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>> Mayor Reed: Good morning I'd like to call the meeting to order. I understand there's no labor update and there's no one here to speak. We'll adjourn into closed session and be back in here at 1:30 for the rest of the agenda.

>> Vice-Mayor Nguyen: Good afternoon. I'd like to call the city council meeting to order for the afternoon of April 17th, 2012. And we will start with the invocation, Councilmember Chu will introduce the invocator.

>> Councilmember Chu: Thank you Vice Mayor. It's my honor to introduce reverend Ralph Su from canaan Taiwanese Christian church. Established in 1980, canaan Taiwanese Christian church has been a popular community gathering place in District 4 since December of 2008. CTCC is a missional church which passionately reach out to community. Currently Canaan Church has three language services in ministry which include Taiwanese Mandarin and English. In order to serve the community, particularly the Taiwan East Americans, CTCC leaves one fifth of its facility to the north in chaff Taiwanese American center which host a cultural programs and community events such as senior day, on third Thursday, and various workshop. And in which topics life, health and finance. They also hold a Taiwanese school with a wide range of courses for children, adults, and areas of art, folk dance, aerobic table tennis and much more. These are activities and events are meant to teach individuals to respect, learn, and love one another. Every Sunday there are over 700 people that attend the church services and community programs. Today we are honored to have the senior pastor from CTCC to lead invocation. Before coming to CTCC reverend Su helped to start three new churches in Southern California, Ohio and New Jersey. Reverend Ralph Su has been serving as the senior pastor of canaan church for the last four years. Please welcome Reverend Ralph Su. [applause]

>> Thank you, thank you. Let's great together, dear gracious God, thank you for calling these men and women our leaders of the City of San José, to serve with their commitments and contributions. Please give them wisdom, vision and courage, to face the challenges and make the decisions for the future development of this great city. Please bless them with your righteousness and mercy so that they may lead the city with the integrity, creativity, intelligence and love. Grant them your blessing of abundance, guide them with your grace, prepare them from harms and evil. And enable together for advancing the benefit of the city and its people, amen.

>> Vice-Mayor Nguyen: Thank you, reverend Su. Next up we have the pledge of allegiance and I'm very proud to say that we have a group of third grade students from Anderson elementary school in District 1, Councilmember Constant's district, to help with -- lead the pledge of allegiance. [pledge of allegiance]

>> Vice-Mayor Nguyen: Thank you, students. Next item is orders of the day. I believe we have a request from Councilmember Constant to defer item 8.1, until May 1st.

>> Councilmember Oliverio: Madam mayor. Just wanted to drop 1.7 from the calendar.

>> Vice-Mayor Nguyen: Oh I'm sorry, Councilmember Pyle? I think we can have the City Attorney weigh in in terms of what we can do, what we can do --

>> City Attorney Doyle: If a councilmember wants to discuss a matter to be deferred, you discuss it until the time you take it up so we'll wait until item 8.1.

>> Vice-Mayor Nguyen: Thank you. Next up is the closed session report. Oh I'm sorry. So we'll discuss this when we get to 8.1. All those in favor? Opposed? Hearing none motion carries. Yes, so we'll have a discussion when we get to 8.1. Okay we'll move down to the closed session report, City Attorney.

>> City Attorney Doyle: There is no report Vice Mayor.

>> Vice-Mayor Nguyen: Thank you. Next item is the ceremonial items. I'd like to invite Councilmember Chu and Jim Ferrand from the Santa Clara County Open Space Authority to join me at the podium. This is my first time chairing this council meeting because Mayor Reed is actually in Washington, D.C. So give me a minute here. Today we are recognizing April 22nd, 2012 as Earth Day in the City of San José and Councilmember Chu has a few more words.

>> Councilmember Chu: Thank you, Vice Mayor. I'd like to thank my colleagues and to -- in joining me to proclaim this Sunday, April 22nd, the Earth Day in the City of San José. The goal of the Earth Day is to inspire environmental awareness and encourage more conservation protection and appreciation for our natural resources. This year, the city took the bold step to implement the nation's most environmental aggressive single

use carry out bag ban at our retail stores. In addition, San José is making progress to achieve our Green Vision goal by increasing the number of clean tech jobs, implementing energy efficiency measures, installing over ten pools of new recycled water pipes, and approve the envision 2040 general plan. Our sustainability effort from the city include adopt a park and adopt a trail program. Adding more bike lanes, recycling programs, at our schools, and annual cleanup with community based organization to keep our creeks and park clean. In celebrating the earth day, the city and San José State university are co-sponsoring a celebration on Thursday, April the 19th, from 11:00 a.m. to 8:00 p.m. At the San José State university campus. I invite you to take part in this workshop, demonstration and other activities. In addition, I encourage you to find ways to do your part, in protecting the environment for a cleaner, more healthier environment, for current and our future generation. Here today, to accept this proclamation, on behalf of the residents of district 4, in the actually on behalf of the residents of the City of San José, is Santa Clara County open space authority board member Jim Ferrand. So Vice Mayor would you please do the honor of presenting this proclamation to Jim. [applause]

>> Thank you, Vice Mayor Vice Mayor Nguyen and Councilmember Chu. By honoring me by giving me this proclamation. A great city flourish in our midst. The task of regulation straying and enhancement is a never ending task that brings commensurate rewards and it is necessary if we are to create a great city where people want to live to bring their business and to visit when they travel. The important tasks of the near future are the protection of our riparian areas, restoration of our marsh lands, preservations of our hillsides, and the completion of an integrated network of bicycle and pedestrian trails. We also need to find a mechanism similar to the county's park charter system to see that our parks are maintained and open. Keep up the good work and carry the spirit of Earth Day throughout the year. [applause]

>> Vice-Mayor Nguyen: Next I'd like to invite councilmember Rose Herrera and Pastor John Talbott from beautiful day to join me at the podium. Today we're recognizing the month of April 2012 as national volunteer month in the City of San José. Councilmember Herrera has some more words.

>> Councilmember Herrera: Thank you, Vice Mayor Nguyen. I'm really excited to see It's a Beautiful Day here. We have Pastor Jim Talbott here and his team Jennifer Guest, Christi Espinosa, Jason Ikeacre and Bill Parker

joining us today. We're here because we're going to proclaim national volunteer month. One of the best things about San José are all the wonderful people that volunteer to make this city great. I really think San José probably has the best cadre of volunteers in the whole country. In honor of all the volunteers who give their time and service to make America a better place, and this city, April is deemed national volunteer month, and encompasses national volunteer week from April 15th through the 21st of this month. Even during these difficult times, according to the bureau of labor statistics about 64.3 million people across the nation volunteered last year. It's important to recognize that in San José every day, people make an extraordinary difference by volunteering their time and energy. Where each and every person is able to contribute to creating healthy communities. The beautiful day team as part of the mayor's gang prevention task force, the San José city council in partnership with the faith based community is calling residents to collectively complete service projects throughout the City of San José to reclaim and provide hope to the areas hardest hit by the blight and gangs. The City of San José takes great pride in volunteerism and on April 28th you are invited to join us and the thousands of volunteers that will be transforming neighborhoods citywide. You can still sign up. It's not too late. You can sign up through the beautiful day Website at ourbeautifulday.org, and you can select many of the great projects being offered that day, which will include graffiti removal, picking up litter, mowing lawns, planting community gardens, brightening homes, schools and homeless shelters, and much more and all providing compassion based projects throughout Santa Clara County during this week-long project. We did this last year, beautiful day did this last year but this year we're coming even stronger with projects in all ten council districts. My colleagues behind plea are all working on this too in their districts and focusing on but not limited to the following areas. District 1, Anderson elementary consume, District 2, Great Oaks park, District 3, Washington elementary school and West Virginia and Palm Streets, Noble Elementary School in District four, District 5 Mt. Pleasant High School, District 6 Blackford Elementary School, 7, it's San José Community Church, in District 8, Tully-Ocalla- Cunningham-King neighborhood. District 9 is Butcher Park and District 10 the pioneer high school. So make sure to get involved and sign it today. Again a special thank you to all volunteers in San José as today we are celebrating the profound impact of volunteers and encourage everyone to discover their own power to make a difference. We all have a role to play in make our community stronger. With that I'm happy to proclaim April of this year 2012 as national volunteer month in the City of San José to call phenomenon all residents to observe this month by volunteering in service projects across our city and pledging to make service a part of their daily lives. With that please Vice

Mayor would you present the commendation. I think we'll have a photo. [applause] And pastor Talbot will say a couple of words or more.

>> That's great, thank you very much. Thank you for signing this all. I appreciate it. And Councilmember Herrera, thank you for the kind words, and Vice Mayor Madison Nguyen welcome back from having a baby. We're glad you're back. I do want to say one thing that I think is super-important that is vital to our city and it's built on relationships. And I feel like over the past few years, the acceleration of what beautiful day has been able to do, which is you know setting up service projects and there's lots of organizations around the country. But the issue is, based on relationship and friendships and I've been able to I think on the entire council build a connection and friendship from someone on staff, a way we can serve one another. That becomes the primary source. It's great that the kids from Anderson we have an after school program with almost half the students going to our mentoring program and kids program we have there and that was built on a relationship with the principal. I think oftentimes when we look at the problems and the issues of our city and we come in with our agendas I think the greatest thing that we can do is seek to understand one another. And build a friendship and a connection in a way that allows us to serve one another. And that has become evident I think with what's happened with beautiful day and with our partnership and friendship with the city. So thank you for this proclamation. I appreciate it, and you all have a great meeting. [applause]

>> Vice-Mayor Nguyen: Next I'd like to invite Cosme Fagundo to join me at the podium, and if his parents are here for them to come up. We are commending Cosme Fagundo. For his dedication in support of local communities and organizations which work to keep San Jose safe and vibrant. As the owner of McDonald's stores throughout San Jose, Cosme understands the importance of giving back to the community he serves. He has generous by contributed to various Ronald McDonald House charities, neighborhood associations, little leagues, and other events in an effort to create a cleaner safer United and vibrant community for all residents in our city. Recently Cosme donated lunch to more than 400 volunteers who participated in the great American litter pickup in my council district. With his generosity, volunteers enjoyed a wonderful lunch after helping to pick up trash on a cold and rainy day. Thank you again for your generosity and ongoing commitment to helping our city

and its residents. Thank you very much. And I'd like to present a commendation to Cosme Fagundo in honor of his exemplary business practices and outstanding service and contributions to the residents in San José.

>> I'm going to keep it short and sweet. Thank you so much. Without Diego, actually and you Madison, none of the events have the ability for me to support would be possible. You guys are truly the ones that should be recognized here. So yes, thank you, thank you to my parents for showing up. Thank you for Miguel and Linda for coming and showing your support. Thank you. [applause]

>> Vice-Mayor Nguyen: Next up I would like to invite Councilmember Liccardo, Sally Ashton and Joe Miller to join me at the podium. Today we are commending Sally Ashton and Joe Miller for their work initiating and bringing to fruition poetry on the move durable national poetry month.

>> Councilmember Liccardo: We are also joined by Patty McDonald and Nicholas Adams who you can see -- are you guys playing tonight? Thursday night at the Montgomery theater. I understand Nicholas has a fantastic singing voice. At 9:00 to 5:00 that is the musical, along with several other notables and we're also joined by Barbara Goldstein who is our public art director and they are holding up what may look like bus placards but they are much, much more. I think we know intuitively what some of the folks who are experts in studying what people love about cities, that there's some surprising results when they survey folks. Knight foundation did a couple of surveys in the last decade to figure out what it is that connects people most with the places they live. And quite surprisingly although we all care about things like public safety and education and obviously jobs all of those things are not what comes to mind when people are surveyed about why they are attached to their community and why they care about where they live. Usually, in fact in all 26 cities that were surveyed, the top three characteristics of the cities that they cared most about were aesthetics, openness to ideas and people and social offerings. The knight foundation study teaches us something I think that we probably know intuitively, how we engage with people in our public spaces whether we're inspired by who or what we encounter in a city, or how we connect with one another often determines how passionate we are about where we are. Why all this introduction? Well, it explains why we care so much about poetry on the move. This month in addition to being national volunteer day is also national poetry month and that's probably appropriate since a lot of poets don't

make a fortune these days, I'm told. So there is -- Poetry on the Move is the brain child of Sally Ashton who is our poet laureate for the county, and she is also an educator, across the street here at San Jose State. She is of course herself a poet and an editor and accomplished leader here in the community. And we are grateful that she dreamed up this wonderful idea of displaying our literary art here in our buses, and throughout the VTA system, which of course overwhelmingly is here in the City of San José. Joe Miller who is also behind me, is the force behind works galleries, he is also a professor over at San José State, a long time works art leader here in San José. And a member by the way of the San José City Hall exhibit committee I believe. So you've certainly seen Joe's work around us. He is responsible for the design of these beautiful panels. And we are celebrating this month the launch of poetry on the move. And we're very grateful for Sally's contribution and Sally would you like to say a few words?

>> Thanks, very much, city council and Vice Mayor Nguyen. It's such an honor to be here in a place among people who are sensitive to the arts and the needs of people. A great idea can go nowhere without some great people behind it. And I had wonderful partners in the office of cultural affairs, the arts commission, the City of San José, the Santa Clara County VTA, as well as arts council Silicon Valley all jumped on and gave a bunch of energy to get these poems into our buses and light rail cars. So I'm going to read you two of them. Two of the poems. There were two winners from San José. It was a county wide contest. And they are not here today. We do have one poet, winning poet with us, Dennis Norn from Campbell, do you want to wave your hand, Dennis? So there's a winner. As well, Joe Miller's vision of what would work in the space. If you get a chance, please do right the light rail and the bus and is a them and the zooming letters that are going. It was truly inspired, he wrote in the light rail and thought what's really going to work best and so that came together. So the first poem I'm going to read from -- is written by potato Samantha Lay from San José. It's called from the platform on first street and it's the pink one. From the platform on first street. A dispassionate rain, sprinkles colors on the Glassy morning tracks. Faded creatures in shapes of blue and sleeplessness going. Gone, the warning whistles of the watchful conduct, gone the smoke that caught the wind and stained the air. I will say our poets had a challenge. They had to have 50 words or less. Let that be a challenge for the council. No, kidding. Anyway, so that's why they're brief, they're sort of imagistic pieces. The second I'll read is graft, by mark highline also from San José. The full moon, golden as December, maple leaves, purity of white orchids in spring. Possesses enough pull to move oceans, to

maneuver titanic levers of tides. Down here, we need some heavenly invention to draw us closer. Body to body, as we move through the days like the moon. A poet, former national poet Billy Collins said, when you get a poem -- when you see a poem in a public space it happens to you so suddenly, you don't have any time to deploy your anti-poetry devices. And I hope this happens to the City of San José and county of Santa Clara. Thank you very much for this commendation, I read it because of the people that are passionate about their arts and the people their city. Thank you. you.

>> Vice-Mayor Nguyen: Next up we have the consent calendar. Are there any items that councilmembers want to pull for discussion?

>> Move to approve.

>> Vice-Mayor Nguyen: Do I have a second? We have a motion and second to approve the consent calendar. All those in favor? Opposed, hearing none, motion carries. Item 3.1, report of the City Manager.

>> Debra Figone: Madam Vice Mayor I have no report today, thank you.

>> Vice-Mayor Nguyen: Thank you. Move down to item 4.3, amendments to section 20.100.500 of chapter 20.100 of title 20 of the San José municipal code, the zoning code.

>> Councilmember Constant: Move for approval.

>> Second.

