didn't think about that. I just wanted to raise those issues.

>> Certainly that's the purpose of having it come before the board. You can make recommendations for something different if you want.

>> David Bacigalupi: Well I'm not sure this board would want to change what was agreed upon between the city and the bargaining groups, other than making sure that our recommendation would be that we write this as they intended it to be.

>> You actually have an independent role under the code to make a -- you don't have to. You don't have to make a recommendation. But you have an independent ability, as a board, to make a policy-type recommendation. Council -- and they have an independent obligation to listen to your recommendation. So I hope that in the memo I laid out most of the areas where there -- there seemed to be some question about what -- what was going to go into the ordinance. So --

>> David Bacigalupi: Thank you. And just one last thing. When was this posted? You say it's been posted for public view.

>> I believe -- I believe that it was originally on the council agenda for August 3rd but it got deferred so that means I had to post it like on July 27th or something. Away does my -- is my council memo in here? No, it's not. It would have had to have been posted about ten days before the August 3rd meeting.

>> David Bacigalupi: Okay, thank you. And Bruce.

>> I don't know whether that's on -- yeah, it's on. That was not the agreement, sir. As councilmember Herrera's office can agreement was 50 miles. And the issue of who could vote for the representatives, wasn't brought up earlier. I don't see why all of the members will not be able to vote, as they were able to vote for you. What was pointed out is it's usually every two years, there's a brand-new person, right? Or possibly every four. Which indicates that that representative all to also be voted on. I, all of -- all of the retirees, it was my understanding that this was going to be worked out. It hasn't yet. I recommend that you handle this in your -- following meeting.

>> David Bacigalupi: Okay, thank you, Bruce. Rose, excuse me, Sean was next then Rose.

>> Sean Kaldor: Sure. So in there I saw -- I guess my kind of question is about the implementation of this. In terms of who -- I see a challenge of filling these positions at \$150 a month, looking for 12 years of experience, 50 mile residency experience, looking for educational leaders and senior executives of investment experience and never been an employee, never related to an employee, never had a contract with the city. It's a small pool to draw from and I see a lengthy process, and a time-consuming and costly process to identify and vet these people. Who bears the burden for making that all happen?

>> Well, unfortunately, the City Clerk. The City Clerk has to recruit the applicants for all city boards and commissions and so she will have -- assuming this in some format gets adopted, she will begin the recruitment process for both the public member positions and for the new retire member position as well.

>> Sean Kaldor: And generally that takes I see a number of board positions sitting open in the city right now. I'm just concerned about -- there is no time line to this. Within six months 12 months two years.

>> I can't really speak to the City Clerk's you know what she will do and the time line she'll be on. The ordinance is structured, though, so that the existing board continues until new board members are appointed. So it is structured so that you people roll off as new members roll in so that you keep a functioning board and also so that the quorum adjusts as your number of board members adjust. So it's -- it was anticipated that it might take some time for this to be fully implemented and we tried to -- I tried to structure that into the ordinance.

>> Sean Kaldor: The concern would be, just as long as we're all aware it probably means the current members are probably going to be on this board for a while, while that's pursued. One of the ramifications I noted is in the negotiations between the different unions and the city there was a position added that we as a board nominate and city council then approves.

>> Well, you don't exactly nominate. The way that position will work, that ninth person, if you will, will be recruited by the City Clerk. Around then you will be given those candidates to interview, that the City Clerk has recruited. She'll do the recruitment for that but you will then be given those candidates to interview and make a recommendation on to the council.

>> Sean Kaldor: So to that whole process there, there's no specification of how many candidates we'd be given assuming --

>> It will be -- you'll be given however many there are. She's not going to whittle the pool down for you. And in terms of recruitment of board members, any one of us can encourage people to apply for city boards and commissions. So it's not just the City Clerk. But it is her job to get it out there. So you will be given, by the City Clerk, whoever does apply for that ninth position.

>> Sean Kaldor: But as this is written, all those other positions need to be filled first, so they need to go out and recruit each of these board members. Then for the last position, however many names they get, if they only get one name, which is only one name left after they're done five months' recruiting, they'll give us the one name, and if we don't recommend that person, they still get the name to vote on?

>> I don't -- I don't know that that is necessarily the way the City Clerk will do it. She -- again I can't speak for her. But sometimes multiple positions will be recruited at once. So she could recruit for all five public member positions at once and see how many candidates she gets, and at the same time, simultaneously, recruit for the fire position. Or she doesn't recruit for that. That comes from the members that hold the elections for that.

>> Sean Kaldor: But then they'd need to appoint all those other public members before they appoint the one that we approve, so we only get the list of names that are left over? I just see this -- it's going to be hard to recruit these people to begin with and our ability to look at a list of three or four good candidates and choose the one we think would be the strongest for the board is --

>> I'm in a difficult position. I kind of drafted what was in -- in large part, I drafted what was negotiated and directed. So that part, there's no doubt about it, there will be a challenge. That was the intent, that you have all of the other members in place once that ninth person was selected, and so that's really the only way to do it.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Rose, you had something?

>> Rose Herrera: Where is it in the documents that Police and Fire would vote separately? That's not how I recollect it.

>> Exactly.

>> Rose Herrera: I just want to make that -- let me just make my statement. I was involved let me refresh my memory because there's been so many meetings, as I recall, it was not going to change, there was not going to be separate voting. So I'll stand by that. And I think this board, to your point, Mollie, we can make our own decision. We're making recommendations today, we don't have to defer to city council for that, so we can make some decisions. But I just want to add that my understanding from the negotiations was that it was not going to be separate. And second I want to argue for the 50-mile from City Hall. That was the agreement and I think there was some change in that because there was the thinking that it was too difficult to accomplish that. I have a map right here that we put together in five minutes, you know it's really simple. So I want to argue for the 50-mile radius because I think that was the agreement and we can accomplish that. I don't think it's too difficult and so that's where I -- and I would put a motion on the floor but I'd want to let everybody have their discussion first so --

>> David Bacigalupi: Rose -- and I just think -- I'm looking at page 9 and it talks about under C, about middle of the page, vacancy exists a seat on the board held by a retired member of the plan, the retired police members of the plan shall recommend an election, it's got a small little 9 on the bottom of it.

>> Rose Herrera: I don't think I have -- we're in the ordinance itself.

>> David Bacigalupi: Did you get the second copy of this? The original copy of this was problematic and they mailed out another copy.

>> It is on page 9 of the ordinance C 1 says the police members will elect the police retiree and page 10 D-1 says the fire members will. So it's obviously easy to take the word, police or fire out, and say the members collectively will do it. It's not --

>> Rose Herrera: That's what I would recall. I would prefer that.

>> The 50-mile limit is also, if that's the board's recommendation, it's not a difficult change to make. So --

>> David Bacigalupi: One of the things I'd like to see this board do is make a valid recommendation to council. This has been out for such a short benefit, I know I looked through it, I'd like to look through it a little more in depth so I would put out on the table this may be something we want to continue our recommendation until more people have had a chance to look at this. And then the decision made, again, what my personal opinion is of how that election should be, shouldn't play a part in what this board recommends to council. And I think this board should recommend to council what they think is best as a board. And so, you know, I'd be looking to continue this until next month so we can go through this a little more and get maybe a few more answers to what the original negotiated process was, and the intent. Rose.

>> Rose Herrera: Yes, I would support that. What I wanted to bring forward to the board was what my recollection of the agreements that have been made in that negotiation, which was to continue it the way it is, Police and Fire together making that decision and that 50-mile radius in the other section. So but I'm happy to go along with the other board members if you want to --

>> David Bacigalupi: Okay, I got Sam next and then Conrad.

>> Rose Herrera: -- delay it to the next meeting.

>> Sam Liccardo: I won't speak on the deferral issue other than I think it's certainly been discussed at great length. I would like to see us move forward very soon. But on the issue of the 50 mile radius I'm not sure I completely get it. And here's why. We obviously want the best and the brightest on this board. I think all parties want that. With a 50-mile radius that is rigidly enforced, frankly, I don't think we should have any radius restriction. But if we want to rigidly enforce the 50-mile restriction we'll cut out significant portions of San Francisco, which happens to be the major financial center of the region, and many surrounding suburbs where the brightest financial minds in this region in fact in the entire world live. I think it is foolish for us to be excluding people who could be highly qualified, could add great value to this board, just because we want to impose these kinds of artificial geographic limitations. We have a fire department in which members of the fire department don't even live in the state of California which I find astounding. We don't have residential restrictions on members of

public safety even though we require them to be at our aid in the city at times of peril and disaster. I don't know why we would want to impose restrictions here, I think it would be foolish for us and foolish for the council.

>> David Bacigalupi: Thank you Sam. The only thing I would like since I wasn't involved in the negotiations is to understand how those things came to the recommendation, and the agreement that they did. So that I can help better make a recommendation as a board member of this board. Scott, next and then rose.

>> Scott Johnson: I I'd just like to echo Councilmember Liccardo's comments about the radius restriction. Just from personal experience, since being finance director in the city we used to have an investment committee where we attempted to get public members. And we tried and tried. We continued to request nominations from the council, from the public, through the City Clerk. And in my career, before we get away with that committee because we just simply could not get public members, even to serve on that committee. And it was Brown Acted, and it was to review the City's investment practices and provide, you know, professional, you know, oversight. So I agree with the qualifications that are in this regulation. You are talking about highly compensated people that have very limited time to commit. I think it's going to be extremely difficult to recruit folks, especially at what, \$150. So I agree, the 50-mile radius to me, I think would be doing the city a disservice in trying get the greatest and the brightest folks that are willing to commit their time. Because they're basically almost volunteering, getting paid \$150 to come to a meeting. We all know the time commitment it takes you know for these meetings. And I'm very anxious to get this thing moving forward. I'm very interested in the time line. So there is a personal interest there. And also I just want to also make a comment about the retiree election. It appears to me when I look at that time joint memo from the council that's in our packet, on page 3, that the ordinance established the appointment process for appointee and retiree representatives of the respective board that codifies the established process currently in process. So now that we're going to have two retiree members, it seems that we should have the similar process that it is Police and Fire that are electing both of those positions or nominating both of those positions to the board.

