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>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for August 4, 2009. Welcome everybody back. Council's not been meeting for a month so we're anxious to take up the public's business again. Not that we minded being off. But everybody's happy to be back, I can assure you of that. We will start this meeting with our invocation. Councilmember Nguyen will introduce the invocator.

>> Councilmember Nguyen: Thank you, Mayor Reed. Good afternoon. It is my pleasure to introduce a wonderful group from our community to deliver the invocation today. I am delighted to welcome the Happy Singers to City Hall. The Happy Singers was founded in 2004 under the leadership of Sally Tan. Since then the group has grown to a 30-member chorus that has won many awards and accolades from our community. They perform regularly in senior centers, schools and events throughout San José and Santa Clara County. Please join me in welcoming Happy Singers to deliver our invocation. Thank you. [music] [singing] ∂ God bless America ∂ ∂ land that I love ∂ ∂ stand beside her ∂ ∂ and guide her ∂ ∂ through the night ∂ ∂ with the light from above ∂ ∂ from the mountains ∂ ∂ to the prairie ∂ ∂ to the ocean ∂ ∂ white with foam ∂ ∂ God bless America ∂ ∂ my home, sweet home ∂ ∂ God bless America ∂ ∂ my home, sweet home ∂∂ [applause]

>> Mayor Reed: Thank you. We'll now have the pledge of allegiance. Please stand. [pledge of allegiance]

>> Mayor Reed: First item is orders of the day. We have some changes from the printed agenda. We will take up item 9.1, that is a joint city-agency matter on the state budget update immediately after the report of the City Manager. Items 3.2 and 3.3, the rules committee report for June 10th and June 17th will be deferred one week. Item 5.3, the construction contract for the educational park branch, we'll take up last on the agenda, so if anybody is wanting to know what time, I'm sure that will be not before 3:00 based on what we have on the agenda. And we'll adjourn the today's meeting in honor of Paula Merloa, a member of the Mobile Home Advisory Commission and a District 7 resident. Councilmember Nguyen has some additions to that.

>> Councilmember Nguyen: Thank you, Mayor Reed, I just wanted to take a few minutes to honor Paula Merloa, a lifelong resident of District 7, community activist and city commissioner. She served on the mobile home advisory commission for four years from November of 2005 to May of 2009. Paula lost her battle with cancer in July 11. She is survived by her best friend, Margie Zamora, an employee with the City of San Jose. One of the many things I will remember about Paula is her drive, passion and commitment to the community. She fought to bring more resources and awareness of tenants' rights to mobile home residents throughout San José. She was one of the strongest members on the mobile home advisory commission. With Paula around, residents could ensure that the issues were represented and heard. I will miss Paula dearly, and I know she is in a better place. Her memorial service will be held at Oak View Memorial Park on August 14 at 10:30 a.m. If you have time, please stop by. Thank you.

>> Mayor Reed: Thank you. Any motion on orders of the day? Motion is to approve the orders of the day. Councilmember Campos.

>> Councilmember Campos: Mayor, on orders of the day, I had a brief conversation with the attorney, and I know that item 5.3, that at this time, that there could be a brief discussion whether we would hear the item, considering the memos that came in after the deadline of 3:00. And I just wanted the city to clarify, if I misunderstood what orders of the day was item 5.3.

>> Mayor Reed: We have a motion to approve the orders of the day. If the council wants to defer something or do something else under orders of the day, we can do that. But it is our practice that if there's going to be a discussion about something, that we wait until that item to discuss it. Because whether or not we take up an item or defer an item or debate an item really is up to the council to decide. So I guess my question is, what do you want to do with 5.3?

>> Councilmember Campos: Well, when I spoke to the City Attorney, he said that an order of the day, if we wanted to bring this item here, whether to even consider it, we could have that discussion. If I'm not clear on what he said, I would like him to clarify what his intent was when I had the conversation on how he was explaining it to me.

>> Councilmember Campos, what you and I just discussed is what you just stated. On Orders of the day, that's when the council considers adding, dropping or deferring an item that -- what -- that is appropriate before this particular body. As you noted on the agenda, the item is listed on there as a new item 5.3. So it would be appropriate to have a discussion as to whether or not you'd want to drop it, defer it, or do some other action with regard to that item, if that was the will of the council.

>> Councilmember Campos: Okay, I hear you. So it would be appropriate to make a motion at this time to drop the item, is that what you're stating in there?

>> It is possible to make a motion with regard to orders of the day, and if a majority of the council agrees with your motion to either defer, to drop, or to take any other action with regard to orders of the day.

>> Councilmember Campos: So I'd like to make a motion to drop the item from orders of the day.

>> Mayor Reed: We have a motion on the floor to approve the orders of the day. We already have a motion on the floor to approve the orders of the day. I have some others who want to speak on this. Councilmember Liccardo.

>> Councilmember Liccardo: Question for clarification. Was there a second to Councilmember Campos' motion?

>> My understanding is that there is a motion to accept before the councilmember made her comment.

>> Councilmember Liccardo: Okay, so the motion that's on the floor is the motion to accept.

>> Correct.

>> Councilmember Liccardo: The orders of the day prior to the comment made by Councilmember Campos.

>> Correct.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: No comment, unless there's a second to her motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Beyond the 3 PM deadline settle by the Rules Committee?