>> Laurel Prevetti: Staff has one clarification for the benefit of the council if I may. Laurel Prevetti, assistant director of Planning, Building, and Code Enforcement. Just want to make sure the council knows which ordinance you're approving today. It was the one associated with the transmittal from the Planning Commission that added greater breadth for the ability to reactivate and extend%. So we want to make sure -- there were two versions in

your packet so we do want to make sure it's the one attached to the Planning Commission transmittal. Thank you.

>> Vice-Mayor Nguyen: Thank you, Laurel. The mayor wants me to disclose that his office met with Boston properties regarding the downtown Almaden boulevard site and the mayor is in full support of the recommendations to amend title 20 to allow for the reactivation and extension of the previously approved permits for development projects that have not proceeded as expected due to economic and real estate market conditions. With that, all those in favor of the motion? Opposed hearing none motion carries. We will now move to item 8.1, audit of the police department secondary employment. And I believe we have a -- Councilmember Constant wants to defer this item to May 1st, and under orders of the day, we are going to discuss this item. So -- Councilmember Pyle.

>> Councilmember Pyle: Thank you. There are several reasons why I don't think so this is a good idea. First of all, this meeting is noticed in its entirety, second of all, we have all parties here, Sharon Erickson is here. This item was already deferred on three different occasions, on the 3rd, and the 10th, I'll say two other occasions and then today. And then three other items on today's agenda were deferred, with notice: 4.2, 7.1 and 9.1, and another point is that May and June are heavy with budgets and other deferred items, and I really am missing the reasoning for the deferral.

>> Vice-Mayor Nguyen: Councilmember Constant.

>> Councilmember Constant: Thank you, Vice Mayor. The reason I asked for the deferral was after consultation with the mayor. This audit as you may have seen is quite an extensive audit. There are a lot of issues contained within if audit that need to be addressed. And there is a memo that the mayor and I would like to put out that we didn't have an opportunity to put out prior to this meeting for a host of reasons. But I just think that because of the issue that there are so many issues contained within this audit report, it's probably one of the most extensive audit records we've had since the time I've been on the council that it deserves the time and the attention so I therefore make a motion to defer.

>> Second.

>> Vice-Mayor Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: I'll support the deferral. We just conveniently had a deferral for the west side airport development when we did not have to defer it but some of my colleagues wanted to and myself wanted to defer it. But because it's been noticed I'm happy that staff wants to present anything that's fine but prefer deferring any action to a future meeting, thank you.

>> Vice-Mayor Nguyen: Anyone else? Okay. We have a motion to defer this item to May 1st. All those in favor? Opposed? We have five-five. So we're going to hear this item because the motion fails.

>> Councilmember Pyle: Thank you.

>> Vice-Mayor Nguyen: I think staff will have a presentation. The auditor is also here.

>> Sharon Erickson: Thank you very much, mayor and members of the council. We're here to present to you our audit of the police department's secondary employment unit. Our conclusion was that urgent reform and cultural change are needed to gain control of off-duty police work. The San José police department allows its sworn personnel to work secondary employment or pay jobs in addition to their city work. Secondary employment encompasses a broad variety of types of work and employers. If I could just take a moment to make sure that everyone knows the basics of this. The focus of our report was on secondary employment performed while in San José PD uniform. This includes security work, in uniform at shopping centers, apartment complexes and schools within the City of San José, as well as special events and festivals, and directing traffic during special events, and street construction work. When a sworn employee is working at a pay job, a member of the public would not be able to distinguish whether or not they were working on regular duty for the city or working a pay job. However in those instances the employee is actually working for the pay job employer, not the City of San José. We

estimated that last year, sworn personnel earned at least \$6.1 million in supplemental income, from uniformed pay jobs. It's the equivalent of about 62 full time employees. We had six findings. The first was that the police department must gain control of secondary employment program to reduce the risk of fraud, conflicts of interest and inequity. The secondary employment program at the time we reviewed it had lacked substantive management oversight until recently. Our audit identified specific problems including overlaps in reported time and long work hours that create a risk for the department and the public. Taken as a whole, we felt these problems warranted significant reform by the police department, and potentially a reconsideration of the purpose and priorities of the program as a whole. Our second finding was that supervision oversight and enforcement of rules was significantly lacking. During the audit the department did not have complete and accurate basic data about the program, including the number of current work permits, number and identity of current employers, number of hours worked or amount of money earned. I would like to say that during the course of our audit, the department has developed some of that data. Various rules that were critical to the oversight of the program were not being enforced, including of tracking of hours, logging-on to the department's CAD system from pay jobs, tracking city vehicle use, department established pay rates and prohibitions against the use of sick and disability leave on the same days as an employee was working secondary employment. The third finding was that existing rules allowed can conflicts of interest and cash payment to police officers. The fourth finding was that pay job coordinators have historically had a disproportionate amount of power in controlling and assigning jobs with little oversight from the department management, and some had significantly increased their income through coordination. Let me say a little bit about pay job coordinators. They serve as the liaison between the secondary employer, the business, and the employees. They handle administrative tasks such as assigning employees to jobs and scheduling them. Some pay jobs are coordinated by individuals, and some are coordinated through the secondary employment unit of the police department. We felt that this process, vast disproportionate power with individual employees and had the potential to undermine the chain of command. The department at that time did not have written guidelines regarding coordinator rules responsibilities and pay. The secondary employment unit had taken over coordination of various jobs when problems arose. We felt oversight and accountability needed to improve. The fifth finding was that the public and public safety -- and public officer safety are potentially at risk due to fatigue and lack of limits on officers working long days. To the extent that secondary employment contributes to officer today teeing, we're recommending the department work to minimize such effect, potentially

risks of fatigue have been well documented. We also observed that employees who had worked a high number of hours had also filed a number of workers compensation claims. Our sixth finding was that the police department may need to reconsider the overall purpose and scope of the secondary work program and the extent to which it provides public benefit. The secondary employment unit was created 15 years ago to provide oversight of the program, but there were still problems. A concerted good-faith effort to make improvements has been underway in the department. However, San José's system for overseeing uniformed off duty work do daylight provided minimal accountability. Key stakeholders all have reason to like this system. For the police department, it augments its force. For sworn employees, they earn extra income. And for businesses, they receive additional policing, at a straight-time pay job rate. But it's also not clear how the broad public interest is served by all of this. Though direct policing services are paid for by the secondary employer, the City's General Fund subsidizes the secondary employment unit to the tune of 500 to \$7th,000 a year depending how you count the cost and the General Fund has been subsidizing the insurance policy for employees who are working secondary employment to the tune of approximately \$94,000 a year. It does seem reasonable to us that if the program continues, that 100% of the cost of secondary employment programs should be recovered. Secondary employment poses challenging questions for the city. Although the additional policing resources paid for by somebody other than the city augment and enhance the police force, it's difficult to quantify the specific benefits of the program. Secondary employment represents policing services that are purchased and paid for by private entities based on ability and willingness of employers to pay, rather than the police department's management, police department management's professional judgment and deployment. This report includes 30 recommendations, some of which may require meet and confer with labor unions, to address these problems. I would sincerely like to thank police department management, their staff, for their time and insight during the audit process. This was not an easy audit, and I want to acknowledge the work of the department to address these issues. With that I'd like to turn it over to the police chief.

>> Madam vice mayor and members of the council, Chris Moore I'm Chief of Police. First I want to begin by thanking our auditor for what is truly a comprehensive audit on a very difficult subject. It is one I know I've had many conversations with each of you about this topic going back to when I was appointed. It was very much a concern, has been a concern of mine for many years how secondary employment operates in the City of San

José. Because it is different than most major cities. A lot of major cities have it conducted out of their existing police department management. That introduces a significant amount of cost. But with all the events of layoffs last year, it was a good opportunity, between the audit and my staff, to put some of the best people we have in the department, some of them who are with me here, to my right, is lieutenant Dave Tindall, who is currently the lieutenant who is in charge of secondary employment, and behind me is lieutenant Mike Knox, who heads up internal affairs now, but up until recently he was the commander of secondary employment. Taking some of the best in the department to address a very difficult issue so nobody would accuse them, they don't work pay jobs these are people who work and are very diligent to identify the issues to make sure they are very clear for all of us of what's at stake. So with this I'm going to offer just a couple of introductory comments I'm going to turn it over to lieutenant Tindall to give you some of our perspectives on the audit, some of the things we have already done. I think the auditor will agree many of the recommendations have already been incorporated into a basically 20-page policy memorandum that we are ready to right now, just came out of OER to address a lot of issues to actually implement with significant restrictions on the type, the amount, the hours, the issues of sleep deprivation and fatigue, they're all included in there. Now we don't agree 100% on every single issue, I think we are very close, one of them is an hour you'll hear about between 16 and 14 hours, and I think we can put forth a reasonable argument for 16 in a week, including your work hours. As well as a 24-hour maximum for secondary employment during the course of a week. Before I turn it over I just again want to reiterate, this is a very difficult issue. This city for many, many years has been able to operate with a police department that is very thinly staffed due in large part to the large number of secondary employment officers that are on the streets every day in San José. You're going to hear some statistics here shortly from Lieutenant Tindall among one of them is that roughly 100 officers a day are paid for by secondary employers in our city. When you think of the total number of officers on our street every single day it's a significant amount. They are straight time rate, those who pay that fee including many school districts who historically would have relied on the police department to pay for those officers and like they do in many cities the school districts pay for it. And the reason they can do that and they're willing to do that is it's done at a straight time rate. The management issues are very clear. It is much more difficult for me as a manager of these programs and as a department leader to control folks if I don't have their paycheck. That's a truth. But if we were to incorporate them into a department structure, bring all of them inside although it might be easier for us, it would also be at time and a half like they do in San Francisco and Oakland,

and we would have to add an administrative surcharge on that like many services we provide not part of a regular business and when you add that you would price out of the market many of the school districts and many of the secondary employers. With that I'd like to turn it over to lieutenant Tindall.

>> Madam Vice Mayor, City Council, Lieutenant Dave Tindall, commander of the secondary employment unit. The department agrees on many points as to control measures and reform and crafted a 22-page policy revision specifically targeting secondary employment and in the process addressing nearly all of the auditor's concerns. The following highlights some of the current changes highlighted in our response to the auditor's report. The department is in the process of pursuing software options to track hours worked by each employee and eliminate the burdensome tracking forms that were not consistently completed. It is the hope of the tracking would be tied to the time card system and we are waiting a response. In regards to beginning the shift and flex time the new implemented policy prohibits beginning of shift and the flexing of time off during regular shifts. Officers may not work any secondary employment that overlaps in any way with their regularly scheduled day. This also takes into account travel time to and from the secondary employment and or to the regular scheduled shift. The revised policy still allows for employees to apply for end of shift time off, end of shift is different from beginning of shift in that the employee is already at work and the time off can be denied at the discretion of the supervisor. It is our belief that supervisors should retain this discretion on a case-by-case basis. Placing a blanket policy on end of shift would significantly affect many events including early morning races and marathons as an example where a lot of the people that are working augment those positions. In relation to audits and inspections, regular audits and inspection and procedures are being developed for inclusion under the duty manual and also for the secondary employment procedures manual. These audits and inspections will include both employees and employers. The proposed inspections would involve a sergeant conducting random and complaint-driven and targeted audits. The revised policy also includes a complete ban whether on duty or off duty, against soliciting any type of secondary employment assignments, instead referring all assignments to the secondary employment unit. The application of employer secondary employment unit applications has now been forwarded strictly to SEU, the secondary employment unit and officers and coordinators can no longer access, that's all new employers have to come through the unit. Currently the secondary employment unit does not have the software to assist with assignments of jobs. It is done manually by staff. The current model entails Excel

spreadsheets to track job assignments in an attempt to be fair and equitable. The revised policies prohibit officers assigned to secondary employment unit from working pay jobs with some exceptions. The secondary employment sergeant is an integral part of planning and integration of certain city special events and his or her absence would not be in the best interest for the promoter. An example would be the jazz festival. In regards to the coordinator position and the coordinator pay rate, a large majorities of secondary employment is coordinated by the secondary employment unit. The new policies have addressed the coordinator issued raised by the auditor and training is in place. Statistically the secondary employment unit currently staffs over 293 events annually. 134 of these events are major requiring 30 to 80 officers per event. In 2011 the secondary employment unit assigned over 3,432 officer positions for these 293 events at over 16,000 billable hours. The secondary employment also schedules traffic control for 35 construction companies within the city for a total of 1670 officer positions and a total of 11,255 hours. The secondary employment unit uses coordinators to staff 42 schools, 79 miscellaneous sites to include 31 HOAs 38 miscellaneous halls malls and theaters, eight churches and two hospitals. Shifting coordination from the individual coordinators for presently utilizing utilized into the secondary employment unit would require significant resource additions to the unit. The revised policy clarifies a role of the coordinator and all of these positions are now subject to the approval of the secondary employment commander and it is clear to all the coordinators that the Chief of Police has final authority. The secondary employment unit has also been moved to the office of the Chief of Police, and I am the unit report directly to him. In regards to the 16-hour daily and 24-hour weekly hour limits and fatigue. With regard to the daily and weekly hour limits the revised policies limit employees to 16 hours of work in a 24-hour period with a maximum of 24 hours of secondary employment in one week. However that number can increase if the employee takes vacation or a compensatory day off and works secondary employment. We cannot dictate what our officers choose to do on their vacation or comp time. In fact, a lot of officers take time off to remodel their homes, landscape their yards, and other activities that are extremely tiring but enjoyable. The same can be said for taking time off to work a secondary employment assignment such as teaching at a community college or at the academy. Many of the secondary employment assignments the officers choose bring them personal satisfaction and can be satisfying to them and make them better officers. And while the auditor selected a sample of officers that worked a high number of off-duty officers? The reality is a vast number of our officers working secondary employment are not working 24 hours in a week. As to the issue of fatigue the auditor's own article by Dr. Brian Vila identified the Albuquerque police department as recipients of the

health sleep capital award from the national sleep foundation, for limiting their officers to 16 hours per day. The article also recommended supervisor assessment as well as a minimum of six hours -- six to eight hours of rest. The new 16 hour per day policy clearly does this. The revised secondary employment policy specifically addresses the supervisor's responsibility to monitor the impact of secondary employment on their officers and individuals work permits can be revoked at any time if issues arise. The department will certainly explore options for awareness training, especially on a supervisory level. Lastly anything less than six hours in addition to the regular shift would have a significant impact on schools, special events and city sponsored events. Much of the staffing is augmented by off duty personnel who work their regular shift prior to or leave the secondary employment. In conclusion, secondary employment by police officers has become a vital way to augment police resources in the city. It is important to point out while the auditor's report brings to light many problematic that clearly need to be and are being addressed the vast majority of the nearly 700 sworn officers currently working secondary work assignment are adhering to these policies set in place and are not working excessively long hours. More importantly in many instances these officers are providing vital community policing functions through their community -- through their secondary employment especially in school assignments where many are coaches, provide drug and gang trainings and provide coaching and mentoring teenagers. The City of San José is augmented by approximately 80 to 130 officers on any given day. The department has given serious consideration to eliminating all independently coordinated uniform page ops and coordinate all requests for uniformed officers through the city at time and a half compensation as is the model in San Francisco, Oakland, and other large cities. In doing so however the cost to the business or entity requesting the officers would double from the current 46.50 an hour to over \$80 an hour. Obviously this would not be cost prohibitive for the schools, homeowners associations, hospitals, et cetera, who would no longer be able to afford officers. Patrol calls for service would certainly increase, especially on day watch during school week. The Chief of Police and the San José police department are committed to the enhancement of the secondary employment program. I respectfully request acceptance of our responses to the secondary employment audit, and that's that the police department be allowed to adequately staff the secondary employment unit as proposed in the current budget proposal, implement the revised policies and procedures and reevaluate the program in one year.