>> David Bacigalupi: Okay, and I think that goes to what we can add as part of our recommendation. But I don't know what was negotiated. The city and the two labor groups spent a lot of time negotiating. And we can all argue

that your pool is going to be much better if you broaden it 50 miles, 100 miles, every time you broaden it, you're going to increase your pool. But this board was not in on the negotiation process. And that was agreed to by the city and the two labor groups. And we can make a recommendation that we don't think that's legitimate. But that wasn't part of their agreement which is going to move forward to the council. Rose, next.

>> Rose Herrera: Yeah, this is a negotiation and and so there were agreements made. And that 50-mile radius was part of it and that's partly why I'm argue for it. I think if it proves to be a problem that we can't recruit good people from it I think then we need to address it again. But I just -- from my perspective and I realize that I might be in the minority here because maybe I was a little closer to that process, I wasn't one of the negotiators down there but I certainly was aware of a lot of the discussions that were going on. I want to honor that so I am going to stick by the 50-mile and if there's a problem we can change it.

>> David Bacigalupi: And I think we all on this board, we've been operating for months with one board member short. We all want to move this process forward. It's been agreed to. Everybody has come to terms with the agreement and hang out there doesn't do anybody any good. So we all want to move forward. But I don't want to move forward recklessly and you know, this was only put out only a week and a half ago and maybe more time needs to be given to it. I don't believe in stalling it off for an indefinite period of time, but I think there's much to be gained by getting some of this information back before we meet next month. Sam you're next.

>> Sam Liccardo: About the issue of negotiation, I recognize many of us including myself are somewhat in the dark about exactly what the context of negotiation might have been and so forth. But this board is independent and should be make independent recommendations, regardless of what the negotiation was. It seems to me that all that can be hashed out. The point is that we are a voice of the plan and it seems to me regardless of what was negotiated we either support it or we can criticize it. We should be able to do that independent of any negotiated outcome.

>> David Bacigalupi: Thanks, Sam. Further discussion? I would entertain a motion -- I will make a motion to continue this until next month, until we can gain more information. And, you know, Mollie unfortunately was put in

a position, she was given documents to try and interpret and write it into an ordinance. And before we make a recommendation and if there's good valid reasons why, once we know what was negotiated one way or the other, we can make a recommendation, and maybe make it different than what was negotiated. And it's just a recommendation. Council's going to enact -- you know on it at their meeting but before I'd make a recommendation, I don't want to move beyond what was actually negotiated by the people that were in the pits there. So I would move to continue this until next month.

>> Rose Herrera: Second.

>> David Bacigalupi: I have a motion and second. Discussion on the motion? Go ahead Rose.

>> Rose Herrera: Yeah, I support the motion and I think to give us time to reflect to get more information. And to Sam's point he makes a very good point that we are an independent body, we need to make recommendations. But also, the council is going to be looking at our recommendation. And I don't think I can divorce myself from the process that I saw take place, the discussions that took place, that I sat in public discussions as well, about the changing of this board composition and all of the things that go with it. So I can't divorce myself from what I learned about that, and at the end of that process that left me committed to certain points and one of those was the 50-mile radius. So that's my position. Certainly everybody else can have a different one and I fully support the board will make a decision ultimately based on all of our perspectives and the information that we have now and will gain by the next meeting.

>> David Bacigalupi: Thank you Rose. Sean.

>> Sean Kaldor: I will also be supporting. I also think it gives us time to think about the qualifications that are being required. There seems to be a lot of focus on the investment side of our responsibility and no emphasis on finding people who might have experience and better understanding of the disability and the medical side of things which is always something we struggle with. So adding that list of backgrounds as being considered might be something else to consider in the process so I'll be supporting it.

>> David Bacigalupi: Thank you. Any other discussions by the board, Scott.

>> Scott Johnson: I just have a logistic question because from what I understand this is going to be heard by the council next week. So by us delaying our input for another month, how does -- I'm not sure how that impacts you know council's decision in moving forward.

>> So I'll address that. So the council can move forward with the ordinance without the board's recommendation. If it want to. And if they find that there's a need to adopt it without providing the 60 days, normally there would be a 60-day period for review. But the council can move forward without providing the 60 days, if they find that there's a need to adopt the ordinance. And in that case, then they basically refer it for you, to you for study. And you can take as long as you want to study it, and I can come back -- your recommendation can come back to them after adoption for repeal, adoption or no action by them. So it can move forward to council, but they would -- it would be based on their thinking that they needed to adopt it.

>> David Bacigalupi: Okay. And they may look at it the same way we're looking at it and say it needs to be reworked as well or they may move forward as-is. So Rose.

>> Rose Herrera: Can we request that they delay while we -- you know so we can give the input?

>> Sure, you can make that part of your motion, if you want. I'm not -- let's see, it's on for -- if it's on for next week there's not a Rules Committee before next week.

>> Rose Herrera: I guess I'm trying to understand. I know there's urgency in terms of -- I'm not sure what the urgency is, this board as constituted is doing a great job so I'm not really that concerned about it. I know there's probably some members that would like to see this changed sooner but I don't think we should move so quickly that we don't make sound decisions. So I don't see that there's some kind of great urgency to have this done next week.

>> David Bacigalupi: Scott you're next.

>> Scott Johnson: I was just wondering if we could add to this motion? Can we request request in the office of employee relations that they provide some clarity? So we specifically know what was agreed and what issues may not be an issue? You know, it's unclear with us whether or not the 50-mile radius is that something that was kind of negotiated between the city and the bargain groups or is it even an issue? Did they talk about it? Did they consider whether we would get significant qualified candidates within that 50 mile radius or --

>> David Bacigalupi: I think hearing from them would be of great benefit to the board.

>> Scott Johnson: If we could request some clarity.

>> The request was coordinated 50 office of employee relations so --

>> David Bacigalupi: Maybe you can pass on some thoughts as to the way it was written. Rose.

>> Rose Herrera: This may be hearsay. The request was 50 miles, the request was 90 miles, if we're going to argue it's too hard to be accomplished, it can be settle quickly that it's not too lard. If the 50 miles doesn't give us the adequate pool of candidates, that's another argument. Between numbers 50 and 90. So --

>> I will just very briefly, too hard to accomplish is probably a shorthand, not really what was in my mind but precisely what was pointed out that literally you could be on one side of the street in San Francisco and you'd be in and I guess you could get out a tape of measure and figure out whether you'd be in on the other side of the street. It really was -- it really was that in a legal standpoint, it reality was that particular aspect of it. But of course it can be measured. It's not impossible to do it. It just, once you say a 50 mile radius it cuts streets off in various places.

>> David Bacigalupi: It depends if you're looking at your speedometer or if you are using Google maps which includes all of San Francisco, all of Oakland, maybe Berkeley, I can't tell the line there, I think it includes Berkeley as well. So I'm not sure what the discussion was on that so I wasn't there. So any further discussion on the motion? Scott.

>> Scott Johnson: Mr. Chair, I just wanted to clarify, I really do hope if it's 50 miles that I hope it does work, that it brings some folk to the table. The other piece that we have to think about, in recruiting members is the conflict of interest provisions. Because we're a government agency. That's where I had -- I had professionals that were interested in serving on our investment committee that we used to have but they wanted to continue to do business with the city. So they're not able to serve on the investment committee and we're going to have the same kind of challenge. I really do hope it works but I have my misgivings on it. From my person experience.

>> David Bacigalupi: We're going to do what we need to make it work as far as this board is concerned. I know we've been waiting for quite some time and I know there are people who see light at the end of the tunnel, they really want this expedited. They all do. Nobody's trying to drag their feet on this, Rose.

>> Rose Herrera: Maybe there is some way, I don't know whether part of an ordinance, we could have this as part of a discussion. If we can't within a reasonable amount of time get candidates within a 50-mile pool maybe there's some way to increase that. No one wants -- no one in any part of this wants to see us not have adequate numbers of candidates that are qualified for this, so maybe we can have you know some additional discussion and have folks come forward. But I think you know the 50 mile was agreed upon, I think it is doable, and unless there's just some overriding problem, you know, then I think it could work.

>> David Bacigalupi: Okay. If there is no further discussion, the motion is to continue this until next month with the additional information to come back to this month. No further discussion, all in favor, all opposed Sam will be opposed. Now, I think everybody has the right intention here. Okay. So the motion carries. All right. Item number 13. We have a memo in our packet from Alex Gurza. And this is a Discussion regarding lowest cost medical plan memo from Alex director of employee relations And who is going to lead the discussion on this?

>> Good morning, Aricelli Rodriguez from employee relations. This memo notifies the board that there have been changes to the plan for employee groups effective January and some of them are effective now for some of the employee groups. What we have done is gone to council and the council has approved to defer the changes for retirees to January. This would allow enough time for employees to plan and to go through the normal open enrollment process. A \$25 co-pay in addition to a couple of other changes.

>> David Bacigalupi: Okay. This would be a note-and-file unless there is any other questions from the board.

>> Scott Johnson: I just had one question, about the premium, the changes of the premiums so retirees are not required to pay additional premiums right as employees are?

>> No, the plan pays 100% of the lowest price plan for single and family.

>> Scott Johnson: Okay.

>> That is different from what the employees pay. Employees currently pay 10% for some plans, or let me back up. Some employee groups pay 10%, other employees now have moved to an 85-15 cost sharing, so employees are paying 15% of the lowest -- of anything -- of 85% of the lowest price plan is paid by the city. The remaining is paid by the employees. And if the employee elects a plan other than the lowest price plan they would also pay that difference.

>> Scott Johnson: Okay for clarification ever our retirees it is 100% premium paid by the plan.

>> Correct.

>> It is if they elect the lowest cost plan. Retirees also pay a premium if they elect other than the lowest cost plan.

>> Scott Johnson: At the same ratio?