>> Councilmember Campos: Correct.

>> Councilmember Kalra: That's what your motion that you put forward?

>> Councilmember Campos: Because it was not common, at the orders of the day, he did say that if we wanted to drop the item, because of process, because the item was brought -- was -- the memo came in after 3:00 p.m. from the direction of the Rules Committee was that they -- there was a deadline of 3:00. That this would be the appropriate time to drop it at orders of the day. That's what -- so I was asking for his direction, if I did not hear his clear direction, when I spoke to him earlier this day.

>> It's a procedure matter on orders of the day and in most cases it's simply procedure that you're going to defer, you're going to drop, you're going to move items around. And the issue is whether or not procedurally this item should have been on the agenda. And I think Councilmember Campos is questioning whether or not it procedurally should have been on the agenda which is the base of her motion. However my understanding is

there's an existing motion prior to her making her comment accepting the orders of the day as it is. That needs to be dealt with prior to Councilmember Campos making her motion.

>> Councilmember Kalra: So it wouldn't be treated as a substitute motion?

>> It hasn't been made as a substitute motion.

>> Councilmember Campos: So then I'd like it as a substitute motion, if I may.

>> The second for this --

>> Councilmember Kalra: I'll second that.

>> Mayor Reed: Okay, so we have a substitute motion to drop item 5.3. And approve the rest of the orders of the day?

>> Councilmember Campos: Correct, mayor.

>> Mayor Reed: Okay, I'm not going to support the motion. I think the appropriate time to have this discussion is when we discuss the item, rather than having the debate in the middle of orders of the day. So I think when we take up 5.3 we can decide whether or not it should be on the agenda or deferred or dropped or anything else as part of that debate. Because I know there are people here who want to speak on it and there will probably be others. Councilmember Liccardo.

>> Councilmember Liccardo: I agree with the mayor on this. I think clearly, there's been, we've been flooded with paper from both sides of this debate. And to decide, you know, as a procedural matter that because the clerk received the document, I don't know, couple minutes late, I don't know when it was received, I assume it was within a very short period of the 3:00 p.m., when clearly there's a desire to discuss the substantive merits of this issue, it's an issue of significant importance in terms of public policy. I think we ought to have the discussion, and not simply dismiss it on a procedural irregularity.

>> Mayor Reed: Let me add that even though it's on the agenda as 5.3, that unless somebody who was on the prevailing side of that makes a motion to reconsider it when we get there, it will die and not move ahead, because it's a request to reconsider it, and we still have to take that up. If there's no motion and no second, then we're done with it. If there is, then we'll vote on the motion to reconsider and then take up the substantive issues. So questions about our process, or the timing or anything, all are appropriate for the debate on whether or not to reconsider it, and we can do that at that time, I think that's the best time to do so. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I'll limit my comments to the specific procedure. And that is, I sit on the Rules Committee. And the intent of the Rules Committee I think was pretty clear, and that was to afford the opportunity for anybody on the prevailing side to make the motion at that time appropriate time. The actual 3:00 p.m. that was discussed really came up with a discussion from the City Clerk on what time would a memo have to be received in order to make it on the amended agenda. Based on that intent of the Rules Committee, obviously it made it on the amended agenda. So it was on time to be on the amended agenda. And I truly think that was the intent of the Rules Committee after a very lengthy decision. So I think it's in order to at least have that opportunity and I do not support it being dropped at this time.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you. My understanding that the memo arrived not just a few minutes, but 30 minutes late, it was stamped close to 3:30, is that the case?

>> Lee Price: Councilmember Chu, the memo, the first draft of the memo was received at 3:27. My office received a call prior to 3:00 indicating that a memo was being drafted and was going to be brought to my office within 30 minutes, would I accept it. To Councilmember Constant's point, I agreed to accept it because I believed that the intent of the Rules Committee was that if I received a memo requesting reconsideration by a member of

the prevailing side on the vote on June 23rd, that I was to put it on the amended agenda. So the 3:00 deadline was really more of a target, if you will, so we could assure that I had staffing, that there was appropriate time, and resources to make sure that the amended agenda was amended in accordance with the Rules Committee direction.

>> Councilmember Chu: Okay, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I think at this point weighing minutes versus what is proper for the sake of the city on both sides of the debate and publicized in the newspaper, and to have, you know, 25 e-mails on my office alone from this issue, means that it should be heard. And have the discussion then. But for a procedural thing of minutes, I think that would be wrong.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. The only comment I will make is when I received the e-mail from the Clerk's office simply said must be received in writing, by writing, at 3:00 p.m, not a verbal place holder that something is impending or will be coming. I don't sit on the Rules Committee so I don't know what other folks on the Rules Committee, what their thoughts are, what Councilmember Constant's thoughts are but the fact was there was already an extension to that 3:00 p.m. deadline on Friday. Those procedural rules, we can take up as to going forward how we like to deal with the issues that arise out of contest, bids, and so on and those are issues that we probably need to continue to discuss clearly based upon what's occurred out of this instance. Thank you.

>> Mayor Reed: All right. We have a motion to approve the orders of the day as modified. And dropping item 5.3.

>> Substitute motion.