>> Madam Vice Mayor and members of the council, just one closing comment again. This is a topic that is caught my personal attention over the last year. Not just because the audit was coming, I'm quite grateful she was doing it and I think she'll share it with you but it really is, it presents a risk to the city when officers are wearing a San José PD uniform, it's true, you cannot distinguish who's working secondary employment necessarily if you're a regular citizen. But 15 years ago a lot of those risks were addressed through our insurance policy, but it's not the ideal situation. Previous councils have wrestled with this 15 years ago and we tried to make what we had better. This is a much better step. It's not ideal, but I think it works well for everybody including those, the schools in particular, but many other government entities that use our services. We'll continue to -- I'll promise you I'll continue to work with the best people we have in our department to make sure the compliance is what we should be. We can have a 20 page policy but if people aren't going to comply with it, it doesn't help. So a lot of this has to be on us. Part of that has to do with staffing, though. Right now we do not have the ideal staffing level to cover what we need to do to make sure that compliance is what it should be. I know some of you have some questions and I'd like if the auditor has anything else we'd be happy to answer them.

>> Vice-Mayor Nguyen: Thank you very much staff for the presentation. We'll now turn to the council for questions and discussion. Councilmember Constant.

>> Councilmember Constant: Thank you. Before I start I'd just like to express my dismay because I know this was an issue that was important to the mayor. And him having to leave town and us not given the opportunity to defer this, I don't think was appropriate. But chief, I understand your comments about, if we do everything on overtime the cost is going to be prohibitive. But why can't we have SEU do all of the coordination and the money that many of these employers are paying right now for coordination to officers, could be paid to the department, and maybe the price adjusted and assigning the officers as is done now with their off-duty time?

>> Councilmember Constant, thank you for the question. I think it was raised by lieutenant Tindall. If you look at the number of jobs that are actually coordinated in the thousands and it's done manually. The staff that it would take to do that would no way be covered by the fees that right now coordinators received. This is just what I learned during the course of our own work as well as the auditor's work. The type of payment for coordination

really varies from employer to employer. It may be extra funds by hour, and a set amount. It may be preference in scheduling so really we'd have to establish rules with respect to additional costs associated with coordination. But any way you slice it I don't think you're going to come close to what it would cost to pay for those resources necessary to do all the scheduling as you may suggest.

>> Councilmember Constant: Well I think that's all the more reason we should do it. If we're not charging all employers equally for coordination services, we have very clear guidelines on what the charges are for officers to be working. I don't see why we wouldn't have the exact same thing for coordination because I think we have a responsibility to the residents and businesses in San José to have a uniform policy and uniform charging. And if -- as far as the volume, the coordination is being done now and a vast majority of it is being paid for. So if that money were paid to the city, and we had even civilian staff there's no reason that you need to have a sworn officer filling out spreadsheets and scheduling people. I challenge -- I think that we could actually do it in-house, and provide a better and more consistent service to the residents. I do have an issue with the 16 hours. I think 16 hours is too high. There was a long time 14 hours was on the books. And it was explained to me that the 14-hour rule just sort of evaporated, nobody knows when or why it went away. But when you are looking at people who are potentially working 16 hours a day, and could be doing it two days in a row, three days in a row, four days in a row by this policy, if fatigue issues are real. And it's not just the sleep apnea that was pointed out in the auditor's report. We had a very high profile case happen recently in the county of Santa Clara with a sheriff's deputy who fell asleep and ran over a bunch of cyclists. And I really don't understand the justification between the 14 and the 16. I know there was a lot of discussion about it. And what I haven't heard is, where do we get the confidence that six hours is okay? And if someone were to work four work days, six hours off duty, ten hours on duty, four days in a row, that would be totally in compliance with this. And if you account for commute-time, and changing time, and all of that, you leave very little time for rest and restoration. So how do we justify the six hours?

>> Councilmember, a number of reasons. Number one if you reference the article that was mentioned earlier in the NIJ study it's A-4 under the auditors report and it does have to do with see -- the title of the article, it's in the NIJ study sleep deprivation what does it mean for public safety officers. And A-4 at the top it talks about Albuquerque and 16 hours a day and again them being award winning. Again there is an article that Carl Mitchell

from the city attorney's office in this month's police chief magazine that references paid police details, a/k/a paid jobs, same type of thing. And they talked about New Orleans and the issues they had in New Orleans, and people -- there was no limitation. Now they're talking about a six-hour rest and recovery psych which we're looking at eight was 16 hours. I think 16 hours is a sufficient amount of time for eight hours of off time before them to do something other than work. I can't guarantee or force anybody to go to sleep during that eight-hour period but at least there's an eight hour period similar to what a pilot would before they would fly. In addition to it, there are a number of jobs in the city particularly in the schools that are going to be between four and six hours and if we were to restrict that we would not have hours be able to work a lot of these school jobs and I think that also plays into the decision whether to go from four to six. It is subjective, I won't dispute that but I think the evidence that I have seen suggests to me that as long as there's annual eight hour rest period or an eight hour period they're not allowed to work that is sufficient for them to rest. Again I can't guarantee they're going to be sleeping for that eight hours but at least there's an eight hour break.

>> Councilmember Constant: Well I think if we're relying on one research report to say we don't have a fatigue issue, I think we're fool ourselves. I could find ten reports that show exactly the opposite. As far as the officer able to work, you may be correct that the officers working today may not be available to work but there are a lot of officers that don't work every single day of the week and in fact the middle of the week work days are the days that we have a lot of people that aren't working. So you know, I caution us as policy makers to rely on one research report, about sleep deprivation and sleep needs. I want to move on now to the next item --

>> Councilmember if I may on that one particular topic, it's not just one. Lieutenant Knox did significant research, if you would indulge us I can share a little bit more than that one report, if that's okay.

>> Councilmember Constant: Well, yeah, I would have -- I had some reports that I was going to attach to my report, too, but I don't have an opportunity to present them, so let's just move on, and you can present -- just e-mail them to the council and we'll review them and perhaps we'll have an opportunity to revisit this at some point in the future. I understand the discussion we had at Public Safety committee about giving comp time from official duty to work secondary employment and I understand that there's no more beginning of shift, time off, but the

proposal is to allow end of shift time off. We continually hear about how understaffed we are. And the high volume of calls for service. If say five officers, ten officers were allowed to go home early, three hours, two hours, whatever the case may be, and then the minute they're logged off we have a multiple shooting, how do we ensure we're going to have the resources to respond? I've looked at the watch list. There's many times where at or below minimum staffing on patrol. That really concerns me. We're looking at a time, we've been talking for over two years about the low staffing levels yet we're hearing here that we want to allow people to leave patrol, in particular is what I'm concerned about, to work secondary employment when we're having difficulty covering our own city. And that is a significant issue.

>> I agree with you. And that's why it's rare that we do particularly in light of current year staffing when we haven't had the ability to let people go. The idea though is on days when we do have a large number of employees that we don't have people calling in sick and it has been a slow night there's never a guarantee but we're not going to be letting five or ten people go a night, we don't have the bodies to do that. But if an individual had requested at the end of shift to be able to work a job, and it is within the watch officer's discretion, I think that's appropriate. As opposed to, at the beginning of shift you can't control what happens. First of all, we want somebody there for briefing, it's critical, we've made that point very, very clear in our staffing model that we want that information out there, so no beginning of shift. The other thing is once they're there you can control hanging onto them. If I give it to them ahead of time I can't control them for that three-hour period. That's the difference between beginning and end. But your point's well taken in that there is absolutely no guarantee, if we let one person off, and we have the big shooting, we're going to be one person down for whatever that period is. The three hour end of shift that's been authorized by the watch commander, we don't allow it other than that unless it goes through a captain or above.

>> Councilmember Constant: So how are we going to ensure, is this going to be specifically tried will the granting of comp time at the end of shift be specifically tied to staffing levels?

>> It has always been tied to staffing levels. It is in the discretion of watch commanders. I credit the auditor for offering up this point which is very valid. Because we require them to be logged on to CAD even in a paid job

assignment they're subject to recall. We know they're in uniform, we're going to bring them back into on-duty status. So it's a little bit more, it's still not a guarantee, but that's a lot better than it was.

>> Councilmember Constant: Right, but we know a lot of people aren't doing that.

>> Well, that's part of the compliance piece we're talking about.

>> Councilmember Constant: For me to be supportive I'd have to see something very specific like if we're at minimum staffing, or no more than X number of officers below minimum staffing. Or something. Because I think that there is -- we don't know what's going to happen. We hear that over and over. Those are the arguments that you and previous chiefs have made in front of us for staffing and yet we're going in exactly the opposite direction.

>> I will share the notion of minimum staffing has fluctuated since we've lost you know 300 bodies, that level of minimum what is truly minimum again we don't backfill, like other departments do, is where somebody calls in sick we don't bring somebody back on minimum overtime, mandatory overtime. We go light. We're very cautious when we grant the TO particularly in the last years when we lost those bodies. You're right, the moment somebody leaves and you grant the time for them to do anything else you're going to be one less. Did you want to add --

>> Councilmember Constant: So on the private investigative work I think this is the one part of the response that bothered me most. Where it says we've had this rule and nobody's following it so we're just going to get rid of the rule without any other justification. I know that most other law enforcement agencies don't allow private investigation work. In fact as you're aware, in Contra Costa county there's quite a controversy over some private investigation related scandal happening up there now, I'd like to understand why.

>> Sure. It's a very good question it's one that's come up. In the context of this audit. We realize that over many, many years some of our employees and many other police officers have gone and gotten their private investigator's license to allow them to do private investigations. We are of the belief that I'd rather have them regulated because they can come to us with a request, say I'd like to work as a private investigator doing this type

of work. We can then say no as a condition of employment you cannot do that and if they do that they can get fired, and they know that as opposed to us having a policy, they are doing general private investigative work and we don't know about it. I'd rather know about it and be able to say no, but on those occasions where the job may not be in conflict, the P.I. work may not be in conflict with the type of work we do and they're properly licensed with the state which we get an opportunity to see through our SEU process that it would provide an opportunity for our folks to go ahead and earn extra income at the same time not be in conflict with the City of San José's interests.

>> Councilmember Constant: So it sounded to me like you said we're going to allow it so that we can deny it.

>> Deny it or allow it where it's appropriate and not in conflict with the city's interest. What we're trying to avoid is have somebody who's hired doing something that might be adverse to the interest of the City of San José doing PI work for some -- first of all we say you can't do it for defense work, you're not going to do criminal defense work as a PI, it's not going to happen. But there may be something strange that may be off the wall to us and not part of our everyday existence we look at and go, that has nothing to do with police work. We're allowing people to do other types of work why not that at the same time not foreclose the opportunity for us to say that's inappropriate we don't want you doing it.

>> Councilmember Constant: So can you tell us, some of the large police departments that prohibit it and some that allow it?

>> I do not know off the top of my head, I don't know if mike does.

>> Not off the top of my head. There are a number that prohibit their department members from being private investigators, it is not a 100% prohibition across the industry though.

>> Councilmember Constant: I think it is more or less a best practice amongst large city police departments and I think the thing we have to be concerned about, I know you talk about the access to law enforcement, criminal

histories and things like that. But we also have the simple somebody walking over and asking to look at a case in one of the units. And we know that happens frequently, nobody questions someone if they ask about a case. But not everyone knows who's a PI and who's doing what work and I think that really concerns me. And again it's something that is not one of the best practices out there. The issue of officers or supervisors in secondary employment being able to work occasionally or sometimes, in secondary employment, I don't think that should happen quite frankly. The folks that are coordinating the job shouldn't be working the jobs. Now I understand the large events that were mentioned, the special events. And if they are needed because of their SEU capabilities then they should be working on duty or on overtime. They shouldn't be working for secondary employers. In fact I think the officers that are in the position of coordinating and regulating pay jobs, really should be designated employees that file form 700 so we know what they're activities are and I think those are a concern that we should have, as a city. And I know I've had some discussions with the City Attorney about the form 700 filers, who are and who aren't. But I think that's something we should be looking at and if they are truly needed because of their role in SEU then they should be there on duty or on overtime.

>> Councilmember I'll have lieutenant Tindall respond to the issue of the exceptions. But I would not disagree with you on the Form 700, given the nature of that particular work. We have a number -- and it's up to council to be a designated filer. But again, given the nature of the work, it would not be unreasonable.

>> Councilmember Constant again, we would agree with you on that standpoint. The unfortunate truth to it is staffing levels in secondary employment do not allow for that. You are correct that the sergeant in secondary employment works closely with the office of cultural affairs. In many cases they are in fact the race architect for many races like the 408K that happened from the arena and Santana Row. They have intimate knowledge of these courses and to not allow them to go out on those sites would not be in the best interest of the police department or the city. Again the unfortunate part of that is the staff would not allow the individual sergeant to go out there and monitor and attend all of these races and assignments and events that the city puts forth.

>> Councilmember Constant: Well I think clearly if it's in the best interest of the city and the police department that should be on duty. If it's the best interest of the secondary employer it should be secondary employment.

>> To that point though you would have the city being in charge for something that really should be funded for that person holding the event. In my mind that would be the way to go. I recognize the issue there if you're saying it's an apparent conflict. I think it's relatively infrequent and only for those large events. To me it's why circulate the city be paying for a private event when in fact we can control it and have them charged at that rate.

>> Councilmember Constant: Then we come one a charge and charge for it as part of the event. It's something we need to do and I honestly think if it's in the best interest of the city it should be on duty time. If it's in our best interest and we think it's right for the city then the police department should be on duty if it's the best interest of the employer it should be secondary employment. A while back we changed our municipal code to allow people who are not police officers specifically the parking and traffic control employees, to direct traffic. Why do we still require officers for road construction? I've looked at a number of the cities in our area and they don't have that same requirement.

>> Councilman, in that regard I've heard numerous conversations with our secondary employment unit sergeant who talks to a lot of these companies. The simple fact is that they are given the option between the PTCOs or the flaggers, a lot of times the construction companies choose to have uniformed police officers out there for a number of reasons. They are given the option each and every time and they have just chosen to go with uniformed police officers.

>> Councilmember Constant: What about for special events particularly the ones in the downtown? My understanding is we've had people organizing events, where SEU has said they had to be police officers to provide that function.

>> I'm not aware of any such a situation. I have attended numerous event plans with OCA in regards to that and with the Department of Transportation who's in attendance whether we have those meetings. And each and every one that I have been to they are given the option of PTCOs and D.O.T. is the one that schedules that and each and every time they have been asked for they've been allowed that so I'm not aware of any.

>> Councilmember Constant: Okay perhaps some of my colleagues maybe Sam since you work downtown I know you have a lot of contact with these organizers. It's my understanding that that's not the way it's been handled and I've heard directly from folks and I'm pretty sure Sam has, as well. Chief is there a reason that we don't handle uniform pay jobs differently from nonuniform not police related pay jobs?

>> That's a double negative. Try that one more time.

>> Councilmember Constant: Is there a reason that we do not treat uniform, police uniform pay jobs differently than nonuniform, non-law enforcement nonpolice related jobs?