>> They pay 100% of the cost above the Los cost plan.

>> Scott Johnson: Okay, thank you.

>> David Bacigalupi: So the difference between the plan they select and the lowest cost plan they pick up the entire difference?

>> Dave, so what it is, is our subsidy is going to change. If you look at page 2, it says 204 for the council memo. So right now if we're subsidizing 1205 -- \$1,205.20 for the family, it will go down -- our subsidy will go down to 1145.58. That's the impact to the retirees' side, is a subsidy reduction.

>> David Bacigalupi: Okay, you lost me there.

>> You'll be saving about 55, \$60 a month on the premiums because the Kaiser lowest-cost plan premium has gone down.

>> David Bacigalupi: Okay.

>> I do want to add that those rates are for July 2010. So those rates are going to increase beginning January 2011. So they will be different.

>> So if the member elects to stay in the \$10 co-pay plan, that's still going to be offered for retirees, I understand, right?

>> I'd have to defer to human resources, and I believe they are here.

>> That is true. So if they elect to stay in the \$10 co-pay plan, they will have to pay money out of their pocket, because now the lowest-cost plan is going to be the \$25 co-pay plan. So they will have some out-of-pocket expenses.

>> David Bacigalupi: So there is that option, I mean you'd have -- not only selecting Kaiser as your lowest price plan, but you have two options, you have the lowest-price plan, which is the \$25 co-pay, or you could bump it up one to the \$10 co-pay Kaiser, and you'd pay the difference, just like if you'd would go to one of the other --

>> That's correct.

>> David Bacigalupi: Okay, that's clear, thank you.

>> I think maybe HR does need to address whether or not the \$10 co-pay plan is going to continue to be available. I think that is the question.

>> This is Jeannie Grohen and I'm the benefits manager for the City of San José. At this point for 2011 we are planning to offer both the \$10 and the \$25 plan. So as long as we have an employee group of that is in a lower co-payment plan we will offer that plan and any other plan that city employees receive. So for 2011 you can plan on the \$25 plan being the lowest cost plan and the \$10 plan being slightly more. The retiree can choose between the \$25 co-payment or the \$10 co-payment but if they choose the \$10 co-payment it will cost them more.

>> David Bacigalupi: And based on these rates it's about \$60 a month.

>> Correct.

>> David Bacigalupi: Sean.

>> Sean Kaldor: Are we planning any type of a communication or notification to retirees about their health care changes and increased co-pays, just so they're not --

>> Yeah, we're fortunate that we don't have to put this in place until January 1st so when we do all of our open enrollment material that information will all be provided.

>> Sean Kaldor: Excellent, thank you.

>> David Bacigalupi: Can I just suggest as one that fields a lot of phone calls, can we maybe do multiple notices, a letter out that it's coming, due to the open enrollment included on the pay stub under the notes section which nobody reads, but -- I mean, it's just -- I mean, I can already see my phone lighting up.

>> We just can't get the people to read the notices.

>> David Bacigalupi: I know. That's why I say, the letter would really be helpful. You can put it in the newsletter and you're going to gain some with each form of communications. But anything we can do to get this out to. And we can employ the retirees association, I can speak for them, in that they would be happy to help also to get it out. Okay so that will be note and file. Thank you, Aricelli. Next item, number 14. Approval of Macias, Gini & O'Connell's 2010 audit service plan.

>> Hello, hi. You have in your packet Macias, Gini & O'Connell's audit for this year. Macias is also in the audience for another item which is the AUP. If you have any questions, I'll be happy to answer any and to the degree possible, Macias will answer questions as well.

>> David Bacigalupi: You have a copy of the plan in your package, is there discussions, questions? No discussions. I'll entertain a motion.

>> Motion.

>> Second.

>> David Bacigalupi: Hearing no further discussion all in favor, all opposed, motion carries. Thank you. Okay item number 15, it's a Report on City's prefunding of required contributions for fiscal year 2010-11 and reconciliation for fiscal year 2009-2010. Veronica has a memo in your package. And this will be a note-and-file unless there's questions. Go ahead Sean.

>> Sean Kaldor: The changes to staffing in the fire department with the reduction of 49 firefighters does that affect our funding levels required going forward for the prestaffing numbers or sorry the prepayment numbers that are being given?

>> I believe that this prefunding was done with the assumption that there would be the reduction in the fire members.

>> Sean Kaldor: So if there is ultimately a resolution reached between the city and the fire union that would change this number?

>> Yes that would result in a change in this number.

>> Sean Kaldor: And so they would be required to put in more, right? So the plan needs to receive more from them if those numbers are returned to the city?

>> Well, it would have to go back out. There would be -- retirement services would need to review and get updated information from finance and then that possibly may have an effect on the prefunding amount.

>> We do a reconciliation every year. So any variances are caught up at the end of the year and like this year, we owed a credit to the city. Next year the city may owe us additional amounts but we balance that out every single year.

>> Scott Johnson: That's correct. There is still one open item in regards to the prefunding and that is the city and the fire union is still in negotiations in regards to whether or not fire employees are going to pay a portion of retirement contributions. So we have the prefunding anticipated that, so we are currently delaying making that final incremental prepayment amount. And we're hoping for a resolution soon to make sure that we're doing that true-up so to speak to do the full prefunding. So any changes in staffing that will be reflected when we do the reconciliation next year because there are always changes in personnel and payroll cost throughout the year.

>> David Bacigalupi: Okay, thank you. Okay if there's no other discussion that will be a note-and-file. Okay item number 16, Review and recommendation on ordinance to clarify provisions in the Police and Fire department retirement plan related to internal revenue code limitations on pension benefit calculations. And we have a memo from the City Attorney.

>> So this is probably the first of a series of ordinances that you're likely to see resulting out of our tax qualification review. This is an ordinance that was drafted and recommended by your outside tax counsel to make sure that we're properly implementing and reflecting the limitations of section 415 of the internal revenue code and our plan. So it's a precursor to getting the plan ready for filing our qualification letter. And this ordinance did go to first reading, to the city council in June. So it's in between first and second readings, now. It's currently I believe on the council agenda for next Tuesday, but it is also in front of you for review and recommendation.

>> David Bacigalupi: Okay, thank you. Russ. Your microphone.

>> Thank you. Even though these are quite complicated provisions they only implement and make more specific what was already applicable. So adopting this will have no other impact other than the impact that is already in existence with respect to the 415 limits. So there's no benefit reduction by this ordinance.

>> David Bacigalupi: No, but it makes us in compliance.

>> Russell Crosby: That's right. It's there -- and in particular it's what the IRS is looking for.

>> David Bacigalupi: Right.

>> Russell Crosby: So if we decide to go for a determination letter, this will be a very important piece to have in place.

>> David Bacigalupi: Like Mollie says, if tax counsel goes through the plan there will be more changes as well so we'll see more of this.

>> This one was considered significant enough to bring it forward ahead of the others. The -- so it is a clarification, though, really, because our code currently has 415 and 417 limits in it. But this is the language the IRS wants to see in your code, in order for you to get a qualification letter.

>> David Bacigalupi: Okay, Scott. Do you have --

>> Scott Johnson: I'd just like to move for approval. I think this is a necessary cleanup that we need to move forward and recommend that council move forward on.

>> David Bacigalupi: We have a motion and a second. Further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries. Okay, number 17. Review of accounting update regarding GASB proposal changes to accounting rules under statements 25, 27, 43 and 45.

>> Hello, this is Mike Maley on the retirement board staff, wanted to address the board. We wanted to bring this issue to the board's attention, and there are two memos in the board packet, one from retirement staff, one from

conflicts counsel. And I'd like to give you some background. GASB is the entity that sets the accounting standards for public plans such as the retirement plan. And currently there are two standards applicable to pension benefits, GASB 25 which applies to plan reporting, GASB 27 is applicable to how the city accounts for the pension benefits. And GASB's been undergoing a process for a couple of years now to see how effective their standards have been used and understood. And they've been concentrating on this GASB statement 27, which is how the sponsor, or the city in this case, accounts for pension benefits on its financial statements. And they've been very clear in their pronouncements that these proposed changes that they're talking about will not and are not intended to impact how the board sets contributions that the city's required to pay to fund the benefits. There are simply accounting standards that will be applicable to the city. How the city records the liabilities, how the city records annual expense. So what they've done they've gone through a process for a couple of years to reevaluate this standard and they issued in the middle of June about 20, what they call preliminary reviews. And they're very general in nature. They're not a lot of specifics in those preliminary reviews and they've asked for comments from the public. Now, from a practical standpoint, what's going to happen if these changes go into effect, really, it's going to impact the city. Because these are the standards for the City's accounting. And what they would require is that the city would have to book a liability which it currently doesn't book. And that liability is going to be the difference between the actuarial liability and the market value of assets. No more smoothing and that difference what they call the net liability, would be required to be reported on the City's balance sheet. Currently under GASB statement 27, there is no, quote unquote, liability on the City's books for the pension plan. Because the city continually pays the required contribution so they're in balance and right now the city reports a zero liability on its books. But that -- there would be a substantial change if this standard goes into effect in what the city reports on its books. One of the other items that will change under this standard is, really, there's going to be a different cost calculation that the city calls its annual expense. Under the current rules, the City records a cost that's equal and identical to what the board sets as a the required contribution. And it's just called the ARC, annual required contribution. But if the standard goes into effect, the City's calculation of cost will change. The required cash contribution will not necessarily change. That's under the purview of the board, under the advice of the board's actuary. But what the city records on its books as a cost will, in almost all cases, change, and will become much more volatile, year in and year out. And there's been many objections to this proposed change because this idea of there being two cost calculations, and it's just potentially going to lead to confusion on the public's part. The

GASB has invited the public or any interested parties to submit written comments by September 17th, and there's going to be two open meetings, where interested parties can attend and provide comments. One's in New York and one's in San Francisco. And now what the process is going to be is, once they receive those oral and written comments, they will take those into consideration, eventually come out with what they call an exposure draft which is the next stage, invite, again, public comments and eventually once they've resolved all open issues, they will issue a statement. We expect that process to be two to three years. Typically it takes that length of time. So it's going to be quite a few years before this takes effect. In fact they have not even proposed an effective date or whether there'd be any transition rules from GASB 27 to this new rule. So from a practical standpoint we don't think this affects the board directly. However, there is this issue of potentially being two calculations of what the cost is for the pension plan. And to the extent that leads to confusion on the public's part, we just want the board to be aware that this process is moving forward. As I said it's been going ahead for a couple years now and we see it eventually coming to a conclusion in a couple, two to three years. And I invite Russ, Russ if you have any concern.