>> Mayor Reed: That's the substitute motion that's on the floor. Councilmember Campos' motion. All in favor? Opposed? Opposed, Oliverio, constant, Reed, Chirco, Councilmember Liccardo, and Herrera, so that motion fails on a 5-6 vote. We have another motion, underlying motion was to approve the orders of the day as originally set forth. On that, all in favor? Opposed? New opposed, that's approved. So for our viewing audience at home what that means is we'll take up item 5.3 last on the agenda. Surely not before 3:00. So if you want to come down and get in the discussion, come on down. So orders of the day are approved. Our next item is the are consent calendar. I have two requests to pull items off the consent calendar already. 2.2, the green buildings matter and 2.5, the executive loan for Barbara Attard. Any other requests to pull items on the consent calendar for discussion? The motion is to approve the balance of the consent calendar. Can I get a second?

>> Second.

>> Mayor Reed: And we have a second, all right. All in favor, opposed, none opposed. Consent calendar is approved with the exception of 2.2. We'll take that up now, the request to speak on 2.2, that's our green building ordinance, Richard Calhoun and Linda Kincaid. Please come on down.

>> Mayor, members of the council my name is Richard Calhoun. I'm speaking today as an individual. I'm concerned about the ordinance as drafted by the city staff. The problem with it is it protects the environment, and the residents globally. It does nothing to protect the occupants of those buildings that you're planning on building under this ordinance. What I'm suggesting is you simply make one minor change and that is to require item K-8 on the green points item, what that does is requires the builder, assure that the formaldehyde level within if building that they're building is less than 27 parts per billion. We all know about the FEMA trailers at 77 parts per billion. They're currently in litigation. The homes that are out there currently that are built and greenpoint certified are all in the range of the FEMA trailers or higher. You will have sick people in the City of San José, and a healthy environment, but your job is to protect all including the occupants of that building. You need to take that into consideration. Thank you for your time.

>> Mayor Reed: Linda Kincaid.

>> Thank you. My name is Linda Kincaid. I'm a certified industrial hygienist with 20 years of experience doing exposure assessment in Silicon Valley. I have been testing homes around the Bay Area and I have specifically recently focused on green point rated homes because of the issues that Mr. Calhoun addressed. I also request that the council require item K-8 on the greenpoint rated worksheet to assure formaldehyde below 27 parts per billion in new homes. I have measured formaldehyde in room air in five greenpoint rated developments in Santa Clara County. All of those developments had formaldehyde near or above the 77 part per billion average in the Katrina FEMA trailers. As you all know, many individuals in those trailers were ill and a number of them died and I believe litigation continues. In a large greenpoint rated development in San José that was advertised as, quote, free of toxins, I measured 93 parts per billion formaldehyde in room air in a model home. There was also nearly 500 parts per billion formaldehyde inside a kitchen cabinet. In a smaller development of single family homes in Santa Clara County that was designed to be greenpoint rated and is under review for greenpoint rating, room air throughout the home exceeded 100 parts per billion. That is the level that EPA indicates would make most adults ill. Some areas of the home were around 300 part per billion, that is the ceiling limit for occupational exposure to formaldehyde. So a worker in that home would be required to aware a rest operatorsor to protect himself from respiration of formaldehyde. I contacted the builder three times, copied the lister. They told me, "there are many ways to achieve green point rating." Those homes have now been sold to families who are unaware of the hazards they will receive in those homes. In short, greenpoint rating does not assure a healthy home or acceptable indoor air quality. Therefore, I request that the council require item K 8 on the greenpoint rated worksheet which will keep formaldehyde below 27 parts per billion in new homes. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. I'd like to give Joe Horwedel a chance to respond.

>> Joe Horwedel: Thank you, Mr. Mayor and council. Joe Horwedel, director of Planning, Building, and Code Enforcement. The issues of indoor air quality is an important concern that, as the energy codes have tightened up buildings to make them less drafty, the air quality inside buildings has become an issue. So one of the things that the standards that the U.S. green building council has built into their standards is the indoor air quality, looking at the use of formaldehyde in the building. It is something that we have heard the concerns of the speaker, as a recent meeting at that time Realtors board, it is something I'm going to have staff, he take a look at. If there is additional follow up that we need to do, that we will do that. Right now, we are just in the early implementation piece of this. So this sets -- the ordinance doesn't become effective until September. Actually, I don't have any projects that are subject to it that are coming through the process at this point so we do have a little bit of time if we do need to look on the checklist piece of it but the enforcement piece we feel is adequate dealing with the air quality issues.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, Mayor. Joe, just a quick follow-up on that. When we say that the ordinance is adequate with regard to air quality, is there any kind of standard for formaldehyde specifically like 77 parts per billion or are we --

>> Joe Horwedel: No, the city isn't setting a standard for indoor air quality, so we really depend upon the state and federal agencies for setting those thresholds. What we want to look at is, are there some things that should be done about the testing as the buildings come online about what is the indoor air quality with those buildings, and part of that is change how the buildings are built and looking at some of the materials. A big piece of the green industry is to not use a lot of materials with formaldehyde in them or similar types of chemicals. Choices and materials for surfaces, I think there is a lot of education piece that goes along with that that builders have built buildings for a while using those types of materials and I think you'll see some of that change has happened. In the meantime it will be good to come up with some sort of protocols around sampling on air quality where we think that's going to be a problem.

>> Councilmember Liccardo: So we're really taking sort of an approach of, let's see how it works out and adjust accordingly?