>> With respect to secondary employment, we have people that do a number of things from paid coaching positions that is secondary employment subject to our rules but do not necessarily utilize police powers, not being in uniform. Those things that present the greatest risk to the City of San Jose from a legal standpoint, they're not going to get the level of scrutiny necessarily ownership to make sure that they're filing for permits, that they have - - their work hours on file, to the extent that they don't really involve law enforcement and they are licensed or whatever they're supposed to do, supposed to have legally, we're not going to pay that much attention to them. Those that are law enforcement particularly in uniform where you're carrying a city gun wearing a city badge those are going to get the most of our attention. There are other examples of work that people do you never realize it but even some of the heavy duty, trying to think of some other good examples of things people do in their off duty time that they get paid for. They may be nominal payments, but they are still secondary employment, even working like a hospital and they may get some funding, they're still subject to the rules but they are not going to get that type of scrutiny. I'm not sure I answered that for you so --

>> Councilmember Constant: The reason I bring that up is because it was part of the police department presentation that there's all these other works that are restorative and not related to police work, in relation, I think it was in relation to the discussion of fatigue and I would contend that if someone wants to work as a real estate agent six hours a day that's a whole lot different than directing traffic or working a law enforcement capacity for six

hours on top of their patrol shift. And is there a way to handle those differently? Because of the fatigue concerns and the differences between, you know, four hours and increasing it by 50% to 66 hours.

>> I think the way we cease that and the common sense way to address that is the supervisors who supervisor these employees, they are in daily contact with them. If they're coming in they're dragging and their head's not in the game the supervisor is going to ask them you know are you working making sure that your -- if you're working do you get enough sleep if you are too tired today that they arrange them to have time off, they are going to be a danger to themselves, all those type of things. A real estate agent is a good example. You're still work, that may be in some respects more difficult than people directing traffic. The true issue is make sure people have sufficient rest time. As has been mentioned, I've taken off years to redo my lawn and that's backbreaking work when you do it and you're going to be tired but that's not something that we regulate. A good supervisor is going to pay attention to the employee to make sure they're operating like they should be they're not falling asleep, make sure they're answering the radio and that type of thing. That can be done with regular supervisory activity.

>> Councilmember Constant: I guess the reason I'm skeptical is all that could be said about all the regulations that dropped off and haven't been followed that all could have been dealt with, with good supervision. So I'm just not completely comfortable for a lot of the reasons that you've all heard me bring up. And I think those are areas that we as a council should be giving more attention to. Thank you.

>> Vice-Mayor Nguyen: Councilmember Pyle.

>> Councilmember Pyle: Thank you. Sharon, when you spoke, you talked in the past tense about some of the items. So I'm wondering, is there a percentage of items that have already been altered, or that you could feel comfortable with?

>> Sharon Erickson: The department has been working on a revised procedures manual. It is my understanding that that's been in review. So we haven't had the opportunity to see that. I am very assured by the attention that the department has given to this and the quality of the peek like the chief said who have been assigned to this

that three are moving and dealing with these issues. There are some things that I think we're going to have to wait and see how they play out. So the procedures have to be -- the policies and procedures which, when we went in there, there were none. So there were no -- there was no written policy manual on how to do some of this. Those policies have now been drafted up, as they roll out through the department I think we'll see how these things are implemented. What kinds of things, for example regarding fatigue. We were alarmed because there was no limit. So we had pulled a sample of high-hour people and saw some very high hours. And there was no limit on the books. Then we realized that there had been a limit in the past. So our recommendation quite honestly was just establish a limit. So we didn't prescribe a limit. We suggested that 14 was the previous limit, that had been in place. But I think some of those things, new rules, new roles for supervisors in monitoring fatigue, if the department does do some training on fatigue all of that would make me feel more confident that the program is under control, being monitored appropriately. So some of that is just going to take some time to roll through.

>> Councilmember Pyle: Sure. And if I could ask the chief the same question.

>> Sure, thank you. We wanted to this memo and this policy has been in the works for a long period of time. Looking at the auditor's title of this particularly audit, you know is a culture change, it really is. I think we worked with the employees to say this is an important thing for all of us and we've had some police come up and thank us, some not so much. But the truth is we've spent a lot of time working on it, people understand it, we've sent it over to employee relations, that's where it has been, we wanted to give it to the auditor but we wanted to make sure it cleared our own administrative piece before it goes to the auditor. A lot of discussion between the auditor and the auditor staff, so she knows where we've been headed with this, and I think that it is going to take time to roll out and see how it works, and we probably will have to make changes along the way but I think the vast majority of issues and recommendations have been incorporated into our response.

>> Councilmember Pyle: Right, but of the capsulized version of the recommendations of the 30 recommendations that the Sharon made, would you say you are 50% of the way, 25, 70?

>> All about but three or four of those.

>> Councilmember Pyle: Good, wonderful.

>> Again, the work was really good. It is a hard change but is something that I recognize had to happen, and we're doing it. We'll have to see how it rolls out.

>> Councilmember Pyle: Very good. I had a question in reference to something that was brought up by Councilmember Constant. We're worried about the uniform and the gun, it would appear. Do we have any idea how many people in our city work at another job?

>> Yes, we do.

>> Councilmember Pyle: I mean I don't know how much of a concern that is.

>> We do now. It was one of these you know when you ask the question how many of these people are working and do we really know that's the right number? And I know that lieutenant Knox spent a lot of time going through and we may not have 100% but we have a very, very high percentage, and know where people are, how many hours they're working, what the dollar amounts, all of those things, who is in uniform, who's in not. But it does represent a significant amount of people in uniform. As the City Attorney will tell you, that was one of the main concerns 15 years ago is when somebody takes enforcements action, let's say deadly force being the most extreme when it comes to litigation the fact that the badge says San José and they're trained as San José police officer San José is going to be the deep pocket. And for a San José police officer we wanted to make sure there was indemnity. I think this is the next logical step, it's overdue, it really is. I'm glad we're doing it.

>> Councilmember Pyle: Well, I am too, and I just wanted to say that I have a personal pleasure in seeing officers out in the community, at the schools or wherever the secondary employment might be. It does give everyone more a sense of comfort, so from a very selfish viewpoint, I'm glad you're going over this. Because I wouldn't want to see it totally go away. It is very symbiotic, in that it helps the school districts, it helps you. And

another question is, does age play a factor? Is this predominantly rookies, or people that haven't been on the force very long, or is it older officers, or is there any kind of an age pattern? Are you the guy that does age over there?

>> Yeah, he's the guy.

>> I just feel old. But it goes across the board. There are -- you're not allowed to work your first year while your on probation, any secondary employment. But after that, generally younger officers want to make money so that they can buy homes, and as you get older, you want to make more money to maintain your home and your lifestyle. So I would say of the 700 people at the department who work the jobs it's spread across the age range from one year on all the way towards the end of the career. Including some reserves who have completed their careers and are now acting as reserves and working paid jobs for some extra money.

>> Councilmember Pyle: So it is pretty well spread out, there's no age favoritism here. And the one area where there isn't really pay, it just happens if there's any kind of civil defense activities the police officers and firefighters are out there doing their thing no matter what. And I don't think there's overtime for civil defense activities. Is there?

>> You talking about preparatory activities or in the event of an emergency?

>> Councilmember Pyle: In the event of an emergency.

>> In the event of emergency we have the ability, and that's why if they're logged on we can recall them to active duty. And it's very helpful to have their police equipment with them. They're present here in the city of San José as opposed to some other county. So they really do present a benefit to the City of San José.

>> Debra Figone: But we would pay time and a half for that.

>> Absolutely. As soon as they identify themselves and start acting as a San José police officer they are on the clock.

>> Councilmember Pyle: Thank you, I'm glad to hear that. That's its for me, thank you.

>> Vice-Mayor Nguyen: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I appreciate that last point. 80 to 133 officers at any given moment are in San José doing SEU jobs if there is an emergency if there's a need for them they're there. And if there's an officer that's doing traffic control at a construction site and something happens you know right across the street it's better to have that officer there across the street than to have to call for an officer to come in five minutes. In the interim you at least have -- that's one of the issues about how does it benefit the city? I think it's an enormous benefit to the city. When I'm driving and I go past a construction site, and there's a police officer there, I think that's why a lot of the companies want a police officer there. The behavior of drivers changes and it reduces the number of accidents, the injuries to workers dramatically, because people are going to slow down for a uniformed officer in a much more dramatic fashion. Unfortunately you wish they would anyway but as opposed to someone you know traffic control employee or someone that works for a construction company waving people through. And that's why I think people -- you throw that in with having a uniformed officer at the school, having uniformed officers at malls, I mean these are all assets. They all benefit the residents of the City of San José. And so even though they're working you know an SEU job this is all a benefit to the overall sense of security and safety for our city. So it's a vital program and I do appreciate the report from the auditor because I think there's definitely a lot of tightening up that needs to be done, sounds like a lot of it has been done because certainly not knowing you know not keeping track of the hours and kind of like what the -- a lot of these kind of common sense items that just weren't being done I know from the moment the police chief started, that was one of those priorities long before this audit came through and frankly I think the audit timing is good. Because I think we've kind of seen the progress that's been made of issues that the auditor's been able to identify many of which the department already identified. But it's kind of like a mid-stream trek, to see you know what's been done and what still can be done. I agree that there needs to be you know, having no cap, and I think some of those outliers really signify the situation and the

concern, if you have cap at all. But I'm certainly more in line of trusting the judgment of our law enforcement professionals as indicated you know the 16-hour-per-day cap is a cap that is -- orders are magnitude better than having no cap at all and I think the 24 hours a week. And we have to at some point now that we are putting in place the ability to monitor and make sure we know what everyone's doing when they're doing it we have to give some discretion to those in law enforcement that actually supervise these officers and give them some sense that they know who these officers are they know what kind of jobs they're doing. If we cut it down to 14 most of the school jobs are six hour jobs and so you are basically going to eliminate the ability for an individual officer to do a school job. I think we should give the discretion to our supervisors because frankly some jobs like if you're talking about a for profit you want to keep an eye and make sure you don't have a situation where there can be someone the same officer going there all the time building a relationship, you want to make sure even the appearance of impropriety is stopped. However with the school there's a benefit to having the same officer there and building the relationship with those schoolchildren, a great benefit. And so I think that's where we have to certainly have the data collection in place and have the controls in place so that we have the authority to pull officers from one job to another or say, no, you can't do this job, to give the ultimate authority to the chief and his lieutenants. But to prescript, to prescribe so directly the parameters of how it should be operated I think will cause difficulties I think I do like the idea of let's come back in a year with some of these measures in place, and not see how we're doing. And let's see how it's worked. And let's see, you know, if there's been any negative impacts. I think that a lot of these changes that have already been put in place and some of the recommendations which the department has a good take on are going to have positive impacts on all in all. And I think the program is very important in general. And I think it's important that we do some of the training, and we have to distinguish between sleep apnea, which is a health condition, and sleep deprivation, which is a behavioral condition. And I think that we have to make sure that we train our officers, and so they can -- sometimes people have sleep apnea, and they don't even know it. And so if they can identify it, we can get them help, get them treatment, and get them to be more productive when they're on duty and off duty, and live a more productive lifestyle. But I think as far as behavior, sleep deprivation, there's certainly -- I think that should be a continual part of the process, of the SEU program, to make sure officers understand what can happen if they do overdo it. Because as the chief said, even when it's their time off, and they are not monitored, they have to have a recognition that hey, you know, if I'm going to be in this basketball tournament all day, between my two days off and I'm doing a paid job, I mean, it

adds up. And they should be aware of how much they can handle, especially as they get a little older as we all do and can't do as much as we think we can. Now that I've hit 40 I think that it's becoming more realistic -- my mental and my physical are catching up, I think, together, the more in line. And chief, the -- the study you had referred to as the study and you indicated there might be some other studies that you wanted to refer to. If there are other studies that you know right now that you can briefly mention that are consistent with the thought that 16 hours is a comfortable level of -- allows for a comfortable level of time off, for them to do their job on duty, if there's any additional studies that would you like to cite right now.

>> I'd like to refer to lieutenant Knox who has been doing that.

>> Councilmember, when we were crafting the policy we looked at the industry standard. There were numerous departments that we identified with the 16 hour limit that we ended up copying. The 14-hour limits had disappeared in 1997 and there was no historical documentation as to why it did but we were left without one. When we started our research in 2011 we looked for industry standards. We did some industry research to see if we could come up with some solid numbers that we could refer to. The most compelling study we came to was the Albuquerque PD study that was published in PERF and was for 16 hours. And it also fit into the types of jobs and the numbers of hours that officers were working here in the city. And that's why I recommended it to the chief as the limit for us.

>> Councilmember Kalra: Thank you. And I appreciate the work that's been done to come to some number, you know off of the no-cap and to actually put in place a cap. And I think that the monitoring or the effectiveness of the cap as well as the 24-hour work week cap coming back and seeing you know, seeing the results of that and seeing what you can gather from the data, I think is the appropriate course of action. I think as the auditor indicated it's consistent with the recommendation of having some kind of limit in place. And then once you have that limit you can actually -- and collect the data right now without the limit you know it's kind of all over the place and I think it's all over the place. I think we need to have that limit in place. I'm certainly comfortable with the recommendations of the police department and their responses to the audit and I appreciate the audit recommendations. I think this just makes for an SEU program that we can have greater confidence in and that we

can certainly allow for just enough flexibility so that the real day practical implications on our officers that are trying to make an extra few dollars to keep their house as we've cut their pay dramatically that that doesn't compromise their ability to do their job when they're on duty and I think I trust the command staff and the lieutenants here as well as others in the department to ensure that the Public Safety will be their paramount concern.

>> Vice-Mayor Nguyen: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you Vice Mayor. I wanted to thank Sharon and her team, I also wanted to thank our chief for his diligence over the last half-year in really trying to take on what has become apparent to be a very serious problem in my view. I know that some may describe this as what less than serious. But I think it is very serious. It's an open question to me, as to whether some of the anecdotal evidence that we see from the survey, small survey samples that the auditor was able to conduct is evidence of something that is anecdotal or something that's more pervasive and that's really troubling to me. Obviously we've seen one criminal conviction in this situation and I have no idea if that's a solitary instance or there should be more we should be worried. And so I appreciate the seriousness with which everyone's taken this and I also appreciate the fact that the chief is frankly walking a very difficult tight rope right now, recognizing there are serious challenges with morale now in the department. Given all we've done in terms of salary and cuts and the impact that that has had. And so I recognize that we need to proceed carefully as we go forward. I do share some of Councilmember Constant's concerns though and I wanted to go back to one which relates to private investigators. And I see on page 11 the response, chief, that the suggestion is that the auditor doesn't actually identify any obvious conflicts with the idea that officers could be working as private investigators. And I'm thinking just off the top of my head about one fairly publicized incident involving I think it's former captain John Carr who was allowed to be in the room during interrogation because obviously he had relationship with the officers he was representing a private party with a financial interest and was granted access to evidence and witnesses in a way that no one else would get access. And I don't think that we should be expecting officers to be checking people at the door to find out, are you working for us or working for somebody else, right? And so my concern is about the conflicts that just arise in

ordinary relationships where we grant access to information to everyone believing we're all on the same team here, not sure if someone may in fact be pitching for another team. Could you respond to that?

>> Sure, and I think that example along with a few others I can think of has given rise to a change in our investigative units, particularly the serious ones the homicides and others, where you have members of the department coming in in years past, walk in and say hey, what's going on. There's going to be a threshold question, hey why do you want to know? There's almost a need to know and if it's demonstrated they'll get access to the information. That's not across the board but in case where you might have concerns the question will be asked by the investigators many times. But you're right, there are many times when people come through there, want to do their work, they're interested and curious and whatnot to know what happened. We have had incidents as you mentioned where people have accessed criminal databases and they have been terminated and prosecuted. We have policies that cover that conduct separate from secondary employment. So I think that's an issue, most private investigators have their own access through public databases, now they can get more information online paying a fee than they can, quite frankly, through some of our systems. Particularly on the civil side.

>> Councilmember Liccardo: But I'm sure they would still love to have CJIC and Klets and all those other databases as well.