>> Russell Crosby: Mike's explained it very well, is that I think there's a huge potential, it's very difficult to estimate now but I think will be very, very significant, to dramatically alter the City's financial statements in a way that is not helpful to the public. But that will contribute mightily to what I think can be accurately be called the pension wars that we all know we're engaged in now. I would at least suggest that the board consider itself whether or not it wishes to -- I'm sorry before I get to that, and it's not at all clear I think at least to some laymen that these are reasonable rules. As a matter of fact they seem unreasonable. Obviously there will be professional disagreement on that. But it is not as if these negative consequences are balanced by any advances in transparency. As a matter of fact, just the consequence, it's just the opposite as funding decisions separate from accounting and reporting requirements. So for me, the bottom line is, the board may want to consider, obviously it's in their discretion, to either submit something by the -- to GASB by the September 17th deadline, direct it -- join with its actuary in submitting something if its actuary is, or just recommend to the city. It's clear this proposal itself only impacts the plan sponsor some only impacts the city. But it's obvious that the spillover that there will be significant spillovers that will affect this board and the way it operates, I think. And we don't have many shots to alter this. It's probably a train that is going to happen regardless --

>> David Bacigalupi: Are we already doing something like that?

>> No, because essentially what they're doing is replicating what's been done to the corporate and ERISA plans ten years ago. And yes, it led to corporations and participants in multiemployer plans having to disclose significantly higher liabilities, but those liabilities actually reflect the industry's best estimate of what the ultimate plan liabilities are for that plan sponsor. That's why it was done in the corporate world ten years ago. That's why it's being done in Public Works plans eventually. It is very similar to the OPEB liabilities disclosures that these plans had to do a couple of years ago. That followed essentially what happened ten years to corporate and ERISA plans. So the industry is simply moving in very consistent fashion, the accounting industry if you will to cause a consistent disclosure basis among all of the plans. And that's the big difference that's happening here and I don't know how you stop or divert that. The accounting profession has been moving in this direction for a very, very long time. And finally they're just coming to public plans now.

>> Yeah, this statement is really a movement towards a mark-to-market basis, less smooth being of assets, less deferral of changes in liability, more recognition of those changes.

>> David Bacigalupi: Sam.

>> Sam Liccardo: Thanks. I think Russell expressed some of my views on this. And I guess specifically mentioning OPEB, what happened a couple of years GASB 45, I guess what I'm wondering is why this is being done first with OPEB and then with pensions why this wasn't done just uniformly with all retirement benefits.

>> Oh, this is simply the first step in a process. They've said once they get to finalizing this statement they'll move on to OPEB, and plan reporting. It is just going to take them considerable time to get there.

>> Sam Liccardo: Okay so when we look at, looking at the memo that came over e-mail date August 2nd and there's a chart there attached, it describes the UAAL, on the analysis, the one with the charts under item 1,

describes the UAAL for mark-to-market June of '09, obviously we know there have been changes in the market since then, the UAAL for both plans is \$2.1 billion. That would not include of course retiree health care. Is that right?

>> That's correct.

>> Sam Liccardo: What I'm puzzled about is only two days ago we were talking about very contentious items around retirement benefits. And city staff represented to me that their understanding of the current pension obligation was around 1.1 billion, essentially UAAL.

>> Yes.

>> Sam Liccardo: And I'm wondering why.

>> I believe that's using a calculation of a smooth value of assets.

>> Sam Liccardo: So that's an actuarial value as opposed to the mark-to-market?

>> Yes, yes.

>> And the mark-to-market adds about a billion.

>> Sam Liccardo: Right. So the next valuation we are going to get is mid 2010 or 2011? I'm trying to remember.

>> (inaudible)

>> Sam Liccardo: Right. So we'll be able to, in a matter of a couple of months, hopefully see a significantly improved number, but it will still be in the negative billion-dollar range.

>> Yes.

>> Sam Liccardo: Okay, thank you.

>> David Bacigalupi: Scott.

>> Scott Johnson: Just a couple of comments. I think to add onto Sam's question about you know GASB, when we implemented GASB 34 about nine years ago, prior to that long term assets and long term liabilities weren't even shown, considered in the financials in the government sector. And so GASB has been moving forward to model more like you know the private industry, where you have everything there. Eyes wide open. You know with all your liabilities and all your assets are. And GASB 43 and 45 I think definitely have been in the right direction for those eyes wide open to let the public know what our true liabilities are in regards to our other postemployment benefits. We have always, we have been disclosing our liabilities in regards to our retirement plans but unfortunately these are not hidden but in our basic financials in the footnotes. When the people go to the financial statements they don't always see what the long term liabilities are for our pension plans. So when we reflect on what's happened in the private industry, when the private industry was required then to go to mark to market and actually book these liabilities on their financial statements, you saw a lot of -- a lot of red ink. And what occurred is as we know history tells us that a lot of private companies went away from defined benefit plans and they went to defined contribution plans. So this is just stating the fact, the majority of businesses have gone away from that because of the liabilities that they created. So I think, if this moves forward and Michael I think described it very well, this is just a preliminary view. They're going to get a lot of public input. A lot of professionals are going to comment on it and a lot of professional organizations are going to comment on it. It definitely would create very negative numbers on our financial statements. I don't exactly know how the rating agencies would view that because they're already aware of our unfunded liabilities in regards to our pension plans. However if we go mark-to-market as was indicated that would add an additional \$1 billion that we don't reflect in our financial statement. It

is to be seen whether this is going to be implemented as proposed by GASB but there's definitely going to be a lot of comment and a lot of input from government agencies as well as the public all the stakeholders, investors, rating agencies, and so on, you know, moving forward. But professionally, I think it's a movement in the right direction that we definitely have to let our stakeholders know, our investors know, our elected officials know and our constituencies know what the true liabilities are you know for the city and for the government agencies. So you know I will definitely be very involved in this from the city's finance department and working with our city council and the other stakeholders in how this moves forward so thank you again Michael for taking this initiative. I know initially there was an article about this, jar Miller put out, okay this is a done deal and I sent an e-mail over to Russell, and he volunteered Michael to also work with our staff in, you know, doing some great analysis on this. So thanks again for being proactive.

>> There were several what I believe to be misstatements in that article so that's why I took an interest in it.

>> David Bacigalupi: Well Michael you made it very clear, too, so thank you for that. Scott, just a quick question, is the city going to make a comment on this, I mean, during this comment period of time, is San José going to make a comment?

>> Scott Johnson: I'm not sure if we will or not. We are definitely going to be there. We -- most likely we will. Sometimes -- you know, this is a pretty significant change. And we might want to ask to phase it in or something like that. We really need to look at what the impact is and I'd like to get a sense from the rating agencies how they are viewing this, and I think this is something that we need to bring forward to the city council and get some input from the city council and clearly go through the City Manager, you know, through that process.

>> David Bacigalupi: Thank you. Sam.

>> Sam Liccardo: I'm sorry I didn't ask this before. But in terms of understanding the distinction between the actuarial and mark-to-market values, my understanding is even the revision in GASB 27, if you look at number 12 here in the chart, and I appreciate the chart is very clear. But it does describe a 15% corridor.

>> Yes.

>> Sam Liccardo: And so it seems as though there is some smoothing even in the revised approach.

>> Well, there is and there isn't. There is within that corridor beyond that it's dollar for dollar.

>> Sam Liccardo: Right.

>> So once you go beyond that 15%, if let's say if there was a \$100 million change in market value of assets, you would have a \$100 million change in your net liability. There's no smoothing of that 100. Within that corridor, it's been termed infinite smoothing, as long as you're within that corridor.

>> Sam Liccardo: Right, right, so we shouldn't take from thus that that any change in the market is going to result in a wild swing in our UAAL?

>> It won't necessarily, but when it does, it could be very large shift in expense up or down.

>> Sam Liccardo: Right, or well beyond the 15%?

>> Yes.

>> Sam Liccardo: Okay, thanks.

>> Scott Johnson: Michael, can you clarify, so we discussed -- this board discussed the market corridor at great length recently, and I know we made a modification to our quarter, just a one-time recognition of that. So our plan does currently have a policy for a market corridor, but I know that the Federated plan does not have a market corridor policy.

>> Correct.

>> Scott Johnson: So I'm wondering, just wondering just on your view of this proposal, for those plans that do not current have market corridors, then they would -- if this goes forward then they would be basically required to put in place a market corridor for financial statement?

>> Well the way I look at this this is -- you're correct for what the city reports. But in terms of what the federated board uses as a funding policy, they could continue to use no corridor. They could -- in the advice of their actuary use whatever method they think is a reasonable funding method. But you're right, in terms of what the city has to report.

>> Scott Johnson: Okay. And just for clarity, so there potentially could be a movement if this moves forward where there may be some changes in standards in regards to how actuaries compute unfunded liabilities and compute contributions.

>> Yeah, you're right. And there's a big controversy now, between many affection of actuaries, as to how that should be measured. And whether it should be entirely mark-to-market or whether the traditional actuarial funding methods should be allowed to continue. And it's been going on for about five years has not been resolved yet.

>> David Bacigalupi: Okay, any other questions, discussions? Michael, thank you for your report.

>> You're welcome.

>> David Bacigalupi: Okay, item none 18. Review and action on ordinance 28753, amending the San José municipal code to implement revisions in employee and employer contributions. I guess this is coming to you Mollie, this is the are recent rounds of negotiations between bargaining groups?