>> Joe Horwedel: Yes. And the other piece to keep in mind is the state of California in adopting the title 24 energy code, so it applies across the state of California are really the leading edge on these standards. The things that we're dealing with, the green building standards, are more that work kind of in concert with that. So without this ordinance dealing with site design and solar access, deal with the tightness of the building itself, regulations around the air exchanges in the building and those types of things, those things still exist. We want to make sure if there are things that need to happen, we are working through the state process so we are dealing with it kind of not just here and that we've got rules different than everybody else, but that we're dealing with that, so it works overall.

>> Councilmember Liccardo: Thanks Joe.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks Joe. While we still have you here, I don't understand the whole mechanics of all the different checklists and things. You can talk about the K-8 specifically that they're talking about? I know when we have the checklist in very general terms the goal is to get enough checks to get a good score to be green.

>> Joe Horwedel: Yes.

>> Councilmember Constant: Now are some of those mandatory and some optional? And where does K-8 fit in? It's not real clear to me.

>> Joe Horwedel: Yeah, and I'm probably not the best person to answer that particular question. There are, as a part of both the LEED process and the Build It Green process, a series of tasks or design decisions that you can make that give you different scores. Some of those are mandatory and others are just for what you do, you get points and as long as you get to a total number, then you're considered a green building. The standards do recognize that it needs to be a well balanced design so that there are mandatory points that are required in different sections. And I don't know the specifics, I don't kind off the top of my head if K-8 is a required point or if it's one you can get points for, and is not required. That's what I have to go back and look at. Do we need to do something, that if it's not a mandatory, are there some things we need to do in education, kind of working with the designers so they're aware of that issue.

>> Councilmember Constant: I think it's important, I know you said we're not -- this won't be 77 immediately, you don't have any projects that are going to be built. I think it's important that this doesn't fall on the way side and that we address it before you issue those first permits on the first building that's going to be subject to these. Because based on what we have here it looks like it could be a serious concern. I want to make sure that we've had the opportunity to really look at that.

>> Joe Horwedel: Yes.

>> Mayor Reed: Okay, let me just suggest that you take a look, talk to green building council, do whatever you think needs to be done and you report back to transportation and environment committee before we get to the issuing permits phase. These comments were based on a very small sample.

>> Joe Horwedel: Right.

>> Mayor Reed: But nevertheless troubling.

>> Joe Horwedel: It could be a simple issue.

>> Mayor Reed: It could be, as simple as open your windows. I don't know. I like to keep my windows open. Not everybody has that opportunity. Why don't woo do that, have this come back to the T & E committee before you issue permits.

>> Councilmember Constant: Mr. Mayor, I'd make that motion with that direction.

>> Mayor Reed: The motion to approve the item bringing the issue back to T & E committee. All in favor, opposed, that's approved. Item 2.5, Councilmember Constant, you wanted to pull that item.

>> Councilmember Constant: Thank you, mayor. I have a series of questions on this issue. And I'm not sure who the appropriate person would be to answer so I'll just ask and whoever wants to grab the mic and answer. First off, in regards to this action, why are we looking at a deed in lieu, instead of a foreclosure? And I know the memo is very, very brief. So I think the public really needs an opportunity to hear why.

>> Since I was the author of the memo, I'll respond to that. As the memo indicates, this was a purchase money loan, which is basically a loan made to purchase a residence. Under California law a purchase money loan, security is the only way to recover the funds. While it is possible to do a foreclosure instead of a deed in lieu, it would get you to the same place. In a foreclosure, you would basically foreclose on the property, take over the ownership of the property, and you would still be subject to the first lien. However, you would have expended close to 30,000, between 30 and \$50,000 in trying to do the foreclosure. You would have to hire a trustee to go through the process of notifying and holding a sale. A deed in lieu will get you to the same place, where you actually become owners of the property, still subject to the first, however you don't need to go through the process of expending all those funds in order to take ownership of the property. So my understanding from staff is that in discussing the matter, with Ms. Attard that she was willing to sign off on a deed in lieu that would give us the property similar to what would have occurred had we done a foreclosure.

>> Councilmember Constant: I understand the difference from our perspective. What is the difference from the perspective of the borrower?

>> Staff has had conversations with Ms. Attard. Some general differences are that if you do a foreclosure, it may have some negative impact on credit of the person who's being foreclosed upon because it is a reportable manner. But the end result is still the same. She will no longer be responsible for the property, because as I said it is a purchase money loan. She will not be liable for any additional funds in either case. So I believe the only difference would be the negative consequence of a foreclosure as opposed to a deed in lieu which may have on its own some negative implication, but may not to the same extent as a foreclosure on your record.

>> Councilmember Constant: What is the current payment status of the city held mortgage as of today? Is it current? Are there past-due interest payments?

>> I think the staff can better give you that response.

>> Walter Rossmann: Ms. Attard has paid the interest payments through March 31st on the city's loan.

>> Councilmember Constant: That means it's about 4 months past due; is that correct?

>> That's correct.

>> Councilmember Constant: What is the status on the payments on the \$100,000 first mortgage that will become the City's responsibility if we approve this action?

>> Walter Rossmann: Those payments are current by Ms. Attard.

>> Councilmember Constant: What is the tax delinquency status or nondelinquency status?