>> The issue for them, in most places, since if they're working for a client, they're going to have access to it. It might have been at one point easier, but the controls on CJIC now are such that it's probably easier for them to go on through their existing online services where they can pay for it, or get it through discovery, than they would be able to get it through the police department. That's not in all cases, to be sure, but that's what we're seeing with the advent of internet searches.

>> Councilmember Liccardo: I guess, I mean, there are a couple of thoughts that come to mind that raise concerns for me. One is going back to the issue of where officers are being forced to ask is there is there a need to know? I mean, I would imagine you want a criminal investigation team in which information flows freely and

people don't have the need to ask one another, is there a need to know. So just the idea of creating within the department barriers or walls, where I think we'd probably agree in most cases you wouldn't want those barriers and walls, because the guy on the street may in fact, the patrol officer may in fact have valuable information and can't piece it all together until they're able to see the other -- other dots. You understand my point?

>> Do I. And would I say that that culture does exist. I don't mean to suggest otherwise, the need to know comments sort of stem from some high profile homicide cases where people were showing up having nothing to do with the investigation and asking questions, which then prompted other questions, okay we appreciate your interest can we help you?

>> Councilmember Liccardo: Right.

>> But that's few and far between. The vast majority are officers who are diligent and they want to be out there solving crime or addressing community problems. They go to an investigative bureau because they want to help and they need information, and our investigators are there to help them. But it comes at the context of okay, how can we help you and there's a description. It's rare that we get the person just come in and ask questions, what happened. It will be more like hey I'm curious or whatever. I don't see it as the large issue apparently that others might and I thought about it long and hard because even those that don't have PI licenses may be subject to those same pressures. We've had people in other organizations in this county that have been basically prosecuted for providing information to inappropriate sources that it wasn't related to PI work, it was just they were taking inside information and selling it.

>> Councilmember Liccardo: Yeah, understood, and the risk always exists. It seems to me you have one issue in that you can't un-ring the bell when somebody knows something, and it's privileged law enforcement information, confidential law enforcement information. That same person might happen to be working for a private entity on the side as a private investigator. How do they create walls in their own minds about how that information is conveyed or not? I think that creates challenges for us. I think it creates challenges in terms of who becomes interesting to hire as a private investigator based on what cases they've been working on. I think we're

just heading down a path we don't want to go. I think in my role as a D.A. the incredible restrictions we had taking any kind of outside matter outside the D.A.'s office we simply could not do it for pay. I think they had really unique exceptions where we were taking on a will for a family member for no pay. Otherwise we just could not represent anybody else as an attorney because they were concerned about these issues around access to information. And I just think there's similar issues at stake here and it's very difficult for you to draw lines. Unless you say it simply isn't going to be allowed.

>> And that's why the permitting process is so important. Is that when you have somebody coming in requesting a secondary employment permit and they're acting as a P.I. we may bring a requirement on them that they bring case by case, to make sure they're operating within certain limits. So I think that's how we're addressing that issue. The concern is rather than have a default position of allowing it but monitoring and regulating it, as opposed to just an out and out prohibition that may restrict people that have legitimate opportunities to work that don't have anything to do with law enforcement or if they do they can be appropriately admonished that they can't use department resources or use information. I think that's the path I would like to see us take in monitoring and again to Councilmember Kalra's point I believe if we were to come back and visit this to see if we had any issues over a period of time and perhaps if we did we could go back the other way.

>> Councilmember Liccardo: I understand the point. I got a secondary job myself, I teach at the university. I don't want anybody to be deprived of employment to pay the bills. I'm concerned that we don't know what we don't know and that's certainly been the case over the last several years, a lot's happened that we don't know and from the small sample that we have surveyed, it's clear that things that have happened are disturbing so I'm a little troubled with an approach that just says, let's just find out you know if we've got another indictment. Which obviously that's not what you're saying but obviously it's an extreme example.

>> If I can talk because some of the talk has been of the sample that the auditor looked at. This watts not a random sample. If I could turn over to her to give the nature of it.

>> Councilmember Liccardo: Sure that would be fine.

>> Because I don't think it is the reflection of the overall nature of the type of work going on. We think it's an exception to the rule. But there's a reason for those exceptions where they were looking at those cases.

>> Councilmember Liccardo: Okay, that would be helpful.

>> So we selected a sample of roughly 20 employees who worked a high number of hours, from four different employers, primarily it was school districts, we focused in on that because we knew there were problems in the past with school districts and we specifically were looking at high number hour folks with the concern that there could be overlap between -- among secondary employers or between the secondary employer and the city.

>> Councilmember Liccardo: Okay, so clearly not a random sample, you took the folks who were working the most.

>> Certainly.

>> Councilmember Liccardo: Understood. And that's helpful to know, certainly puts things in better context. In terms of the -- you know, I share some of the auditor's concerns also, about having SEU coordinators who are also working paid jobs. What I hear from promoters, event producers, a lot of nonprofits is, police cost a lot more here than they do in other cities. That's an ongoing complaint. You know, I can think of America festival where it cost more for the police than it did for the fireworks. That was huge challenge and I've often heard the complaint, we're not giving alternatives, and you know with respect to the PTCOs, my understanding PTCOs are vastly underutilized, a person standing in the street not necessarily performing any law enforcement function but just involved in traffic management. We believe PTCO personnel are trained to do that. But there's not a lot of desire or willingness in SEU unit to utilize those alternatives. And I just think that there is a set of incentives here that does not enable us to best serve the nonprofit groups or the festival promoters or fib else who is looking to be able to put on an event without having frankly excessive cost.

>> If I can address just that one point because we've had a couple of specific examples where some of the nonprofits who clearly are trying to run events on a scale some large some small that they're trying to make money and so it's always in the money to reduce the cost which we understand. We've had scenarios where they wanted to use volunteers to control traffic or to block intersections which put us as a city at risk. We prefer not to -

>> Councilmember Liccardo: I prefer they wouldn't --

>> We've had these scenarios before and we've asked by a number of organizations and appropriately so if we have volunteer officers. With pay cuts they decided they didn't want to volunteer they need to spend their time working and so one group in particular had to cancel a run because they couldn't get the volunteers. With respect to the America fest if I recall correctly a lot of that was done at time and a half because of the numbers that were involved, some of those pay jobs were at secondary employment at the lower level but if they can't get enough where people don't want to work them we require that they be out there they end up having to pay time and a half for on duty personnel or for personnel that we have to hire through the department. So again the point is well taken when people say again we are expensive we are factually a lot less expensive, doing an event in San Francisco or Oakland. They are not going to want to pay for the security cost because it is expensive.

>> Councilmember Liccardo: I appreciate whatever we charge is always going to feel like it's too much I understand that perspective. I just -- I get constant push-back from the folks who are out there, trying to put on an event, why do we need so many? Feeling as though there's not a strong incentive to try to work with people to see, look, this isn't a public safety concern, you know, this is a, you know a small event or this is an event that doesn't involve alcohol or how can we really make this work rather than you know is there an incentive for folks to be getting jobs? And that's been expressed several times to me that hey, we feel like we're facing at least there's a perception that somehow or another, we're not getting a fair shake, because we've got a lot more officers than anybody reasonably thinks is necessary, and we're not getting PTCO offered as an alternative.

>> I'm going to suggest one thing, is that's one of the reasons I brought in these two gentlemen in sequence here, to make sure those types of incidents if there's issues or concerns, they go to lieutenant Tindall to address specifically what the issues are, they may not like the outcome but they have an understanding why we do the number of people we do, if there's alcohol served, the number of people there. If you want to add.

>> Councilman in regards to secondary employment a lot of these large events I have one specifically sergeant who is specifically a race architect and deals with a lot of these coordinators and with the office of cultural affairs, more so than not he designs races, he works with the promoters, to make sure that we have a safe and successful event. A lot of times like the chief alluded to, you know they want to save money and that's what the bottom line is in regard to that. Unfortunately, in what experience has shown us is a lot of these events were thrown together haphazardly. There were certainly hazards involving traffic, you know, we'd have marathoners running down streets with buses flying by, we'd have cross traffic, we'd have people pulling out of driveways. Unfortunately, a lot of these events, while they've maintained themselves, have been a safety risk. A lot of these events, especially over the last two years we've brought in-house, we've made folders on and we've looked at what would make them safe, both for the officers involved, but more importantly for the community. Putting these provisions in place, has made it so that more volunteers or people who would be able to handle these events be put in place, but again, safety's the main concern when it comes to these.

>> Councilmember Liccardo: And thank you, I appreciate that and I understand you -- I'm not suggest that anybody is not primarily concerned about safety. I think simply removing the appearance of conflict would go a long way to resolving a lot of the concerns that we hear out there about who's making decisions and why they're making them. And that's why I think the auditor's recommendation is a good one. It simply takes the argument away and that nobody feels like they feel like they have to hire someone because the rules are stacked -- the deck is stacked against them.

>> I agree and that's one of the concerns I have. The equity issue number one but also trying to make sure that no one's being charged for something they shouldn't have. I'll make slur with lieutenant Tindall the opportunity for PCOs if people want them that people have the opportunity. Take that argument away, make sure that everybody

is asked that question, if they choose to have them and they're trained that's fine. In areas where we can use volunteers, as Lieutenant Tindall said, that we would like to make those spots available so that they don't have to be paid.

>> Councilmember Liccardo: I appreciate that. Sharon, I see you are ready --

>> Sharon Erickson: Yeah, I just wanted to point out page 36 of our report includes three specific recommendations that I think will help deal with this as these changes roll through. Recommendation number 17 is that there be written guidelines, those guidelines be revised. I think better communication about the basis for making some of these decisions with event promoters will be very helpful. So if that can be documented through the unit, I think those kind of guidelines may be of assistance. Recommendation 18 was to make it clear through every different city organization that's dealing with event promotions, special event organizers that the option to hire PCTOs be made very clear to everyone involved. And then finally, 19, the other concern that we heard about special events was quite honestly behavior at special events by our police officers who are working secondary employment. And this is guidelines concerning behavior at special events. We heard complaints about people clustering in certain areas. You know, whether or not officers working secondary employment were patrolling areas of an entire festival, for example, so this recommendation was designed to ensure that that also takes place.

>> Councilmember Liccardo: Thank you, Sharon, I appreciate that. With regard to recommendation 17, it seemed as though the response from the department and Chris, correct me if I'm wrong, was hey we've already got procedures in place. I didn't sense the department is ready to sign on to changing procedures as a result of the recommendation.

>> We do have policies and procedures in place. That doesn't mean we can't provide additional training and why lieutenant Tindall's presence is necessary for guidance, look you're being paid for by somebody else, we don't want you all standing around drinking coffee in the same spot, that's not helpful.

>> Councilmember Liccardo: I appreciate that, I appreciate that. You can probably see where I'm going on this, I know that there's concern about General Fund subsidizing this employment and so forth. I want to see secondary employment continue. I think it's important in a lot of context, I think it does need to be -- I think there are reforms that are needed, I see the many reforms are in the works. But I would hate to see the result be that because we think the General Fund is picking up a lot of these costs, that the answer is simply shift these costs back onto the event promoters, the festivals, nonprofits. Because I know they can't afford paying overtime and I know that point was made in the response. And I highly doubt that increasing the cost of the staffing is going to be something that's -- that's not going to be a great answer here for us.

>> It was interesting that when this issue first came up about easy thing to do I've said this is for us to just take them in-house. It eliminates so many problems. But it created a lot of problems for a lot of the organizes a lot of the school districts that convinced me we need to improve what we have significantly but does not necessarily throw the baby out with the bath water.

>> Councilmember Liccardo: And I can't help but believe that there are lower cost ways of doing this, with software, with salesforce.com, it surprised me that you needed this much personnel to manage this kind of project. I understand the 293 events annually, you know Tammy Turnipseed has I think a team of 2. I know that's a different job, but she also manages about 300 events annually. I appreciate there's a lot of numbers involved here but I can't believe with technology today we can't do it with less than the 1.3 or 1.4 million that was suggested we'd have to staff up to manage this internally. But I know you're much more savvy in technology than I am chief so I'll defer to you.

>> Councilman in regards to the statistics again the 293 events was the major large events that were scheduled by secondary employment unit being one sergeant and one half of an office specialist. When we take into account the traffic control which is again another 35 construction companies, which is 1670 officer positions then you get to see the grand total of the various hours that are involved in that. One of the things that should be taken into consideration when it comes to staffing for the secondary employment unit is to remember that they are also responsible for the 71 police coordinators that are outside of the secondary employment unit that we have running

the approximately 102 officers that work at 42 schools, the assessment 79 miscellaneous jobs including HOAs, halls, malls, theaters, churches, hospitals, as well as oversee the 700 sworn officers and reserves that are permanent to work, secondary employment. The oversight in secondary employment and the auditor brings it, and we gladly accept it, realistically for the one sergeant and for the half of an OS 2 position, they are charged with not only putting these events on, being race architects, going to all the OCA meetings, they are charged with overseeing the approximate 700 sworn reserves, average of 80 to 100 officers per day, managing the 177 annual employers that we have, as well as working with the 71 police coordinators that we have. So as you can see this is a monumental amount of work that is currently being done. Again this augmented by one sergeant and why have pulled from the permits unit that should be supervising permits and by TDY staff that we pull in from various places in the department on you know case-by-case basis when they're available to help augment the things that we're trying to do.

>> Councilmember Liccardo: I appreciate that point but I think part of the problem is that we have 71 coordinators. It seems to me we're creating work for ourselves here. And I think the point and the thrust of Sharon's report I believe is to centralize this. And I think that minimizes a lot of concerns around conflicts, and I think it also does a world of wonder in terms of improving our efficiency in terms of managing this project.

>> Thank you.

>> Vice-Mayor Nguyen: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I want to thank the auditor for another great report and the chief for the responses. I think by and large you've been very responsive to the requests for the changes that need to get made. I think it's been amply discussed here about the benefits of this program. I think you said it and I was thinking it, we shouldn't throw the baby out with the bath water here. But obviously, I think there's been some important points that have made where areas needs to be improved. And I think you're definitely moving in that direction. I don't pretend to be an expert in this at all but I just want to ask a question that I was thinking about as I was looking at the issue with the coordinators and some of the things that the auditor brought up. Is it possible to

separate the relationship that coordinators have, separate the function between the relationship with the job and the relationship with selected employees. Because it seems to me that if you have one person that has the relationship with the employer and I can understand why they would want that relationship, they get to know what that employer needs, whether it's a school, whether it's an event, you know, there's a good reason to probably have some of them have that deep relationship. But do they have to be the same person that decides which employees get that job? If you could somehow just separate that, that somehow eliminates the conflict. You know what I'm saying? It would be like a typical job you know folks that work in the industry procuring you know handling job employment agency. You often have one set of folks out there recruiting the companies and then you have another set of folks actually managing the employees. Anyway. I'd like a response to that if there's any way that could be done.

>> Certainly. It would be something that would be hard to do. Again the 71 police coordinators and again in the proposal in the policy changes is to bring all 71 of these police coordinators in under the auspices of myself and the secondary employment unit and obviously the Chief of Police to provide them adequate training and put things in place that would monitor what they do how they do it and make it more uniform across the board. Obviously certain job sites like specific coordinators because they have a history and they know the internal workings. You could move it around every once in a while but quite honestly we probably would be very hard and not very efficient whether they be schools or organizations themselves.

>> Councilmember Herrera: I'm not suggest you move the coordinator from the site. I'm suggest you have a different coordinator select the employees that go to that site. That way it eliminates any conflict or anybody trying to angle for a specific job. I thought that was one of the conflicts that the auditor was trying to get to. Maybe I'm wrong about that.