>> This ordinance has actually been adopted so it could be implemented quickly. You still have an opportunity to make a comment on it. It doesn't change the contribution rate set by the board. It just addresses how the contribution rates are going to be split between the employees and the employer for the groups that have agreed to that.

>> David Bacigalupi: Okay. Well, as part of -- I'm personally concerned I would make it a note-and-file item unless somebody wants to make a motion on this because it's already been adopted.

>> That's perfectly appropriate.

>> David Bacigalupi: The horse has been let out of the barn and it's too late now. Question, Sean.

>> Sean Kaldor: I just have one quick question. It says -- I totally understand however they want to split their money up, they can negotiate and do that. On page 2, section -- or subsection B it says the city shall be entitled to offset 50% of the additional employee cola fund contributions.

>> We changed the 50%. It actually, there is a function for the actuary to decide what portion goes to cola and what portion goes regular retirement. Because you could do it pro rata, you could do it 50%. And I think the actuary has already made that determination. I don't know what it has been but we did not -- we struck the 50% and it is a percentage as determined by the actuary.

>> Sean Kaldor: So this isn't the final -- of draft and revised draft.

>> Yeah.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Okay. Is there a motion to make a recommendation on this or is there a consensus to just note and file it? Since it's -- okay. Unless I hear different, I hear the consensus is we'll just note and file that. Item under old business continued deferred item, item number 19, this is approval for the secretary to negotiate and execute a third amendment to the agreement with Segal company to increase compensation by \$340,000 for a total not-to-exceed amount of \$905,000 for actuarial services rendered for the period 2006 through fiscal year 2010-2011. there's a memo from Michael in your packet. And if there's no --

>> Scott Johnson: Move for approval.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries okay item number -- let's see I got two 19s. Put that away. Item number 20, Discussion and possible action on Macias, Gini & O'Connell's draft payroll-agreed-upon procedures including FLSA.

>> Macias, Gini & O'Connell is here to present.

>> David Bacigalupi: Okay and who do we have here renting?

>> We have Linda Hurley and from Macias, Gini & O'Connell.

>> Scott Johnson: Mr. Chair, can I ask a question?

>> David Bacigalupi: Go ahead.

>> Scott Johnson: Can staff just explain where we are in the process? Because understood, this is a draft at this point, but it is my understanding there is still some -- between retirement and payroll, we're still working on some of the items, looking at the responses, looking at the data. So this is not final, in a final form.

>> You're correct, it's not in a final form. What Macias is putting forward here is this is an of an accumulated report with the work they have performed to date. In a draft form, it is the status to date of some of the things they have found. You are correct that finance and retirement services are still working to clear up some of these comments. It is just that this audit has been out there for over two years now and there's really been just oral updates and a couple of written updates by retirement services staff to keep this AUP relevant and keep the board up-to-date on some of these issues, especially on FLSA. This report was really just to kind of put forward where Macias is at in a written form. But yes, it is still a draft.

>> Scott Johnson: Okay, I just want to go on record to say I think this is very unusual protocol. Because the way I look at it, this is a working draft. And I've been an auditor for a number of years prior to being a finance director and working with auditors, auditors usually give us the opportunity to respond informally to any preliminary findings. And then once there's an agreement, then usually there's an opportunity to provide a formal response, and then to issue you know the report. So it's not clear to me like -- I feel it would be inappropriate for me as a finance director to bring forward a draft report from our external auditors where we haven't even had the opportunity to kind of clear things up and to clarify. So just for the record I just want to go on notice --

>> David Bacigalupi: When you say we are you talking back as finance director?

>> Scott Johnson: As the finance director. I'm just saying what the standard process is. In my entire career, I'm not -- I just kind of feel it's a little inappropriate to bring a draft report when staff have not had the opportunity to provide, you know, to clarify, provide comment, you know, to see if there's any misunderstandings and things like that. So I just want to go on record. If Macias wants to present the report I just don't see very much value because this doesn't seem relevant because there hasn't been the opportunity to fully go over this with the payroll staff and to provide the appropriate comment. So just for the record I don't really see the value for this board to go over this

draft report at this time. I'm not trying to hold anything up and I understand it's taken a long time. But I still think that it would be more valuable for the board to get the final report after all the findings have been reviewed and make sure that everybody's been clarified.

>> David Bacigalupi: Well, thank you Scott. We'll note that. It's on the record. Can you ladies address Scott's issue about coming up with a draft report that doesn't have you know the opportunity for comment? I know I've seen that but I'm not sure -- I know this thing's been dragging on for two years so it's nice to see something coming up before us. Would you mind addressing that as well?

>> Good morning, trustees, I'm Linda Hurley, with me I have Annie Louie who is the engagement senior manager and who has been leading atom field work through this process which has gone on for quite a length of time. And I do appreciate Scott's comments. We were actually asked by management to present this draft report today. And so I -- we have gone through it, extensively with management. And it was really at their discretion that it be on your agenda today. So I realize that there are quite a few areas that still need follow-up and response. But I think the purpose of today was really to give the board an idea of where we were in this process, and that we do have a written draft that has been provided to management.

>> David Bacigalupi: Go ahead.

>> Our response was really to considerable input and questions from trustees on what is the status of this, month after month. We needed to get something out to say, this is the status at this point and it's not complete. That's correct. But here is a status and here's what's going on with this thing after two years.

>> David Bacigalupi: And I think that it's -- it would behoove all of us as trustees to respect the comments made by Scott. Even though he's wearing two hats, I mean it's legitimate not to have -- you know this is outside the normal response, comment, put it back-and-forth before it's presented in front of us. Keep in mind it's only a draft, only an update and there are issues that may or may not exist that are highlighted in here that will be worked out as they continue to work through the process between our department and Macias and finance

department. So with that, I would ask you to briefly, we have the report in front of us but briefly highlight the issues that you think are important.

>> Absolutely. We were asked to perform procedures agreed to by management to assist them and our objective was to assist management in the department to determine if pensionable salaries contributions and adjustments for the particular time periods noted within the report were calculated accurately in accordance with the municipal code. One thing that is very important to note here, this is not an audit. These were procedures, we did the procedures, we reported the findings as-is. We don't interject any kind of judgment here. So these were procedures that management agreed to up-front that would serve the purpose of their objective. There are basically eight areas that we were asked to look at by management -- by the department. The first is a general understanding of how pensionable salaries are calculated and that also included military and retro active type pay. The second objective was to look at earnings codes and what's included in pensionable salaries and what wasn't. The third, eligibility within the plan, were records in agreement between the pension gold system that the department maintains as well as the city's human resource system. And were employees included in each plan appropriately. The fourth objective was looking at the pensionable calculation and we looked at a sample to look at the components of what's in pensionable earnings and how it was calculated. Number five was to look at the interface between what was flowing from peoplesoft to pension gold. The sixth objective was to look at military pay and how the contributions were calculated, and eventually transferred to the department. Number 7 was looking at retroactive pay, and if there was any retroactive adjustments based on new or revised MOUs, how those were captured. And finally, the eighth area that we looked at was the FLSA adjustment and we looked at verifying underlying data for adjustment calculations for a certain sample that was selected by management, as well as the recalculation of the adjustment itself. So within each procedure, we have a findings section to note exactly who we found by performing that procedure. Now the findings section isn't necessarily that something's wrong, it's just what our findings were from completing that particular procedure. So at the pleasure of the board I didn't know if you wanted me to go through each area and sort of where we are but that's the overview of what we're doing. But you can see where we have found maybe some discrepancies, or we'll say that they're open questions right now still with finance.

>> David Bacigalupi: Well, since I think there's still more work to be done on this, I don't need to have the individual items detailed, where the status is, I can read through this for that. Any idea when we're going to come to a conclusion and we'll have that period where there's a draft set out waiting for comment back and forth and finished this project?

>> I don't have an estimated time line right now. We do have open questions out with finance. We meet regularly with the retirement services department staff to let them know what our status is. We just did receive some additional information on one of these procedures within the last couple weeks that we're going through right now. But I think in certain areas we're at a crossroads in terms of how much further the department would like us to go in some of these procedures. Some of the records based on timing and as far back as we were asked to go aren't available so obviously there is a stopping point there. But this report isn't necessarily going to explain ought the whys on these questions. It is just going to explain what specifically the result of the procedure is. So there still may be some more work depending on how far management and the board want to go in terms of understanding why some of these differences occur. So we're really at you know the disposal of the department on how they would like to proceed on this.

>> David Bacigalupi: Okay, thank you. Sam and then Sean.

>> Sam Liccardo: I would just make a motion to make a note and file. At this point it looks like it's not fully cooked and I think we all agree there are discrepancies that need to be worked out and I don't certainly want to get in the weeds at this point.

>> David Bacigalupi: I have a note and file, do I have a second?

>> Second.

>> David Bacigalupi: Okay, I have a second, and then Sean.

>> Sean Kaldor: So I agree completely, I mean, you have been asked to do good work, look at kind of targeted segments of how the data's been processed and comparing databases and identifying and reconciling. And at our level, looking at this, yeah, I can see discrepancies, and everyone needs to look through and resolve those. On a bigger picture, and you've been asked to do that piece of it. I guess the question is not so much for you, but we have this discrepancy in the data, we have FLSA hanging over us. Last June or May we were asked for an update a time line a schedule, what's the project time line for completing this. Retirees are asking us. I know active members have highlighted that they've had FLSA pension withdrawals taken out of their paychecks for nonpensionable FLSA pay going back to '98, that's money that we have in our account that we owe back to somebody. We have retirees that we conceivably have to go back to and ask for them to send us money back. A bigger picture than what you've presented here. When is this going to get resolved, when is there going to be a report, when can we -- people are asking for it. Everyone knows it's hanging over us and I think, as a board, we're kind of required to say here's the schedule and here's where it's going to get worked out, at least a tentative. I mean, I understand things change but --

>> I think if I can add, and specifically in response to FLSA, there's a lot of components that are going into FLSA, and they are not all available at one given time. So right now retirement services has been asked to take a look at the correction file for FLSA for the nonpensionable amounts that were determined by finance last year. I believe since then there's been a couple of other -- and at least another issue that's come up related to FLSA. And so as the new pieces develop, some of the difficulties are that some are negative adjustments or reductions to pensionable amounts and some are additions to pensionable amounts. And FLSA is very complicated. There are lots of pieces that are moving in and out of it. So the review period and trying to make sure there's the accuracy in the adjustments, and so that hopefully this is, you know, a correct adjustment that retirement services is doing. Because as you noted, it is something that affects retirees retroactively, active members. So there's a lot of portions that need to have the right amount of due diligence and research done to make sure that there are accurate changes. And there is also other legal aspects that need to be looked at as far as what retirement services can do as far as the corrections. So it's a lot of interworking groups between payroll, OER, HR, the City Attorney's Office and retirement services to really complete the task.