>> Walter Rossmann: We believe she's current on that as well.

>> Councilmember Constant: We believe or we know? Because that's going to have a fiscal impact to us as soon as we take this vote. The taxpayers of San José I think deserve a right to know if they're going to owe somebody's past-due taxes.

>> Walter Rossmann: She's current on that.

>> Councilmember Constant: Is the payoff amount on the first loan \$100,000 or has any of the principle been reduced? What is our exact payoff?

>> Walter Rossmann: It is approximately \$94,000.

>> Councilmember Constant: And where -- how is this money -- where is it coming from and how is it going to affect the budget of the City of San José specifically?

>> Walter Rossmann: It is an appropriation for senior executive home loan program from the last fiscal year.

>> Councilmember Constant: So it's not going to have any impact on this year's budget?

>> Walter Rossmann: Not on this year's budget, that's correct.

>> Councilmember Constant: So all basically \$350,000 has already been realized, accounting wise and cash flow wise?

>> Walter Rossmann: The actual impact to the city is the payment to the 1st to Suntrust Company of the first borrower, and the actual expenditure for the city's loan has been occurred when the loan was signed in 2005.

>> Councilmember Constant: So where is the \$100,000 coming from?

>> Walter Rossmann: That is coming from an appropriation from last fiscal year.

>> Councilmember Constant: From where, though, all the funds?

>> Walter Rossmann: Executive home loan appropriation.

>> Councilmember Constant: And how much money do we have in the executive home loan fund?

>> Jennifer Maguire: Jennifer Maguire budget director. We actually in last fiscal year we set aside \$250,000 for this potential issue. So that was set aside in 2008-2009 budget. Going forbid, I believe there's \$500,000 in -- for 2009-2010 in that appropriation if my memory serves me correctly.

>> Councilmember Constant: I'd like to ask why this loan was offered to Ms. Attard and who actually is the person who determined that this loan or persons that this loan should be made?

>> Walter Rossmann: In 1999, the council approved the resolution for the senior executive home loan program which is available for council appointees as well as for senior staff members of council appointees.

>> Councilmember Constant: Right, but that council resolution which I believe is resolution number 69478, under section 3, states, and I'll quote, "The need of a loan shall be reviewed on an individual basis and not deemed available as a matter of right." So my question is, who determined this need?

>> Walter Rossmann: I believe for council appointees, it's the mayor's office which determines the need.

>> Councilmember Constant: That's something I think we need to have follow-up because again I think the taxpayers have a right to know that someone determined a need to loan somebody \$250,000, at 2-point-something percent, far below that of any loan that one of my tax paying residents can get, when this person was relocating from San Francisco to San José, barely 40 miles away. We have many, many of our hardworking employees that commute much farther than 40 miles, and we approved a loan based on need. My understanding in reading this resolution, the council actions related to it, that the reason we had this was because of the high cost of living in San José and the cost of housing for someone to relocate from outside of the area. And I wonder if anyone else out there is questioning the fact that it's a higher cost of living and higher to buy a home in San José than San Francisco, and that there is a need for someone to receive a loan so that they don't have to

commute 40 minutes to work when many of our employees, in fact several are my employees of my office commute quite a distance to work every day. Section 3, subsection K, also provides for certain other assistance. Can we hear exactly what other of the assistance under section 3K, that this person received, as well?

>> Walter Rossmann: If I may, may want to make a correction actually. I looked at Ms. Attard's contract, which was signed -- offered to her and signed by her in 2004, and part of her contract which was approved by the council, she received housing assistance. Additionally at this time she relocation costs and I believe that all the kind of relocation assistance she had received at the time.

>> Councilmember Constant: Okay. So the City Attorney does an employment contract supersede a council resolution as far as need? Microphone.

>> I'm sorry, the resolution is basically a guideline that the council should follow. However individual contracts which council then approves can supersede that.

>> Councilmember Constant: Okay. I just think it's important that the tax paying residents out there know that the resolution clearly uses the word shall, that a need shall be determined. And it's also important to note that we paid other relocation money, and this person maintained their home in San Francisco. So I don't know if that was necessarily relocation. How many of these loans does the city have outstanding for other people?

>> At the moment, additional seven loans outstanding.

>> Councilmember Constant: And previously or to date, has anyone else failed to live up to their obligations to the City of San José residents?

>> No, they have not.

>> Councilmember Constant: So this question may be rhetorical, so if we know that foreclosure is really not a viable option, why don't we require some form of personal guarantee on these type loans?

>> City Manager Figone: I'll answer that one. Actually the finance director and I are discussing and it is my intent to put in place at least for those staff under my authority, a requirement for what is shaping up to be a 10% equity, and again, the finance director's on vacation, but based on this discussion, we might also revisit some of our own thinking.

>> Councilmember Constant: Well, I think that we need to, as a council, we have to look at this entire thing and see if we want to follow that lead that many of the financial institutions nationwide did in giving 100% loans and then eating the money. The only difference is, it's not the shareholders that pay for this problem. It's the taxpayers. So after we take this action today, are we going to report this loan forgiveness to the credit agencies which is a standard practice if you get loan forgiveness from a commercial entity?

>> The loan forgiveness will be reported to the IRS.

>> Councilmember Constant: What about the credit rating agencies? If you forgive a loan if I can't make the credit card payment, and they forgive the loan, I have to live with that for seven years on my credit report.