>> No, I think the concern that some of the coordinators -- having had the opportunity to talk to a couple of folks who are coordinators as well as some of the people who are secondary employers, let's take schools for example. They're pretty picky about once they find out somebody who is reliable, understands the school, has been there for a period of time, they really like the coordinator. But to your point, how about hiring the individual

officers that will be there. A school may have several officers on a big campus. The schools like to pick their own officers, too, they would like to have that same set of people. I'm sort of torn between making sure there's equity in the assignment of officers, so there's not this, you know, the same people get all the jobs, that we spread them across, recognizing that some officers are better suited to be in the schools than other officers. And I think you have to -- I understand the schools really would like to have a lot more say in the people that they hire, to make sure they have the requisite skills. We've pushed back a little and said look maybe it is a better model where you can hang on to the coordinator and you we look at the methodology of getting you good people. We haven't figured that out, we'll work with it a while and see what we can do.

>> Councilmember Herrera: I suggest that if you change the structure you could eliminate the problem just by changing that so there's not any potential incentive for that to happen.

>> Sharon Erickson: I'd just like to add the other potential benefit of that would be equity amongst officers. So that somebody who wants to break into the system that there is a mechanism for them to call SEU to get on a list to be assigned to a pay job when one comes up that seems suitable. And I think that is something that SEU is considering. It's my understanding. So that they can also facilitate those kind of relationships and it isn't simply what may have existed in the past, where somebody would go out solicit a job and then find their buddies to also staff that job. There's a little more equity in the distribution of those jobs.

>> Councilmember Herrera: Exactly. And that's my thinking, if you can separate that then you can get more equity. I'm glad you're thinking that way anyway. I think that was one of my -- I'm also concerned about the idea of officers doing detective work. And that that whole section was a little bit concerning to me. Although I see what you're saying. I guess the concerning part is when you guys addressed it you're saying it's going to happen anyway so better we sort of know about it and can sort of have some say in it because we can't really stop it because it's really happening anyway.

>> I think the way I'd prefer to frame it is rather than say no to everything is that we bring them in so we have a real good idea who's working those kind of jobs, gives us information but also provides them guidance. If it's

clearly something that's going to be inappropriate we can tell them then and there. But if there are jobs that have nothing to do with law enforcement and are appropriate for secondary employment and they're licensed to do so, my position is why not have them have that opportunity and keep them from doing something wrong.

>> Sharon Erickson: Councilmember if I could also add, we weighed, as Councilmember Liccardo outlined, we weighed the pros and cons of this thing and we came on the side of independence, of completely separating it. I do understand the chief's concern. The department does have some controls in place so it's not like there aren't any controls. At the time we started our review we didn't know who was a PI and who wasn't. Nobody could give us a list. And we had no assurance that these things weren't happening all over the place. The department duty manual currently says that members are not allowed to work as consultants or expert witnesses in criminal or noncriminal matters in the County of Santa Clara for example. We didn't know whether or not that was being enforced and our suspicion was that it wasn't. I do think that we came down on the side of prohibiting PI work. The City of Los Angeles prohibits it, San Diego, San Francisco prohibits it. The City of San José used to prohibit it. At the same time, I understand the chief's point. And if specific guidelines can be developed so that certain types of PI work are allowed other types are not, I don't know if that's in the current version of the manual that's coming through. If it is, then I'm going to feel much more assured when we come back around, you know, in a year or whenever we do that, that this is under control and it is not some kind -- we aren't looking at rampant problems here.

>> Councilmember Herrera: That's more comforting, thank you. The last thing is the recommending 18 on the parking traffic control officers. So I was really glad to hear, chief, sounds like you're going to address that and make sure that it's explicit that everyone --

>> Just a footnote to that, the actual cost differential isn't that great between the department and police officers. It's not that much.

>> Councilmember Herrera: I remember that. I'd like to make a motion to accept the auditor's report and recommendations but to have the police manual with all of this come back to council so that we can review that if that would be a motion I could get a second on.

>> Second.

>> Vice-Mayor Nguyen: Okay we can have a motion on the floor. Councilmember Rocha.

>> Councilmember Rocha: Thank you, Vice Mayor. I have a couple of questions. And thoughts as well. But I'm going to start with process first and maybe the assistant City Manager in terms of this, we do accept this report going forward as I've read through this and listen. The recommendations as modified and addressed by the police chief will be implemented as he's laid them out. Exclusively.

>> Sharon Erickson: Well, if I could take a stab at that one. The auditor's report is the auditor's report. And unless the council directs that some recommendation be changed, what we would do is follow up, we follow up every six months. So we would give you working with the department a status report of these recommendations as they're currently written. And whether or not, if we come to a resolution -- here's -- the reason I'm hesitating is, we've made our best, we use our best judgment to come up with a recommendation. If, over the next six months, the department comes up with a better way to address the problem, I think then, if you have accepted the audit report and the recommendations, we can come back to you and say, we, the chief and I have come -- come to an agreement that this would be a more appropriate way to address this recommendation, or this is how it could be modified. That would come back to you as part of our recommendation status report. If you'd -- so we do that routinely with every audit recommendation that you've accepted. So we'll report back to you on what the status is. In some cases, we could recommend to you that a recommendation be dropped. At some point in the future. But I think my recommendation at this point would be to accept the auditor's report. You've got indications from the department that some recommendations may be, that they're moving forward in a slightly different direction. I think you've got the auditor's office saying you know, we can live with that for the next six months. We're thinking that the major issues here, we're hoping that they're being addressed. And then we'll see

where we're at in six months to a year from now. Now, if the council would like to have all of this returned to the council in a different format, that's your prerogative as well.

>> Councilmember Rocha: That's generally where I'm going. I'll use an example, recommendation 5, and it's the Website total compensation earned and the response from the police department is generally, this will take significant amount of staff time. And I don't disagree with that. But to me there is really not a clear agreement here, nor is there a clear direction in terms of going forward what I'm to expect. So as far as the motion, if I may ask for a friendly amendment, I'd like this to return to the city council with the -- in a year, report for a year especially with the items focused on that there isn't concurrence and a report on those and an update I guess might be best. If I might also suggest, a six-month report to the committee since I'm not on it, I don't know the name, Public Safety, Finance and Strategic Support committee, Councilmember Constant is the chair, halfway point, just a brief -- and move it on to council in the next six months. Because I agree with a number of my colleagues that some of these issues are pretty significant and I don't think anybody disagrees with that in this room. So that's a good starting point. So I feel a lot comfortable if I could hear some of these items come back and know what the discussion was, outside of your report that you put out, I get that. But I think it would offer the council some comfort that we would have another opportunity to weigh in on these policy issues.

>> Councilmember Herrera: Councilmember Rocha I think I'm trying to go in the same direction but I really wanted to hear -- I wanted to hear it sooner when they're ready for the policy manual, I was hoping we could do that sooner than a year.

>> Councilmember Rocha: Are you on that committee?

>> Councilmember Herrera: No, no, we'll come back here.

>> Councilmember Rocha: I know. Are you on that committee?

>> Councilmember Herrera: No I'm not on the committee, either. So I couldn't -- I wouldn't know. But I would like it to come back because I think what we're going to find is a lot of the issues have been addressed. So I think we're going in the same direction. I think we'll accept the auditor's report, have the item come back, and what we'll see is some of the issues that are outstanding that we want to pursue further. Because it sounds like the manual -

>> The policy document is now ready, it came back from employee relations I think last week.

>> Councilmember Herrera: So whenever that's ready, whatever time frame we think is reasonable is when I would be asking for it. I didn't ask for it in the motion, but I would like it to come back if we could hear that.

>> Councilmember Rocha: If six months is enough time, that's fine. I was just trying to find a time frame that the police chief was comfortable with so he can implement these or have the policy work done.

>> My preference is, to actually -- this document is ready to go -- is that we implement it. Because a lot of these changes that we all agree on need to be -- we need to -- people have bid their shifts based on the rules we told them were going to be here, and we were held up in getting it out. Let's get it out. And then see how it works. And then as we come across the issues that Sharon has talked about, that some may work better than we thought and some may not. And then we come back six months from now. But I would like to get the document out.

>> Councilmember Rocha: Let's say October sometime, if that's comfortable. I mean, that's six or seven months, hopefully that's enough time to implement and hopefully work through some of the issue. I think the private investigator one is one I would like to have some further direction in the chief on. I too share some of the concerns. I try and find another vocation here, a public service that's similar where I would be comfortable with it. And I look to the City Attorney's office, and would I be comfortable with city attorneys doing municipal law on their off time or days off. And I don't think I would be comfortable with that. So I'm struggling to be -- I want to be comfortable with this. But I honestly, with all due respect, haven't been convinced that I should be comfortable with this. Because while there may be no exact conflicts that we can point to, and say that's the problem, to me

there's something in my gut still doesn't sound right when we have police officers off duty doing private detective work in the City of San José. And maybe it's okay. But at this point, I don't -- with all due respect again, I don't think I've been convinced of that. So that would be one of notices issues that I would really like further discussion on.

>> Councilmember Herrera: And I agree with you. And I think six months sounds reasonable to me and I would certainly accept that as a friendly amendment to make it six months.

>> Councilmember Rocha: Okay, thank you, questions sir in terms or clarification.

>> Vice-Mayor Nguyen: Point of clarification I'm going to have the City Attorney weigh in first.

>> City Attorney Doyle: I think you've got it, are we accepting the report or as modified by the chief's response, the council can accept what it wants. The recommendation from staff and the City Auditor specifically is to accept the report. But I think you've got --

>> Councilmember Herrera: My motion is to accept the report.

>> City Attorney Doyle: Come back and follow up in six months and come back to council. I think you've figured out. I just want to make sure we have a lot of leeway up here as to what your motion is.

>> Councilmember Herrera: It's to accept the report, but it's also to come back with this manual after it's been in practice and implemented.

>> Councilmember Rocha: And also further discussion on the items that there isn't concurrence between the auditor and the police chief, that for me is really important. So as I'm reading through the report I noticed that there is 917 officers that participate in this program, is that correct?

>> Yes, we have over 700 sworn officers and reserves who are permitted to work secondary employment. Some of these officers have multiple permits for each job site they're required to have an individual work permit for the job site itself. So in essence an officer can have more than one work permit and work two different job sites.

>> Councilmember Rocha: Okay, I thought I saw 917, I may have been incorrect about that. That's not important. So then if that is the case again I'm looking at a number I thought was accurate which said 77% of officers participate, when we talk about the need for this and officers and the flexibility for us to identify which officers and also in terms of the time spent working on duty, and the 16-hour or the 14-hour issue, I'm getting a sense that we probably wouldn't have a struggle identifying an officer who wants to take that SEU who might not be working during that stretch. So I mean it's kind of a complicated issue and an issue that I haven't been very clear on, but if we have so many officers participating, and if we were a little bit more strict about the officers who participated whether they had enough time off, how would that affect the program? Would we not be able to provide it to the folks who are interested in it? Because for me I think we should be able to if there are that many people interested if we had just people that worked and the hours conflict and they're not going to have enough time for rest, then we just move to the next person. To me, it seems like a long list that we can keep moving to, and maybe I'm reading this wrong.

>> No, councilman, you're not. But the simple truth is with the amount of positions that we have open we simply don't have enough staff in order to do that. When you start talking about just the ones that secondary employment does, which is 3,432 positions, the schools were 37,000 hours are worked by the officers, the traffic control which is 1670 officers, and then all the miscellaneous jobs, the simple truth is we don't have enough officers to go around. To cut the hours and doing that would make it a lot harder to standpoint a lot of those special events.

>> Councilmember Rocha: So if we had to dissent some of these requests, these folks would look then to security firms? I don't know the exact answer but wouldn't that be their next step.

>> I think it would be or to go without. And that's the concern that I have, is that we -- you know schools are an example. If we were, for instance, say, to go to a bring them all in-house model, and they would want to --

probably have to cut their presence or eliminate and go to a private security firm is the next available option. I know of no school district -- you would all hear about it from every school superintendent there, that their preference is to have officers there, as it is ours. With respect to some of these jobs that we put out there that we can't fill, they're either going to go unfilled altogether or they're going to an apartment complex or something like that, they are going to go unfilled or hire a private security.

>> Councilmember Rocha: I agree it is an important program for us and for the public, so I am supportive of it and I think we need to continue it. And I'm generally just trying to get clarification so I understand your approach and why we may have a disagreement whether it's 14 hours or 16 hours or whatever the case may be of time off, just so I'm comfortable with hearing from both sides of the issue. Let me point to the other issue of 6.1 million that this program has brought in has been paid. And that's from the outside folks paying for our officers. Is that correct?

>> That is correct. Goes into the pockets of the officers as a direct benefit.

>> Councilmember Rocha: And then we spend out of our funds about 560,000?

>> Correct, for the 1.5 plus --

>> Councilmember Rocha: So looking at the map, it was 6.6 almost 6.7 million, and there was a number attributed to that, a number of potential officers. So for me looking at that, just so I understand why you would rather have the program rather than having those funds come to the city where we have that many more officers on the force can you help me understand why you would rather have the program continue as opposed to having those funds come to the city of San José and we can hire more officers?

>> For us to be taking this in-house we would be charging significantly more. It would be worth more to the City of San José if they paid it. We could adjust that and compensate and discharge same amount but we would be

providing more officers and they just would be working four hours there and we could assign them somewhere else from the city.

>> I'm not sure I understand if you're talking about having them on duty work straight time?

>> Sharon Erickson: As I understand the question, if we could get that \$6.1 million from those private parties, and deploy it any way we wanted to, we could hire more officers and deploy them on straight time. I think the problem is that a significant amount of that money comes from a place -- well, comes from a shopping mall, say. So the shopping mall is paying these officers, a certain amount of money. Those may or may not be the place where the Chief of Police would decide to deploy the officers. So -- and that's one of the problems with this program is, it really is pay to play policing. The people who can afford this service get the service. So the shopping mall that has money hires -- hires secondary officers. The shopping mall that isn't making a lot of money can't afford to do it. So the chief is using those private resources but he doesn't really have the choice of where they get deployed. If the money came straight to the city the chief would need the ability to deploy based on Public Safety concerns.

>> Councilmember Rocha: That's exactly how I understand it, but I was looking to hearing from the police chief as to his philosophy on this and why he prefers this over that.

>> I would not be -- I can tell you if I had an extra \$6 million through the graciousness of the council to hire new officers, they're not going to end up going to a particular shopping center for those period of hours. That is not the way it would go professionally.

>> Councilmember Rocha: I didn't mean that exclusively. I mean, these are still officers, never mind, I'm sorry go ahead.

>> No, no, I think it goes to the core of secondary employment. I think she's absolutely right. Those who can afford -- and this is not unique to San José. This is all over the country and the question is whether they should

be hiring security officers, they would like to have, they get a benefit from San Jose -- having somebody have a San José patch, at the same time we get the benefit of having officers that are out in the community that we do not have to pay for. So it's a symbiotic relationship but somewhat uneasy in my mind.

>> Ed Shikada: If I could also add councilmember that from a budgetary standpoint that the cost of the officer on secondary employment is not fully cost recovery. So for example if we were to take the equivalent dollars and take it to hire additional officers it would not exactly cover it.

>> Councilmember Rocha: Cover it. The further comment?

>> If you were to take straight dollar for dollar, the 6.1 would get you what, 62 officers. And again if you look at the number of officers that are out on the street in the thousands of officers those 62 you know even if you split their time up as full time employees, it still wouldn't cover cost recovery.