>> Sean Kaldor: So is it another year before we --

>> It would be difficult to determine how long -- I guess for retirement services, the piece that we're left off at would be for Macias to complete their review of the FLSA correction. And in your report I believe there is the peoplesoft portion has been completed. It's some of the free prepeoplesoft portion that had to be researched on microfiche that's opened. Macias, I'd invite you to kind of respond maybe to the status of FLSA.

>> In regards to the FLAS adjustment calculation, we have gone as far as we could with the available information. What is left open at this point is to work with the finance department to resolve some of the differences. And some of it is because we did not have the calculations supporting the adjustments that were made. So at this point we are pending finance's response.

>> Sean Kaldor: So that was exploring January 2008 to January 2009, right?

>> Say again?

>> Sean Kaldor: The FLSA analysis you did was January 2008 to January 2009?

>> It actually goes back to 1999. The FLSA adjustment covered from January 1998 to January 2009.

>> Sean Kaldor: I'm sorry, 1998, thank you. So again, just to the overall project is it a year? I mean last time we were talking I know the active members are looking at getting some resolution to their issues with the city in an August paycheck. For pension I'm worried we're holding too much money or we have to go to retirees and have to get money back. Is there an overall schedule to this or is it, as we keep finding things it keeps working, and it could years?

>> David Bacigalupi: I mean, if we are at a crossroads, what's creating the crossroads? Are we getting the information that is needed to do that? It's not in the computer system so it has to be located on microfiche. Are we getting that, if that's what's holding things up?

>> I believe that all the information has been gathered. Now it's just resolving the variance that exists between the microfiche calculation and the ultimate record correction that came in the finance report. So I think it's really the research of that, that reconciliation between those two parts that needs to happen.

>> Before we get to that point I think the next step in the process is really sitting down and with finance to talk about these issues. You know, it's -- they've been tugged with resource constraints, as well as other city departments. And so I think it's just sitting down and having a meeting of the minds with finance about really where are we in this process and what's left open? We have given them information so we're in a holding right now.

>> David Bacigalupi: Well, since one of our board members does wear two hats, let me implore upon him. Is there anything we can do to locate resources to wind this up? I mean, you know, it's -- this this board, you know, is responsible to the people, that we are either holding somebody else's money that we don't -- don't have a right to and there's somebody else that last got money that they shouldn't have gotten from this fund. So I mean is there anything -- I know resources and I know you've been running crazy with budget issues and things but can we get a commitment from you to you know help move this along in anything you can do from your department?

>> Scott Johnson: Mr. Chair, let me put on my finance director's hat for a minute. You know when we became aware of this issue so as was mentioned these calculations go back to payroll records back to 1998, we found out about this, there were two settlements that occurred with the fire union that we were not aware of and finance has you know preceded my tenure with the city. As soon as we became aware of this there were three separate issues. Payroll staff has spent many, many, many hours, because you can imagine how many records this included going back that many years. As soon as we had the information, we shared that with the retirement staff. And then after that, that was shared with this board. And then the board just you know, there is a decision to

have our internal auditor audit the records which the internal audit then presented her audit findings and conclusions to this board. And in the meantime this board decided that they wanted to have a third party independent, the external auditors review it. There's been a lot of time and resources being put on this particular issue and now this is about -- this is like the third iteration of arriving information, of the same information. So what I would encourage is you know I definitely support encouraging retirement staff to work with the finance department on putting together a work plan with the schedule, with what the expectations are, and bringing that you know share that with the board because I will personally sit down with the payroll staff because they know I have personally sat down early on throughout this whole process. But I have not been aware of any exit conferences or anything else with regard to these findings with Macias with the finance department. So it is a number one priority, I want to get this resolved and then after we come to conclusion on what those final numbers are then there's to Sean's point the next stage of working with the city attorney's office, working with this board on how we resolve payments being refunded how it impacts current retirees, how it impacts current employee. You may recall that on a prospective basis we resolved the matter once we became aware of it in the finance department. So I really want to give credit to the retirement staff for a great job that they've been working on. They've been taking this seriously. It's a high priority. It is also -- want to give credit to the payroll staff. They have put in a lot of hours. I have personally been involved in those discussions in many meetings in regards to this so we are taking it really seriously. It is a high priority. So it's not an issue of allocating the resources. I think that we need to get the meeting of the minds together, and make sure that Macias, the retirement staff and finance department staff work together on a time line so we can be real clear when we can get this resolved so we can get to the next stage.

>> David Bacigalupi: Thank you. Okay, unless there's any other questions we'll -- actually we have a motion to make this a note-and-file item. Is there any other discussion on that? On the motion, hearing no further discussion all in favor, all opposed, motion carries. Linda and Annie thank you very much.

>> Thank you. Okay, item number 21 is, Discussion and possible action regarding the continuation of exit physicals. A, city administration's informational memo regarding the city's health plans. B, retirement services informational memo regarding the history of the exit physical program. and then C is an oral report from legal

counsel regarding the board's authority to offer exit physicals. You have copies of A and B in your package. Let's start off with C and hear our oral report since that's not --

>> So I think that it is more properly probably stated the board's legal authority to pay for exit physicals. It's your use of plan funds to pay for the exit physicals, that is the question. And there has to be a purpose for the board. In these exit physicals. It is not entirely clear to me from having looked at the historical record, exactly what the board purpose was. The purpose cannot be to provide a benefit to the members because that would have to be something that had been negotiated. The board's function is not to provide additional benefits. The board's function is to provide the benefits that the plan provides for. I mean, it -- there was a different scenario I know back in 1999 with who your medical director was and how your medical director functioned when these exit physicals configuration came into existence. When looking at it, the only two sort of functions for these exit physicals for the board's purpose, that I can think of and I'm trying put myself back in that time, would be some use in connection with the disability process. And the second possibility would be, you know, the long -- the really long term concept that a wellness and disease prevention program will bring down medical costs over the long term. That's a really, really sort of long view of it, as opposed to something that is useful to the board here and now. So I think it's totally -- I think you would need to articulate what your purpose is for continuing to do this in order to continue the process. And that -- Russ is weigh in if he wants.

>> David Bacigalupi: Let me just say, being on the board at the time that this was implemented, I don't recall the long term -- or I don't recall discussions regarding the long term effects of a wellness plan being one of the reasons. But I do recall that the disability process and identifying things, and in fact I think some of the discussions were trying to make it mandatory, that we get this exit physical so we get a baseline. This board gets a baseline of somebody that may have something festering and will come back before the board trying to change a service retirement into a disability retirement. I mean we spent a lot of discussion on that today. So I remember that being part of the discussion. I don't recall anything about the long term wellness plan part of it. And it may be if you've got records of that I just don't recall that.

>> Do I not and I reviewed the minutes and there isn't really a lot of discussion in the particular minutes that I reviewed. But then there might have been discussions before the contract actually came forward. I mean once the contract came forward it may be that it wasn't so much of a discussion item as it had been before. So --

>> David Bacigalupi: Well as I recall this board or members of this board were really interested in making this a mandatory physical to set that baseline. And the bargaining groups, absolutely you know, said no, you can't make this mandatory. So we settled for second-best and went the optional. But that's some of the history behind it. I've got Sean and then Scott and Sam. Scott. Disappeared on me. Sam.

>> Sam Liccardo: Sure, why not? Yeah, and obviously I know subject to negotiation, I'm happy to see it being mandatory. I don't see why it wouldn't just be through the insurance provider per the member. I think it's a good thing to do, I don't think anyone would disagree with that. I'm trying to understand why we would --

>> I don't think all insurance providers would provide the test. If they had an underlying sickness before you go in there, I think we had a long discussion on that today about it, you can't just go to the doctor and say I want this test. It has to be something that the doctor is going to have to make a provision to say why.

>> Sam Liccardo: And I certainly understand that Conrad from the July memo but it seems to me that the administration of test from the basic guidelines from any doctor it makes some sense that we don't spend thousands and thousands of dollars on tests that no doctor would believe are front in that particular instance. That's one reason why everyone believes we're in the health care mess we're in is we have an enormous expenditure on testing that nobody thinks should be applied because of defensive medicine and other rationale. It seems to me that there's no reason why we shouldn't encourage in every way we possibly can to have everyone who is about to retire to go to their physician and get a physical and a thorough battery of tests and I just don't understand why the plan assets should be diverted beyond what we already pay for, for medical insurance.

>> David Bacigalupi: The only thing having gone through this Sam I can say, and Gina may be able to address it more specifically. I know as a Kaiser patient I go through periodical Kaiser physicals every other year. And it was much more intensive, what I received through the provider that we had on this exit physical of the things that were lined up. It was a one day shot, all these things were covered, and they aren't all the same things who my personal physician, who I've been with for ten or 15 years at Kaiser goes through, unless there's some specific problem that she wants to look further into. And in fact whether some heart things showed up at the exit physical, it was, this is what you need to do, go contact your personal doctor. I mean they cut it off there and I was back. But at least I'd been tipped off that you know I needed further tests and based on what Palo Alto medical clinic said and their reports Kaiser did further tests. So I mean, would you just -- I mean, the difference between the physicals that -- the exit physical is that's being conducted, versus routine physicals under our various different insurance plans? Should be a little button there.