>> Walter Rossmann: We'll have look into that.

>> That usually occurs when a creditor participates in a credit reporting agency arrangement where the lender actually gets information from a creditor, they agree with that transaction, I don't know if we're an participants in any of that type of arrangement, but staff can look into that.

>> Councilmember Constant: I think that's something staff needs to look into and I'd like to personally be informed on what the status is. And when we inform the IRS on this loan forgiveness are we also including the \$100,000 that we are paying this first mortgage so that we report a full \$350,000?

>> Walter Rossmann: Yes, we are.

>> Councilmember Constant: I think all this is very important, because we have to have a level of personal accountability, especially from our executive staff, when we do things like this. This is a serious use of the public taxpayer money. \$350,000 for us to buy a condominium that's worth maybe 250, and that's after all the costs of sale. What will we be doing, and what's our plan for this asset, once it becomes ours, if this passes?

>> Walter Rossmann: We are in process of hiring a property manager in order to manage the property for us and then the property manager will be required to find a tenant, who will be required to hold the property until the market recovers and we can sell the property.

>> Councilmember Constant: Okay. I think it's very ironic, I guess is the word, that the person that we hired, who the basis for her chosen career is to hold our police officers personally accountable for their actions is walking away with \$350,000 of taxpayer money with very little personal accountability. And I think it's very sad in this day and age, in this economic situation that we find ourselves in with thousands of our residents throughout our city losing their homes, not having the luxury of not having another home just a short distance away and having to live with the impact of that loss not only on their family but on their credit for seven to 15 years. This is just not a fair level playing field. So I hope this issue comes back very quickly to the city council for us to look at several of these items, including personal responsibility and personal guarantees, looking at loan to value ratios and how we are going to use our taxpayer money and how we define a need and making sure that the intent of the original council resolution is not forgotten and that is the fact that that need is not guaranteed. It's a need that has to be established prior to us giving away taxpayer money, which is exactly what we did.

>> Mayor Reed: Let me suggest that we have this brought back to the council through the committee, as the manager works on the terms that she thinks are appropriate for department heads, we also need to think about the council appointees. We should bring that back and there are three things I think would be important. First is some minimum personal down payment, whether it's 10% or 20%, some percentage. And some limit on how much of a percentage of the debt we would take on, compared to a first. And council approval of the final terms of the agreement. So if the City Manager would put those on the list of things to consider as she's look at the policy and then bring back to the council whatever her recommendations might be, and we can sign off on it then. If that would work. Did you want to make a motion, Councilmember Constant?

>> Councilmember Constant: No, because I want to vote against this as a matter of principle.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I wanted to ask about how much the monthly payment would be for rent. Do you have any idea, Walter?

>> Walter Rossmann: We haven't yet signed a contract with a potential renter but we expect the contract to be around \$1400 or \$1500.

>> Councilmember Pyle: And how much is the major going to be, how much of a difference is there between the two?

>> Walter Rossmann: There will be a mortgage payment but the city will own the property --

>> Councilmember Pyle: I understand that. But the city still has to make the mortgage payment for the \$100,000.

>> Walter Rossmann: We will pay off the first, the contract company with that action. So there will not be any mortgage payments from the city to the bank.

>> Councilmember Pyle: Okay. I just wondered, if the rent payments were about equal with what the payment would be for the first, and I guess maybe we can't just assume that first so that we don't have out of pocket cost?

>> Walter Rossmann: What we know is that a payment for Ms. Attard for her first loan was about \$560.

>> Councilmember Pyle: Oh, I see.

>> Walter Rossmann: So compare that to the rent we expect to receive minus all the payments to the property manager, we will actually -- it will be more than \$550.

>> Councilmember Pyle: And probably we wouldn't have to anticipate keeping the property for more than a couple of years, at least according my real estate friends, who are saying that homes in this price range are just going away. So I would recommend that we have an assessment on this property on a little more frequent basis. For example, at least by next year, we get some kind of an assessment of what the value would be. So that we can track where we are. That would be -- that would be a helpful thing.

>> Walter Rossmann: Periodically, we can engage a property appraiser to evaluate the price of the property so we can understand how the price of the property is hopefully change upwards.

>> Councilmember Pyle: And the value of the property now at about 250, whose appraisal was that? Was that a bona fide Realtor?

>> Walter Rossmann: That was a registered appraiser engaged on behalf of the city.

>> Councilmember Pyle: I appreciate that. I suggest that we get the valuation of the property at least once a year. Get some determination of the value of the property. Thank you.

>> Mayor Reed: All right. Would somebody like to make a motion on this?

>> Councilmember Pyle: So moved -- seconded.

>> Mayor Reed: Motion by Councilmember Nguyen with direction to the staff to bring this back for further council direction. Councilmember Pyle seconded that. Further discussion? All in favor? Opposed? Two opposed, constant and Campos. Motion carries. That concludes the consent calendar. We'll now take up the report of the City Manager followed by the report on the state budget impact.