>> Councilmember Rocha: Okay and I had the opportunity to sit down with the auditor and she kind of walked me through this. But I was interested in hearing your philosophy as well. Thank you. I did have a question on, let's see, recommendation 15, the department should reinstate its prohibition against employees working as private investigators, so this is the one we just talked about, so I already asked that question and we'll hear more about that when it comes back. I had a question then on page 13. The police chief's response. In relation to the duty manual that applies to some of this. And if -- so I can feel a little bit better about this, if a police officer is off duty working on an issue and then when he's on duty and he has access to records, if he goes in to look at records, it is my understanding that it's tracked what this officer looks at.

>> Councilmember it is absolutely. There's an audit trail for every transaction an officer makes either from the field where a dispatcher may run it on behalf of an officer or if the officer does it themselves at a terminal. It is easy to track. We do these cases on occasion where somebody -- there is an allegation made or we do a random audit, we'll make a determination. But every employee when they become a sworn police officer they have to -- they sign a document in each of their personnel folders that say they can't use the data system for anything other than

official purposes, it is right to know need to know, and we've had people prosecuted from our department for using data inappropriately.

>> Councilmember Rocha: So we do do blanket audits here and there, not based upon --

>> CJIC does audits, we do audits, the state does audits, and we also get complaints from folks who say I had my driver's license run, or something like that, and we can check to see who did it.

>> Councilmember Rocha: Thank you. Let me ask a question about the events and the requirements and that's how it's determined how many officers, and hypothetically you have an event at Camden community center, and it's a wedding anniversary and there's 50 people and they're going to serve beer and wine, and we have a requirement. I understand public safety. But I understand that if this is a 50 year wedding anniversary, they're probably 70 years old, yet we have I don't know how many officers. The discretion you folks take in this I'm sure looks at the circumstances. And again I'm assuming that's the case but have the opportunity to ask that you so if you wouldn't mind speaking to how that discretion is do you have -- I'm sorry?

>> I'll let the experts tell you directly. We do have a written guideline but it's always the discretion of the chief.

>> Councilman we do have written guidelines on that. The average, the way when alcohol is used is two officers per thousand if there's alcohol. Again it's at the discretion of the secondary employment commander so in an instance like you said with 50 people, we'll weigh out what kind of event it is. Whether or not any prior events or like events and it will be the discretion and more often than not, something like that we would not require police officers police officers there. We would give them information as to whether or not they would like police officers there but they're definitely not forced in any way and it is their prerogative. Again the only times that we do that is generally when there's some type of ABC requirement through the permitting process to have officers there, alcohol involved and again case-by-case basis on that.

>> Councilmember Rocha: Okay, thank you. The PTCOs, when did we start that as an option?

>> My understanding this was council direction, I have to get you a date maybe in the audit they were -- in 2010 council amended the municipal code to allow civilian PTCOs to provide traffic control.

>> Councilmember Rocha: So it's pretty new, they may not have familiarity request it.

>> It is not that cheap but it is cheaper.

>> Councilmember Rocha: You made a comment twice now and hard for me to let it go by. Not all officers, for example, have a temperament to work pay jobs at schools. There are a lot of students in our city, and police officers work beats, they're going to interact with students here and there. So I'm a little -- help me that there might not be officers who don't have the temperament to work at school and I know we all have different personalities but please.

>> Let me rephrase it. Maybe I'm unfair to my staff.

>> Councilmember Rocha: I hope they're all trained to work with students.

>> They're all, my staff are all good at what they do. There are some who are better than others, how about that?

>> Councilmember Rocha: There we go.

>> And I do think that all of our officers have the capability to work in these schools, and I am a firm believer in equity, in giving people an opportunity to work in all of these jobs, rather than having them locked up for long periods of time. But I've heard from enough principals who say look, this person has worked with this school for 10 years, they are really good with my students, they are good with my staff, I would like to hang onto them. I take that into consideration when we are working through these arguments. I apologize for misspeaking. All my personnel absolutely have the ability to work in any school in this city.

>> Councilmember Rocha: You didn't misspeak, I had to ask. Page 19, again fatigue is an issue with an employee the Chief of Police have the ability to revoke the individual's work permit. You talked about that discretion and in this, and also, private investigators, and that approval, and it's been very anecdotal with all due respect and I haven't heard you really point to specific examples and maybe it was in some of the discussion. I know we've been going for an hour and a half on this issue and I did miss it. But I think my comfort level would be that there are cases where we have clearly said no, you've worked too many hours here and too many SEUs and you're not going to do it and you're going to get rest and et cetera. Because I mean I know we're saying that we would or should or could, or it's in the manual but are we actually doing that and if we're not then that's a serious problem.

>> That's a fair question. I have in fact restricted and/or cancelled work permits. And it's not a step that's insignificant to me either as part of a disciplinary process work through OER, when it's related, if there's a discipline case related to secondary employment, sometimes what we will do is restrict or cancel a permit for a period of time. When it comes to daily, particularly on the fatigue issue, to me it is more of a supervisory issue for those out in the field. Again my concern is they're hired to be San José police officers. Their main focus should be as San José police officers working with whatever assignment they are and to the extent that secondary employment impacts their ability to do their job their first line supervisor should be paying attention to that through looking at their employment their secondary employment permits making sure that their tracking sheets are complete that the hours aren't excessive those types of things. But we have in fact cancelled people's work permits and I will tell you, you want things that affect people's lives and income that's pretty significant more so than perhaps a suspension.

>> Councilmember Rocha: Thank you. Again, your line of work is much more serious than, let's just I'll use an example, probably my council assistants won't appreciate it, but council assistants. They come in the next day, they look a little weary, maybe it's a late night or whatever it was, they are working a second job, I don't know. They can function through that day and not put anybody in jeopardy, and if you -- in your instance if an officers comes in and looks weary or fatigued or tired, ask a yes, you are a little tired today you're off, I'm not

saying how it is, that's my concern, that the full amount of review of this ask -- the ability is not there. But if you're telling me the ability is there for these supervisors to look at the record and recognize it's not just somebody who was working in their yard for a long period of time, it was actually somebody who was working another job just a few hours ago, then I'm comfortable with that answer.

>> I have done that as a supervisor and as a command officer. Let me give you one more example, because it's probably more prevalent than secondary employment example. We have a lot of midnight officers that are called to court. Court may not start until 8:30 or 9:00. I know councilmember Constant, we've all been in these shoes where you work all night, and you've got a subpoena for the following morning. You wait, your case doesn't get heard until almost noon. And you're dead. Or maybe it goes into the afternoon, and you get a hold of your sergeant, hopefully, and you say, look, I've been in court all day long, I physically can't come to work. Then we're going to facilitate the time off for that officer. Or if the officer chooses not to say anything, and shows up to work, and they're completely red bloodshot eyes, the question will be asked, you don't look so well, what happened? I was in court all day long, look your head's not in the game you're not only a danger to perhaps yourself but to the rest of the employees that are out the land we're going to direct to you go home. We've done that before. We hope our officers will share that information but it's not just about secondary employment. It could be about their regular work hours. We've had homicide officers who work 24 hours around the clock because it's a hot case. And I know my assistant chief is a former commander, has said, look, there have been times our folks don't want to go home because they really want to solve this case we have to order them to go home. Because they're not -- they're starting to get short, they're just not functioning right.

>> Councilmember Rocha: Thank you. And thank you, for your honesty honestly and frankness on a lot of these issues on answering my questions. I'm very I guess what's the right word, I'm convinced honestly that you're taking this issue very seriously and I appreciate it. Thank you.

>> Vice-Mayor Nguyen: So we've been at this for more than two hours and we're going on round two. Let's see if we can be more brief you know, we have a motion on the floor. I would hope that staff can be a little bit more succinct with the answers and we can get this item moving. So Councilmember Kalra.

>> Councilmember Kalra: Thank you and so the motion basically is just like any other audit, accept the report, with recommendations we're not saying all the recommendations need to be, we're going to allow you in fact in this case he more so in other cases because the department the chief has charted a lot of the work and there seems to be a really good dialogue and it seems like when we come back in a short while in about six months we'll have a pretty good sense of what's going on. A follow up regarding the detective work, understanding I had Sharon is that there is -- there was a policy just wasn't necessarily monitored as far as not being able to work in the county not being able to work criminal or civil cases in the county. And so hopefully with the tightening up of the monitoring that will at least help us have more information to go off of as to what kinds of when we see a detective these aren't -- that there are other kinds of detective work besides criminally related detective work. That is the kind of thing that will help all of us have a better sense and feel a better sense of comfort with the idea that that's one of the many options for SEU type of work. And so that's just something I appreciate that dialogue. And the final thing is I also appreciate the chief's commitment. I mean I think that our starting point should be that these police officers are doing their job because they want to serve and they want to serve the residents of the city. And the X -- even the SEU, most SEU work isn't service to the city. Whether they're at a school, at a mall, at a traffic site, they're police officers in the SJPD uniform serving our residents. And we just want to make sure they're doing it in a safe manner, in a way that can be monitored in an effective manner.

>> Vice-Mayor Nguyen: Councilmember Constant.

>> Councilmember Constant: Thank you, I'll try and stay as brief as I can because I only have a couple of things. One is a friendly amendment, if it would be accepted. It seems the chief was agreeable on the designated employees on the Form 700s for SEU to have that added when we get the next, that comes to us every year, a list and to have that as one of the approached additions when that comes.

>> City Attorney Doyle: I would, the chief is looking at me. I think when we go through this process with the City Clerk we go through all the departments and I think at that time we can work with the police department as to who should be designated then that comes through the City Manager to the city council and you get the finalist say.

>> Councilmember Constant: So what I'm asking for is just in addition to the motion that's on the floor just general direction to ensure that happens in the next go-round.

>> Councilmember Herrera: I don't think there's any problem with that. I think the chief was amenable to that right?

>> Again the process, along with the City Clerk, the designated filer if it fits. I would have no problem with that, I'm talking about not every secondary employment job.

>> City Attorney Doyle: The last time around we went through the designated employees citywide and the City Clerk was very hard with the employees and a lot of people taken off that list, it was trying to streamline as to who really are in a position where there may be a conflict. I think if the direction is work with the department to up with those who you think really are -- may have a conflict, and should be covered, that's easy.

>> Councilmember Herrera: Work with the department and go through regular process that the City Attorney has already outlined.

>> Councilmember Constant: My intent is not every officer who already works SEU, because you're already getting those reports. It's for not people who are work secondary employment but those who are in SEU the unit who are the ones that are assigning the jobs and all that because of the regulatory nature. And then just a question for follow-up from the City Manager. Do our Public Works contracts still require police officers or flag people, and if so, when we changed and gave the option for PCTOs, did our contracts get modified to allow that, as well?

>> Ed Shikada: Our standard specifications I believe have been modified to provide that option.

>> Councilmember Constant: Then my final comment, I'm glad this will be coming back but I really think we really need to look at the fatigue issue. I disagree with you chief respectfully about it being a supervisory issue, because you don't know that the fatigue sets in until it sets in and disaster's happened. And we saw that at the county, and we don't know it until it's too late. And the 14-hour rule served if department for a long time and served it well, and I really don't see any reason based on one research report to go to 16, and like I say, I've looked at a number, and there's a lot that say that that is expensive, so I think we should be much more deliberate at that when we review it. And then finally, I know that it will come to us back in six months and then one year I think was how the motion was modified, I would just suggest that when the policies are modified, I know they came back from OER and back to you, that they get transmitted to us back at the council to make sure we have them.

>> We'll make sure you have them when they are ready.

>> Vice-Mayor Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: Chief, in our Public Safety, Finance and Strategic Support committee, we had the discussion where Vijay was working with the police department on providing a solution that automates with the payroll system or time card system. How are we on that one?

>> Today it's been put off on numerous meetings, it keeps on getting put off the calendar so there's been no further addressed on that. What we are working towards is the new system with AFR and RMf. We are looking not only through the time card system but finding a way to track it through the new system when it's being rolled out in June.

>> Councilmember Oliverio: I just want to understand, is Vijay still actively involved, or somebody from his staff on that?

>> I believe so, yes. And I'll see if I can facilitate. I meet with Vijay periodically. The idea is to find some mechanism to be able to track this, so you don't have to fill out a form and we lose all this paper. We have a time contract front end with peoplesoft which actually works well, if we can modify that without messing up the existing system is what we're looking to do, I think.

>> Councilmember Oliverio: Okay, I'm just confident on Vijay's ability to find a solution that's not incredibly costly and one that can automate a process. And my concerns are that you know this is a process that you have to manage some data and you have to manage this and I don't think it necessarily requires a police officer, I think it could be a civilian supervised by a police officer, just want to make sure that's in there. Do I have some comments as Councilmember Rocha mentioned, enjoy to my church and they have an event with alcohol like a crab feed or something. I've never seen a fight break out there in 40-plus years and I'm sort of curious why we need to have a couple of police officers where it's probably one of the most peaceful place you're ever going to find. And so I'd like to see some of that discretion because I think it's an inordinate cost on cost on organizations that are putting on events in those types of modes. But with that a lot of topics have been raised, and I will look forward to what comes back. Again, I think I would have preferred waiting for the -- honored the request of the mayor, but with that said, we had a five-five vote, so we have to make a decision, so I'll be spouting the motion. Thank you.

>> Vice-Mayor Nguyen: Thank you, I think I'll have the final word here and I'll be extremely brief. I just think there are great benefits that are provided by the secondary employment unit as stated by the chief. However, I think that there are serious concerns which are raised by Councilmember Constant and a few others. So I'm really glad to see that this report will be coming back to us. At that time we have another opportunity to look at some of the revisions and also to see if some of the recommendations are implemented in the way that the council would like to see. So with that, we have a motion made by Councilmember Herrera a while ago with the friendly amendment by Councilmember Constant, all those in favor? Opposed? None opposed, motion carries. Thank you very much. We will now move down to item 8.2, acceptance of the 2011 assistance to firefighters grant program award to replace the fire department's cardiac monitor defibrillator inventory.

>> Motion.

>> Second.

>> Vice-Mayor Nguyen: We have a motion and second. Seeing no all those in favor? No one opposed, that motion passes. We move down to open forum, one speakers, Tom sawyer.

>> I'd like to thank Councilmember Liccardo who took time out on a wonderful Saturday afternoon to come over and talk to shipna about his view on the baseball stadium. I drew the short straw and got to debate against him and again I would like to compliment him on not crushing his feeble opponent. What I did understand the councilman to say in response to a question about co-signing bonds is that the City of San José would not cosign or lend its credit to any revenue bonds for stadium construction. I'm not entirely sure whether this applies to both the soccer stadium and baseball nor am I sure it's in Mayor Reed's bargaining principles. If that could be clarified in some way, shape or form, I realize it's not on the agenda so it can't be today, I would certainly appreciate it and so do those who hold my view. Thank you.

>> Vice-Mayor Nguyen: We are at adjournment. We will resume at 7:00. Thank you, everyone.

>> Vice-Mayor Nguyen: Good evening. Good evening. I'd like to call the city council meeting to order for the evening of April 17, 2012. And we will begin our meeting with the few ceremonial items. First up I'd like to invite Councilmember Chu and the junior sharks girls 12AA and 16 AA teams to join me at the podium.

>> Councilmember Chu: Vice Mayor did you invite the sharkie down here as well? Oh, and the -- I'm sorry, I think I missed -- let me see if I can get this -- I think they're here. So I believe we have the junior sharks girls 10 U team also here? Okay very good. Tonight we are presenting a commendation to the junior sharks girls 12AA and 16AA teams for capturing the U.S.A. hockey's Pacific district championship titles and the first teams ever to play in the Northern California junior hockey association. Councilmember Chu has some words.