>> Button will go green.

>> There we go, okay. So basically what happens with our health plans and with the medical communities is that the physicians actually drive what tests are medically necessary and they use guidelines that are published as good preventative standards. And they pull from the federal agencies what those acceptable medical standards are and if a participant goes in and is having a physical, a medical physician determines do they need to have the services, is there a medical standard where it's good to create a baseline and from that they create a treatment. And they make their recommendations. So it's really driven by a medical physician. What's nice about that is, if you go to an outside provider and the tests are done you're going to come right back into the same health plan, in order to get the treatment that you need and often what will happen is the same tests will be performed again and you'll end up with two sets of data and a physician is still driving what's about to happen. It's probably just as well to drive the participants through their health plan so that their medical records and all of the tests that you don't have duplication. So the encouragement would be we are paying for the services, perhaps the action should be encouraging members to seek their preventative care because it is available within their health plans. Most of the services within our health plans are at no cost. Anybody who is going to be on the \$25 plan

effective January 1st, 2011 there will be no co-payments. There are some co-payments on Kaiser and Blue Shield for certain types of tests, but over time with health care reform, even those co-payments will disappear.

>> David Bacigalupi: And all the tests are the same that I just spoke about?

>> The health plans cover all of the tests and they can be coordinated through their normal physician.

>> David Bacigalupi: Okay, Sean.

>> Sean Kaldor: So in general I'm very strong advocate of some kind of exit physical. I think we had an officer here today who had no cardiac history, no preceding symptoms other than high blood pressure and had he gone to his doctor I think a doctor might well have said I see no symptoms that would require me to give you a stress test on an EKG treadmill, and yet had he had that, we might have detected the disability much earlier that five years into the process. We have another applicant on the same day who's deferred to next month, same situation, no previous cardiac history, goes in for an exit physical, they detect Q wave abnormality, ST depressions, and ultimately LVH just like this person did. Again, someone who goes into the doctor said oh, you're healthy, might have thrown him on an EKG with no stress test, because those are more expensive, more complicated tests to do, might have missed that also, and again, you get into a disability that can be delayed before we detect it, and it raises issues. So I like the idea of giving people the option to be tested. I understand the unions don't want to make it a requirement. Okay, they've also said they don't want their funds being used to pay for these tests. Whatever we can do to encourage people to get this testing, I think is good. If we're not allowed to pay for it, or we can't just arbitrarily do it, if the membership won't let us force it on them, then some way to package it for them or encourage them, or give them a list of tests that they should request. Because doctors look at these, you know, every five years you should have this, every ten years they should have that. But it doesn't say oh some police officers who are beat cops for the last ten years, you need to get a stress test. It just says in general the average person has these ranges of needs. That's my position on it.

>> David Bacigalupi: Thank you Sean. The only thing I want to say is, I'm not sure I heard, Mollie -- and I'll ask you this in a second, Mollie -- you say that the fund could not pay for it. Everything Sean said was correct, in that as far as the bargaining units didn't want mandatory, the bargaining units didn't want their funds being paid for it. But I got to tell you I'm a prejudicial advocate for these exit physicals. Because when I had mine it alerted me to a potential problem that Kaiser hadn't picked up in my routine physicals and it was very smooth -- I was quite impressed. Within days I was transitioned into my own personal health plan, further tests not a duplicate test but different tests were done, I guess there's more expensive test and a higher degree of certainty and those tests were performed which were positive news for me. But it got me into that system and it wasn't a duplication much test from my own health plan because they just took the records from the exit physical. Like I say I'm a very prejudicial advocate but Mollie would you address whether or not legally the fund --

>> What I said was, that the plan funds can be used to pay for these exit physicals, if the board finds that, having the exit physicals performed, and available to members and getting them sometime is useful to the board. You don't have an obligation to do it. You could find that it's not useful, because people could get their physicals from their physicians. You need to find there is some use, there is some value to the board in making these physicals available to your members. You're correct, we can't force them to have the physicals. I don't -- I think staff could probably speak to how many people actually take advantage of it but you do need to find that this is providing useful information to the board.

>> David Bacigalupi: Okay, thank you Mollie. Sean.

>> Sean Kaldor: Do we have an estimate of how many people and dollar amount?

>> This was on June memo and I think it was something like 30% if I remember something like that.

>> Sean Kaldor: Roughly how many would that be in a year?

>> Tony, do you remember?

>> Sean Kaldor: I'm sorry, do we know roughly what each one of these physical batteries of tests cost?

>> The cost averages about 1500. It's changed over the years but currently it's around 1500. Tony wrote the memo so she might have the statistics.

>> Yes, it is about \$1500. 30% of the retirees take advantage of it. And it really depends on the number of people that we have retire. The -- consistently about 30% take advantage.

>> Sean Kaldor: How many do we get retiring in a year, I mean roughly? 100?

>> About 100 people.

>> Sean Kaldor: So 30 people, so \$45,000 a year is what this is costing us for the information provided?

>> Yes.

>> Sean Kaldor: Okay, thank you.

>> David Bacigalupi: Aricelli, I think I see you approaching.

>> Hi, we previously requested this information from retirement services, and they did go back and provide us data going back to fiscal year 06-07. So you do have a range of 13 to 58 requesting the physical.

>> Sorry, what?

>> 13 to 58. So fiscal year 06-07 was 26, 07-08, 13, 08-09 58, 09-10 was 20. And the costs do vary, so it ranged from 15,000 to \$86,000 per fiscal year. So it's double the 45,000 that was mentioned previously.

>> Sean Kaldor: So what is the sorry it ranged from 15,000 some years to 80,000 so an average --

>> 86,000.

>> Sean Kaldor: So an average might be --

>> So it's going up every year.

>> It's really dependent on the number, the quantity that you have.

>> Sean Kaldor: Okay, thank you.

>> David Bacigalupi: Okay, Scott.

>> Scott Johnson: Looking to the packet of this information, and the tests that are currently being done on the exit physical, just keying in on Sean's points, can something be developed for a retirement packet for those that are planning to retire, that the board encourages potential retire -- you know folks that are getting ready to retire to have an exit physical being conducted and maybe with the list of those suggested tests and because when I look at Mr. Gurza's memo, if I understand correctly, those services are already available through the various health plans. And I look at the schedule of those type of tests that are attached to his memo dated July 19th. So it appears to be the same tests that are under contract on these exit physicals. So it seems like you know we are already paying for this health plan, employees are paying a portion, city is paying a portion. And why we wouldn't you know as a board we could encourage it, have it in a packet, be more proactive by encouraging these type of tests and that we encourage them to go to their doctor and go through the battery of tests and if we have that documentation to their doctor it shows that you know they're getting ready to retire, the board is encouraging that the doctors administer those type of tests. So rather than paying for the same service twice and paying up to 85,

\$86,000 out of this plan doesn't seem to be appropriate to provide a dual benefit, for a benefit that's already available. Just -- that's just kind of my common sense thought process on this whole issue.

>> We do provide them with the exit physical information as far as the list of tests that are available to them through the exit physical program. And the application with all the tests are on it as part of their retirement package. I guess what you're saying is we should change our methodology and just in lieu of the exit physical program just give them the list of tests that used to be on the exit physical and encourage them to get them from their current provider.

>> Scott Johnson: Since the services are already available through the exit health plan. That's what I would recommend. It doesn't seem appropriate that this plan pay for benefits. That's not the purpose of our plan. It's to pay for benefits that are bargained for. Let me rephrase that. And to supplement those benefits doesn't seem to be appropriate to me.

>> David Bacigalupi: Thought you were wearing the wrong hat there for a minute.

>> Scott Johnson: No.

>> David Bacigalupi: Okay, further discussion, questions? Anybody want to make a motion?

>> Sam Liccardo: I'll go with one and see how it goes. My motion would be, for this to come back to the board with some proposal for some kind of enhanced notification. I understand significant amount of notification already occurs but some kind of enhanced notification for retirees about which test they ought to be requesting. As public safety employees and what other steps we might take to encourage pending retirees to take advantage of what's already in their plan to ensure they're being tested at a full extent. And then to discontinue this program of paying separately for exit physicals.

>> David Bacigalupi: Okay, I have a motion.

>> Scott Johnson: Second.

>> David Bacigalupi: And a second. Discussion on the motion? The only thing I would like to add to the motion, is to get Dr. Das and unfortunately he left already, but his opinion as far as the value of offering these tests independently, or just offering these tests, as far as making determinations in future disabilities. I mean this is one of the cruxes for this board, the advantages to this board is to get that exit physical. And I'm not sure having it done in one spot at one time with an outside vendor is advantageous or not advantageous over your routine health plan. The advertisement.

>> Sam Liccardo: I'll include that in the friendly amendment. And let me just say we hear a month from now from Dr. Das or someone else that we're somehow missing out, or forcing our retirees to miss out on a key test of some kind then it seems to me we ought to be talking about how we could notify retiree ease that the plan will pay for tests, that they're being declined for some reason.

>> David Bacigalupi: Reasonable.

>> Sam Liccardo: But to just pay for a whole separate benefit just doesn't make sense.

>> David Bacigalupi: Okay.

>> Dave, can I ask for just a clarification? Councilmember Liccardo, when you say discontinue, you mean from this day forward we will not be paying for anybody's exit physical?

>> Sam Liccardo: Trying to think should we wait a month before we would actually be --

>> I'm waiting for more information.

>> David Bacigalupi: We're asking for a lot of information, and if we've already made the decision today what --

>> Sam Liccardo: Right. I think -- let me say this. I understand there's more information that's still sought from Dr. Das. So I would -- I'll refrain from making the motion to discontinue at this time. I think that will be clearly my motion when this comes back.

>> David Bacigalupi: Can I ask you to amend your motion to continue it only until the next meeting, and then we'll make a decision then?

>> Sam Liccardo: Yes, yeah, that makes sense.