>> City Manager Figone: Thank you Mr. Mayor, members of the council. Actually, my report does dovetail with the report that will follow on the state budget. What I want to do is just take a moment to briefly update you on the final employee impacts from the very challenging budget decisions the council had to make in June. And I think it's an important backdrop to the discussion which follows. With the savings that was achieved through the true zero wage freezes agreed to by nearly all of our bargaining units, the council was able to restore a number of the reductions that were contained in the proposed budget. However, the adopted budget did reduce our total position count by about 362 positions, and let me just put that in done text. That's approximately \$36 million worth of reductions, across all funds, across all departments, which is a very significant reduction to our capacity through our workforce. Of this number, 250 employees were impacted by these decisions, either directly or through bumping. As the council knows, we managed through downsizing by using our civil service rules, which govern how the position impacts to employees occur. So of the total positions that were affected, approximately 150 employees were able to move to different positions in the same classifications. 60 were demoted in their classifications and approximately 42 were subject to layoff. 29 of these through the creative application of retraining and taking a look at skill sets, 29 of these positions were redeployed to different positions within the city, and ultimately 13 people left city employment. So while the number ever employees who actually left the City's employment was relatively small, the impacts to all affected employees and to the organization is truly significant. Nearly every employee who finds himself in a new position is going through a learning curve in their new role, and as a result, department productivity and responsiveness during this transition will be diminished. I've asked all department directors to review where our residents and businesses will notice the impacts to their service and to do the best that they can to communicate proactively with our customers. In addition, since many of the impacts are more internal, we are still evaluating where the organization and the council offices will see some changes in service from our strategic support departments and we'll be

communicating that with you over time. Let me just say that the organization has moved through this transition, although we're still moving through it, we've been moving through it in very admirable way. I'd like to in particular like to thank Mark Danaj, Heather Ruiz and Sara Nunez of the HR department who have been the silent champions working with our employees and our bargaining units as we've had to make many, many decisions about the status of our employees. Again Mr. Mayor I think this is an important backdrop for the council to understand as we talk about the problem that we will continue to face moving forward. And also, as we take a look at the workload priorities that will have to be juggled as we move forward. And that concludes my report.

>> Mayor Reed: Thank you. That includes the Manager's report. We'll now go into item 9.1 which is state budget impacts. I asked to have this agenda item so we can begin the difficult process to figure out what to do with what the State has done. A little over a month ago, we finished up our fiscal year by balancing our budget, covering an \$84 million gap. Through a partnership with our community, our employees, our staff, we were able to avoid a lot of cuts, restore some services, and save a lot of jobs as the manager has just pointed out in her report. Now, however, we are not done, because the state has been busy, while we were in recess, the state was working. And I want to note that a lot of city staff, Betsy and Roxann were working a lot during the month of July, redevelopment staff, other city staff worked a lot on this budget issue. I was in Sacramento myself. We organized the big ten mayors, to communicate with the legislature and the governor. And I knew that when we met with the governor, and our argument was that they should take the 1A moneys, because that was the agreement approved by the voters, for these times of crisis and avoid redevelopment funds, and the highway users tax account, and that would be a compromise that the big city mayors would support, the governor's staff informed us that they were planning on taking it all. And it was the efforts of the big city mayors, our staff, and the league of California cities and many other organizations, that managed to kill the take-away of the highway users tax in the assembly. The governor was supportive and it passed the senate, but the assembly voted it down. So we're grateful to that because that would be another 16 to \$20 million on top of what we're going to have to deal with. So today we'll be talking about what happened, not so much about how it happened because that's behind us. But what happened, what it means to us in dollars, and if some discussion about the process of where we go from here. We're not trying to figure out exactly what we're going to do, how we're going to cope with it, but looking at timing issues and some of the alternatives that we have. I'd like to point out I think we have a slide in the presentation from the staff that shows the money the state has taken away from us over the last 18 or so years. And I think it's close to \$500 million in state take aways and it's running at about \$45 million a year. That's before we take into account what just happened in this last budget at the state. The other thing to keep in mind, based on the conversations I've had with members of the legislature and the Governor's Office is, while this was supposedly a budget for the year, if the revenues don't pick up at the state level, we may be back or the legislature may be back in three or four months trying to figure out how to cover the gap that they have in this year, on top of the gap we know they have because they used some budgetary gimmicks to close this gap. So we may be having this conversation more than once this year. And the \$20 million that we're dealing with in the General Fund and the \$75 million in the redevelopment budget may not be all we have to deal with this year. So our staff in Sacramento and others will have to be very cognizant about what's going on, and I'm sure that they will be. But nevertheless, we will balance our budget. Unlike the state legislature, we have no choice. We will do it. And we'll do it in a way that got us through last year, closing a big gap, and we will be working with everybody to try to figure out the best way to do it. So today is the beginning of the process. We don't have the answers and we don't expect staff to have the answers today but really a discussion about how we go about dealing with the hand we've been dealt. So with that I'd like to turn it over to the staff. Deb's going to take it, right?