>> Councilmember Chu: First when I was in room 1218, I warned them to watch out when they walk into this chamber because tonight we have a lot of sharks. Here they are. And sharkie is here as well. But first of all I'd like to thank my colleagues and the Vice Mayor in joining me to congratulate the junior sharks 10 under which is squirt, right? Okay. And for capturing the first place in the squirt B western division and making history by being the first ever girls team to play in the Norcal championship so let's give them a big round of applause. [applause]

>> Councilmember Chu: And I understand they're the only girls squirt team in California. Is that right? Why right - in Norcal. Okay so there's ducks down probably down South.

>> Yes.

>> Councilmember Chu: So only girls team up in the north and also I'd like to congratulate the sharks well-under that will be -- peewee team, and the 16-under, ban contaminate? Midget. You know, by the way, my son plays in junior sharks for many, many years, and until the first year he was in college. And now he plays for San José spartans. They didn't get into the championship this year but we'll see how they do next year. So for their capturing the U.S.A. hockey Pacific division championship titles. Last year I recognized the junior sharks, 10-under the squirt team for making history by winning the program's first national title. This year, all wings from each age group proves the program's success growth and strength, with such a great professional ice hockey team in

our town, which they are 2-1 in the playoff. But they'll catch up, don't worry about it. It's no surprise, that an aptly wonderful youth program is in place to inspire youth to excel in this development, I commend the players for a successful season. You have demonstrated discipline, teamwork and respect for each other on and off the ice. We're honored today to have the players, their coaches and their families with us, family please wave at me. I've been there before so I know how hard it is. Sitting on those cold benches watching their playing. But their commitment to the junior sharks program has strengthened the game of the youth hockey. Here today, to accept this commendation, are all team members coaches and junior sharks ten-under, 12-under and 16-under. Go sharks! Vice Mayor could you please -- thank you very much. I prepared a commendation to all the players but symbolically I will present the commendation to the coach. Sharkie are you in the picture? All right.

>> Good evening, everyone my name is Carl Shook, head coach of the U-16 team and first of all thank you to our honorable Vice Mayor, city council men and women, thank you for having us and for recognizing these wonderful athletes. The San José sharks ice program and the junior sharks started many, many years ago with one, two, now we're four sheets many more to come and the city's directly responsible for providing the support and the infrastructure for that for which our program would not be. And for that we thank the city, we thank the people who provide those resources to us so we can train and prepare. I think it's interesting when you look at the success of these teams this year at both the ten-year-olds playing against boys and getting to a Norcal championship tournament that's incredible for these girls, congratulations. For the 12 to go back this year and to go back up into the district championship and to win that district championship to go on to nationals again in the second year phenomenal success, great program, way to go guys, that was great. For the 16s to go out of incorporate and beat the northern ice breakers, to play in a national championship game it is something I'll never ever forget, it's been an incredible run and to the ladies behind me I congratulate you, great job. This ice hockey program for the junior sharks is quite frankly I think indicative of what San José is all about. The dedication, the focus, the effort it takes to be good, to be -- to have greatness, to work hard to achieve that and I think San José really reflects that and our program for the junior sharks does that as well. And I think hockey and junior sharks really bring about what we see in San José also, that's character traits of hard work, personal responsibility you know just charity, teamwork, dedication. These are things that I think that San José really represents, and I think it really comes down into what we do here in our programs in the junior sharks. So once again, to the city, to the city

council, the pair, to all the parents by did way, thank you, we know the dedication it stays. You've done a great job of supporting your girls. Without you it doesn't happen. And finally I do also want to thank my fellow coaches Rick, Dave, the assistant coaches, your dedication your effort your volunteer of your hours brings a lot to the success of the program as well. And with that I thank you all and let's go all go celebrate! [applause]

>> Councilmember Chu: One two three let's say thank you parents.

>> Thank you parents!

>> Vice-Mayor Nguyen: All right, thank you very much, sharks!

>> Vice-Mayor Nguyen: Next I'd like to invite Councilmember Pyle and the 2012 outstanding contributors to early childhood education to join me at the podium. Tonight we are presenting a commendation to the 2012 outstanding contributors to early childhood education and Councilmember Pyle has a few words.

>> Councilmember Pyle: Thank you. We are here tonight to honor four outstanding contributors to childcare. Connie Ainsworth as JB child development centers, McKinley state preschool and the San José day nursery. I'll begin with Connie Ainsworth, who holds a BA in child development, an MA in early childhood education. She received a life achievement award from the California participation nursery schools, is a credentialed elementary school teacher and the director of explorer preschool. Under Connie's direction, explorer preschool became one of the first co-op preschools to be accredited by the national association for the education of young children. Connie created a ten-week outdoor curriculum which encourages the children to learn more about science and nature, by hiking, climbing, having nature studies, and studying science books and materials. So Connie, thank you for all that you've done. [applause] I think we're going to just go with pictures. And next is the SJB child development centers which has served the City of San José for 40 years by helping parents establish financial independence by creating a safe place for learning, where they can bring their children while they work. With funding from the Kaiser foundation, SJB hosted a health and community resource conference which provided information about childhood obesity, child health, public policy efforts and local

resources, recently with UCLA and Johnson and Johnson Sjb worked on a successful six month long health project in which 80 parents, staff and children partook in healthy eating and exercises that significantly improved their health. So the SJP is right here. Do you want to step forward? Take a bow. The next would be the San José day nursery which is provided and the recipient is right if you just step forward so everybody can recognize you as benefited the residents of Downtown San José for 95 years! They aren't original equipment. By providing parents with excellent childcare service, along with a fundamental learning curriculum which gives the children an opportunity to develop compassion and empathy for others. Learning from the San José day nursery's kind principles the children work on community service projects with the help of parents and staff to raise money for various community programs. This year, the children of the San José day nursery sold muffins to parents and staff to buy books for the family literacy program at the king library. In which they sorted and delivered the books, to the partners in reading program. Now, therefore, we do hereby congratulate and commend these children providers, childcare providers for their continuing to provide high quality early childhood education and proclaim them to be the 2012 outstanding contributors to childcare. All of these individuals are working towards the same goal: To provide children in San José with the high quality, early care and education they deserve. So let's all, ladies and gentlemen, join our hands together, to give them a very hearty round of applause. [applause]

>> Councilmember Pyle: Did I miss one? I'm sorry we have one more to go. We have one more to go. It didn't seem that I had four, I can still count to 3. McKinley preschool is operated by the Santa Clara County office of education which provides low income communities -- there they are and they're not at all enthusiastic -- with the developmentally appropriate high quality early education program for 168 preschoolers! And under their -- let's hear it. You deserve it! Under their head start program McKinley state's preschool established a well planned environment with quality teacher-child interactions. The program was featured in the DVD demonstrating quality preschool practices for the California Department of Education, and child development division's preschool learning foundation. And once again let's hear a big hearty hand for the people I left out. [applause] And we're ready for some pictures for the program that took place between 6:00 and 7:00. We have one more of these? Okay we've got four, we're all set.

>> Vice-Mayor Nguyen: Okay, we will continue the meeting with public hearings. Seems like we have no public hearings on the consent calendar. So we have two land use items, 11.2, rezoning real property located at the southwest corner of Miller Street and Asbury street.

>> Laurel Prevetti: Thank you. We have no additional staff report on this particular item, but the Department of Transportation Public Works and Planning are all here if you have questions for us. Thank you.

>> Vice-Mayor Nguyen: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, Vice Mayor and thank you, Laurel. I wanted to make a motion to move the recommendation, that incorporates the staff recommendation along with my memorandum dated April 16th, 2012, with the following modifications: That paragraph 3B, the \$75,000 for traffic improvement contributions that would be used to offset subscription revenue shortfalls for car sharing, that equipment would be made for a period of up to three years. After a three year period any unused amount would go back into the base amount of the traffic improvement contribution pool. And paragraph 4B, the words "these projects may include identity would be stricken and instead the words would be such as additional traffic calming devices, to reflect that there may be a whole set of options that may be incorporated. Not to be exclusive.

>> Second.

>> Councilmember Liccardo: Thank you.

>> Vice-Mayor Nguyen: I'm sorry my screen is not working properly. So if you want to speak on this item just raise your hand and I can call on you. Okay. City Attorney.

>> City Attorney Doyle: Yes, I'd like to get something on the record that indicates an acceptance by the applicant of your memo.

>> Councilmember Liccardo: Well I wanted to first of all thank Christy Mabury and Josh meadows and the good folks over at Barry Swenson builders. I know they've been working hard to try to make this project go forward. I guess I'd ask if someone from Barry Swenson would step forward. My understanding it would be helpful if the developer assents to the conditions that are articulated in the memorandum.

>> I'm Christy Mabury, I'm Senior developer manager with Barry Swenson Builder. And we have reviewed the document, and we do agree with the memo.

>> Councilmember Liccardo: Thank you, Christy. This is really the first shot out of this recession that we have to get development going, and I think we are heading in the right direction with a very green project and something that we will all be proud of.

>> Vice-Mayor Nguyen: I don't have anyone on the screen. We do have a couple of members from the public who wants to speak on this item. Rudy Ortega.

>> Good evening, I'm Rudy Ortega and I am a member of the Vendome neighborhood. I obtained a copy of the traffic study based solely on the Vendome Towers from Hexigon Traffic Consultants, Inc. The 2006 modified traffic study I received did not anticipate the building of the future home of the earthquakes. The Coleman shopping center the almost completed fourth street apartment tower, the esplanade, the Pavona, the Market House Lofts, the Veridian, 875 north 10th street and the 700 block of north seventh street. I suggest that you take into consideration the recommendations council Sam Liccardo has proposed in his memorandum. Now this is to save our neighborhood of being choked with noise pollution traffic pollution air pollution. I'm pretty sure most of you do not live in this area, but I do, and I want to preserve what we have before it's too late. \$125,000 is not much to ask for from one of the biggest developers in Silicon Valley. Honestly \$125,000 won't even buy a new efficient traffic light for westbound Taylor street at First Street to safely make lefthand turn. Oh, and I would like to request speed bumps, permit parking and sufficient lighting on George Miller street only 300 feet from where the new towers are going to be built. I would like to thank councilman Sam Liccardo for listening what we, the people,

have to say. Also Fred Buzo councilman's aide, Tina Morrill with Vendome Neighborhood Association, Gary Black with hexagon transportation consultants incorporated, and of course you council, thank you very much.

>> Mayor Reed: Tina Morrill.

>> Good evening, my name is Tina Morrill. I live in the Vendome neighborhood which is a couple of blocks from the development. I want to first say that I applaud the developer for implementing the ecopass program. I think this is absolutely the right thing to do. Also the car-sharing program. I really feel like Vendome place can be a place that serves as a model for successful transit oriented development and something called place-making, and for those of you who have not heard of this term, it's the art of creating public places of the soul that uplift and help us connect each other. The way in which all human beings transform places they find themselves into places that they live. So we want to make this a cool place to go, hang out, have community amenities. I think that's extremely important. And I think that the development really needs to be architecturally and aesthetically pleasing so that it is a really cool place to go. I appreciate councilman Sam Liccardo's memo, thank you very much, I think that you're right on track, and I did want to say that in this memo, you referred to a memo in 2008 which I think is extremely important. We -- it calls for the exploration by staff to look at car sharing and ecopass programs. And I hope that that moves forward. Parking spaces really are not needed as much, when there are alternatives. And they're costly as he called out, 45,000 per space. Wow, what could we buy with \$45,000. Maybe some really cool public art to make the development really nice. So there's a couple of other ideas I had for our future transit oriented developments, and possibly even this one. What about unbundled parking or a community bus or shuttle that runs to and from the Diridon station. So just this effort of trying to get people -- encourage people out of their cars and into alternative forms of transportation, as they're going to and from really cool places to be.

>> Vice-Mayor Nguyen: Thank you, Tina, your time is up.

>> Thank you.

>> Vice-Mayor Nguyen: We have a motion by Councilmember Liccardo approving his memo dated April 16th, 2012. All those in favor? Opposed? Hearing none, motion carries. Thank you. We'll move to item 11.3, rezoning real property located on the Northwest side of east Gish rode.

>> Laurel Prevetti: Thank you, madam Vice Mayor. Laurel Prevetti assistant director of Planning, Building, and Code Enforcement. We have one modification to the development standards for this planned development zoning for challenger school. On page 9 of 11 there is a traffic mitigation measure which does need to be adhered to. However there is a level of specificity in terms of dollar amounts and numbers of intersections and trips that is probably too detailed for the level of action that the council's taking this evening. So with all due respect, we would like to provide a modified version that essentially strikes out that level of specificity. Again, staff from D.O.T. and Public Works are also here to assist the council, as need -- as necessary. Thank you.

>> Vice-Mayor Nguyen: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, Vice Mayor. I'd like to make a motion that incorporates that modification.

>> Councilmember Herrera: Second.

>> Councilmember Liccardo: One more question Laurel, I recognize that there's maybe at war dueling consultants here, in assessing whether it's 19 trips or 12 trips, and I never thought 7 trips would matter so much. But I guess when we're talking about the fees in the Mabury Oakland interchanges it adds up quickly. What does our action today mean in terms of what happens next in terms of how you figure out what the proper calculation ought to be?

>> Laurel Prevetti: Thank you, councilmember. We as illustrated in the negative declaration which is the environmental clearance for this application, the applicant does need to pay the traffic impact fee based on the traffic analysis that they're their consultant prepared. This is a traffic impact fee that was set by the city council

and it does implement the traffic policy also established by the city council. So the consultant's report identified the analysis and the work that needs to be done. It did identify an estimate for what that would be. And however did not include all three intersections that are required as part of this policy. So we will be working with the applicant, subsequent to this council, depending on council's action of course, to make sure we have clarity about what that requirement is. And we certainly recognize that as the council considers future traffic policies we'll need to be cognizant about how this plays out for all of our land uses and not just housing. Thank you.

>> Councilmember Liccardo: I appreciate that Laurel thank you. I want to thank the good folks from challenger school, I know they're expanding and we look forward to a successful relaunch next year.

>> Vice-Mayor Nguyen: Councilmember Campos.

>> Councilmember Campos: Thank you, Vice Mayor. Laurel just to make sure, you know this is an opportunity that we have, to give some feedback, and propose traffic or any type of environmental mitigation on a school project. Because usually it goes to a school board and we don't have any say and we end up saddled with all these impacts. So will you continue to look at each project on a case-by-case basis? Because I know we're going to be getting a lot of these in -- all across the city and I want to make sure that as schools come into our communities, that, you know, that, one, we certainly welcome schools in our communities. But whatever impacts they cause, we need to make sure that, you know, we're trying to create the most win-wins for our neighbors as possible.

>> Laurel Prevetti: Thank you. To the extent they are private schools and we have a regulatory role, we'll be happy to work with all our private schools to make sure they meet the requirements of the city, they do environmental clearance and they do appropriate mitigations that are fair and reasonable to address their impacts that they might generate. To the extent that it's a public school that's moving forward and they decide not to follow local land use they do their own environmental clearance and their own identification of mitigation. We don't have as much interaction with our public school or our private school are requesting an override from the county Board of Education.

>> Councilmember Campos: Even if they cause you know extreme impacts from you know traffic?

>> Laurel Prevetti: We do have an opportunity to participate by way of commenting on their environmental document.

>> Councilmember Campos: Okay.

>> Laurel Prevetti: So to the extent we're provided that opportunity we generally take it.

>> Councilmember Campos: Okay, okay, thank you.

>> Laurel Prevetti: Thank you.

>> Vice-Mayor Nguyen: Okay, we have a motion made by Councilmember Liccardo. All those in favor? Opposed? Hearing none motion carries. We don't have anyone who wants to speak to us under open forum, so we are adjourned. Thank you everyone.