>> David Bacigalupi: That's okay with the second. Donna, is that clear, we're okay? Any further discussion? Mollie, I've got buttons that say attorney up here, if you're not asking --

>> I left it on by mistake.

>> David Bacigalupi: A motion and second. Any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries thank you. And might I ask, would we get the complete packet next month for the meeting, that all the information including what was included in June, what was included this month plus all the new information? It's all packaged. I know we're adding a few sheets of paper but it's helpful to have it all in front of you. Okay, item number 22. Review and adopt revisions made to the placement agent policy. Ron.

>> I'll present this. The board approved a placement agency policy at the June meeting in conjunction with the federated board. The federated board made some changes to their policy so we're bringing forward a separate policy which is solely for the Police and Fire board.

>> David Bacigalupi: Okay. If there's no questions I'll entertain a motion. Go ahead Scott.

>> Scott Johnson: I did have a question, I just want to understand, we were going to do a joint policy with federated. Ron, you said federated made some changes to their policy.

>> Yes.

>> Scott Johnson: Did you outline what changes did they make? Are they incorporated into this new policy now or proposal?

>> No, the only changes they made were, they wanted to indicate that the federated plan was indicated as a system not a plan. So there were some clerical changes made, as far as our -- the Police and Fire board was not changed at all.

>> Scott Johnson: No technical changes at all?

>> No.

>> Scott Johnson: Move for approval.

>> Second.

>> David Bacigalupi: I have a motion and second. Further discussion on the motion? Hearing no further discussion all in favor, all opposed, the motion carries. Item number 23. Oral update and possible action on the final compensation for pension calculation purposes.

>> So you asked as the last meeting that the memo I had provided gosh back in May I suppose, be circulated to employee relations and to the bargaining units and I believe employee relations did send the memo to the bargain units, and I don't know if anybody wants to say yea or nay on their -- the purpose of doing that was to see whether or not they had any additional information or any input that they wanted to give the board on the definition.

>> David Bacigalupi: I have to say -- and Conrad, I'll get to you next, but wish I had that memo in front of me. Now referring back to a memo in may is difficult for senior citizens.

>> I didn't realize it had not been put in the packet, I'm sorry I should have noticed that and I don't have a copy with me.

>> If I may, we did send e-mails to those at POA and local 230 and asked if they had any clarification on the document that if they can please notify us. We have not received any response from either union so at this point we may be recommending to the city attorney's office that they proceed with the ordinance to make the changes, that should have been incorporated that were inadvertently taken out.

>> Sean Kaldor: That would remove the drafting errors?

>> Correct.

>> It is my understanding that's what they want done, the bargaining unit.

>> David Bacigalupi: So we can move forward with this if I get a motion?

>> If you get a motion I can bring back an ordinance for you to look at, yes.

>> David Bacigalupi: Do I have a motion?

>> Motion to approve.

>> I'll second.

>> David Bacigalupi: Motion and second. Mollie will bring back the actual ordinance. Any further discussion? Hearing no further discussion all in favor, all opposed, motion carries. Item 2004, oral update on status of plan tax qualification review.

>> So while you received one ordinance already that resulted out of the qualification review, what we would like to talk to you about today is timing for tax counsel to come make a presentation to the board of some of their other findings with respect to the plan. And we think that we will be ready to do that in October. The question for the board, the couple questions for the board, whether or not you want the presentation to be to the full board or whether or not you'd like to have an ad hoc committee on tax to look -- to deal with the tax qualification issues before it comes back to the board. And -- oh, and if you do want it to be a full board meeting, whether or not you would like to have a special board meeting, so that we could schedule federated and Police and Fire on the same day for tax counsel. So if we do it at your regular board meeting in October, it would be the 7th. We were looking at the week of October 18th, I believe, for a special meeting, and I believe Russ had, I think you said the 18th, the Monday was the best for you that week. I think our tax counsel is available that week. In October, yes. And we haven't talked to the federated board yet, of course we will talk to them next week. The 20th was the day that we talked about, Wednesday the 20th. We can -- it -- depending on -- there are a couple of issues with the tax counsel doing the presentation. One of which is, if we -- if we're in this setting they'll probably have to come to do the presentation from Indiana, because there's not really an ability as you've probably figured out to call in here. And so --

>> David Bacigalupi: Excuse me for a second. We don't have the ability to teleconference in this chamber?

>> I don't know that we do. I haven't seen it.

>> David Bacigalupi: I know that our cameras aren't working like they were supposed to for being here --

>> I was trying to make it, you know, as cost effective as possible by having them come just once for both boards. And since you meet on two separate days, either -- it would -- it's going to have to be a special meeting by one of the boards.

>> David Bacigalupi: Okay if we didn't do a special meeting, if we didn't do it during a regular meeting, we could do a special meeting, we could do it in our shop and we have this ability over this conference chambers by having telephone conferencing. Would we save some money by not having them come out, could we do it over the phone? I don't know, are we set up for video conferencing there, can we even do it video conference?

>> You could do a telephone conference. There would be obviously some advantage to having them personally in the sense that you might find it helpful. But of course, it's cheaper. That's why I bring it up. And it's obviously cheaper for both plans if they can present to both of you at the same time and only make one trip out here. That is a real cost saving, to the able to present to both plans at once.

>> David Bacigalupi: Or if they didn't even have to come out here and do a telephone conference. Ron.

>> We can do a telephone conference but not video conference.

>> David Bacigalupi: My thought is, this may be something we would want to call a special meeting, and then the members of the board that could attend, could attend. How long would you expect this meeting to go, Mollie?

>> Two to three hours. And so if you would want to do a special meeting, then I would ask that you look at that date.

>> David Bacigalupi: October 20th, Wednesday.

>> October 20th. We can come back and talk about it more next month. This is kind of laying it out for you all to think about. If we can do teleconferencing from here, then we know we can do it during our regular meeting if we need to.

>> David Bacigalupi: That is a very detailed and important subject, to try to squeeze into these meetings. These meetings tend to go long anyway and people have other commitments.

>> I agree and that's why I brought it up. I also brought up the committee idea because I wasn't sure that you might wasn't to appoint a committee to deal with it.

>> David Bacigalupi: Well, I would like to make it available to the entire board, because this is such an important issue. If I have consensus from the board, I would refer this to staff to try to put together a telephone conference for October 20th. What do you think would be a reasonable time, 9:00? 9:00 in the morning and if there's any problems or questions, contact staff. But let's shoot for that.

>> We'll have to work with them on the time because they're on eastern standard time, we would probably want to do it at 10:00 because that would be 1:00 their time.

>> David Bacigalupi: So if I have a consensus from the board I think that is the best. I'd like to keep it open to the board because tax qualification is such an important issue.

>> We just wanted to let you know we think it needs to come forward in October to keep us on schedule.

>> Dave I would just like to raise the issue of whether or not representatives of the employee organizations, the city if necessary other than who's here, be specifically invited to come. Because that might be a really good way --

>> David Bacigalupi: We can tell that it's an open meeting, so everybody is going to be invited to come.

>> Well specifically --

>> David Bacigalupi: Okay, we would like to have them at all our meetings. Okay. Would you make that a special note though?

>> Sure.

>> David Bacigalupi: Thanks. Okay. Thanks Mollie. All right, item number -- lets see, we are now at standing committee reports, recommendations, item number 25, the investment committee. The next meeting is scheduled for August 19th.

>> Can I just make a request on that if I could just have it start at 9:30?

>> David Bacigalupi: What time do we have it scheduled for? 9:00? 9:30, sure, okay. Okay, item 26, the investment committee of the whole, next meeting is set for August 19th, also. Investment committee, is there something special we need to do for a committee of the whole? All right, now we're on item number -- we're on the consent calendar. Items number 27 through 34.

>> Real quickly will there be a Real Estate committee meeting?

>> David Bacigalupi: I don't think we have one scheduled this month.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: And 27 through 34 are all items on the consent calendar, unless there is any item any board member would like to be pulled for special discussion. I'll take a motion for the consent calendar.

>> Move approval.

>> Second.

>> David Bacigalupi: Confirming there's no items 9 is requesting to be pulled. No further discussion on the motion? All in favor, all opposed, motion carries okay, as part of the agenda is for public comments. If there's any members of the public that would like to address the board. Morning. Comment on up, state your name.

>> Good afternoon, Darryl Von Raesfeld, recent retiree with City San José. I would just like to follow up from the June meeting that we talked about, some of the IRS implications with the plan. And I had mentioned the 415M plan back then, and it was in June of 2004 where this board put forward a proposal that had gone through the City Attorney and gone through all the review. To OER and no one can tell me where that went to so I would like to just request again that we look and see what happened to that June 3rd, 2004, memo that went forward from this board on a 5-0 vote and it presented a 415M plan to the city to implement which would help with some of these IRS 415 regulations that are impacting some of the retirees now including myself so I'd just like to request if we can get it agendized to review that memo in its complete because it was a full ordinance that went for approval and it kind of disappeared into mid air, so I'd like follow up with that if we could have that review.

>> Sam Liccardo: Can we do that by motion?

>> David Bacigalupi: No we don't need a motion, I'll just add that to the agenda, on where that motion in cyberspace died.

>> Thank you for coming back.

>> Thank you.

>> David Bacigalupi: If we can have some information on that by next meeting, Darryl we'll have something on that by next meeting. Thank you for come back. Anything further? Hearing none, education and training, notification of CalPers trustees round table to be held in San Diego, California on October 15, 2010. I thought somebody had signed up for it. Not? If you have the opportunity it is always advantageous to educate yourself on your position. With nothing else on the agenda, I'll adjourn the meeting. Oh, Scott.

>> Scott Johnson: Mr. Chair, I neglected to mention when we confirmed Segal's third contract, they did agree to a reduction in fees. Thank you know to Segal for agreeing to those reduced fees. That's for the record. Thank you.

>> David Bacigalupi: Okay, and if there's nothing else this meeting's adjourned. Thank you. [12:11 p.m.]