>> City Manager Figone: Thank you Mr. Mayor, members of the council. I will kick it off. The mayor really positioned this conversation well. Just piggybacking some of his comments, what I want to do is begin with setting the context, the San José context for the state budget actions that we're going to be talking about here in a moment. As the council's well aware, you have established as one of your top priorities, and did you this in 2007, the elimination of the General Fund structural budget deficit as a top priority. With this in mind, you do have a structural deficit elimination plan which we have used as a blueprint to guide the proposals brought forward for your consideration. Last May in your final decisions to balance the 2009-10 budget which was a monumental task of an \$84.2 million shortfall. You worked through that challenge admirably and you balanced the budget with 96% ongoing solutions to mitigate further impacts on the structural deficit which we know was looming out there as you look at next fiscal year. These solutions included employee and management wage freezes which contributed \$9 million to the balancing solutions. Looking ahead, you do know, we reported to you in June that you're already facing a \$7 million sales tax shortfall. And an additional potential General Fund shortfall of about \$90 million for

2010-11. The state's budget actions and projection of state budget deficit for 2010-11 do pose a threat for further impacts to our fragile local economy and the city's fiscal situation. The redevelopment agency side of the 2008-9 San José redevelopment agency budget, that was passed in December. As you know the agency is on a different cycle than the city. Is intended to fund projects to stimulate our local economy and now those are being threatened. The State proposed a take away of \$12.8 million from last year's agency budget which was challenged in court by the California redevelopment association known as the CRA and that was successful but the State has appealed. So this is the backdrop to what I'll now turn over to the staff, the city and the agency staff will share the presentation. And we'll talk more specifically about the State impacts that are now looming.

>> Jennifer Maguire: Jennifer Maguire budget director. I apologize, this version we did have a -- we have a little version control with the presentation because we did have a slide that does show the major state budget actions that the mayor was alluding to. I think they're trying to fix the slide presentation. I think we might have to show it at the end of the presentation. As far as the immediate state budget impacts on the city and the redevelopment agency, in total the take away from both agencies is approximately \$93 million with three major areas of impact. The first impact area affects the city's General Fund property tax receipts in an estimated amount of \$20 million. This is due to the State borrowing 8% of the local jurisdiction property taxes for a period of up to three years for the conditions outlined in proposition 1A that was passed by the voters in 2004. The conditions that made that borrowing legal under proposition 1A included the governor declaring a proclamation of severe fiscal hardship, the legislature approving the borrowing with a two-thirds vote in each house, and the legislature enacting a law for providing full repayment of the borrowed funds plus interest within three years. Although not consoling in any way, shape or form, it's important for the council to note that the legislature may not enact such a borrowing more than twice in a ten-year period and may only do so if any previous borrowing has been repaid under this provision. What is not new to the city is our second area of impact which is the deferral of our gas tax or HUDA and our prop 42 state payments resulted in lost earnings of approximately \$130,000 between the General Fund and the construction excise tax fund. For context the city is budgeted to receive about \$16.4 million in gas tax payments in the General Fund and 7.5 million in proposition 42 payments in the construction and excise tax funds. What this funding is used for is our street maintenance, traffic control devices, traffic signs, roadway markings, street lights, as well as landscape, bikeways, and pedestrian way expenses. The gas tax payment deferrals provide that our July through December monthly payments will not be received until January 1st, 2010 which is why we're resulting in lost interest of about \$70,000 in the General Fund. The proposition 42 payment deferrals provide that our October and January payments in that fund will not be received by the city until May 31st, 2010. As you're well aware and as just discussed the State did threaten to take almost all of our City's gas tax payments in 2009-2010 which would have amounted to about \$15.7 million and after that take 11.6 million in 10-11. While it is off the table for now we are still concerned that that could arise again as the State continues to grapple with their fiscal situation. The last and very significant impact is the impact to the San José redevelopment agency at a take of approximately \$75 million over two years. The executive director will discuss this reduction in more detail in a few moments. But in addition to the significant impact to the agency projects and programs, this is of concern as the City's adopted budget and the General Fund depends on about 20.1 million in funding from the agency to provide for key neighborhood and economic development services as well as for city capital expenditures that fund the San José B.E.S.T. program also for eight police officer positions. Also the city is the backdrop for the RDA funded convention center debt payments that are 14.7 million annually that are paid for by the San José redevelopment agency and the 4th and San Fernando parking garage which is about \$3.4 million which is paid by the redevelopment agency. The next slide is going to provide a little bit more detail of what we know and what we don't know about the property tax borrowing and the potential options to deal with those impacts. First the timing and the actual amount to be borrowed is still in the to be determined category. Preliminary discussions with the county indicates that our current property tax apportionment schedule will be used, for the state borrowing which would mean that the take away could start with our November -- excuse me our normal December 10th distribution date but that still needs to be confirmed. Although our best information indicates that the city impacts will be approximately \$20 million, that impact could grow, as the state budget did provide for a hardship exemption for local jurisdictions which must be applied for by October 15th. If a hardship is granted the amount provided from other jurisdictions within that county would increase. So in other words, if a hardship is granted within Santa Clara County then our property tax take away would grow. As I mentioned earlier the proposition 1A does provide the state repay local jurisdictions within three years of borrowing. Under the state action they would be required to make a loan repayment to us by June 30th, 2013 with interest. There was assembly bill language that puts local jurisdictions higher on the priority list for pay back because there was a lot of concern about the actual pay back. We would be behind only schools and general

obligation bonds on the pay back. So what are our options for dealing with the \$20 million revenue loss? We have been focusing on two potential financing options that we believe to be viable alternatives in lieu of further expenditure cuts and service level impacts this year. These two options have been primary focus given the one-time nature of the borrowings, but these options will need much further analysis before the administration could make a recommendation to the city council. The first is a financing mechanism as authorized under state law. The prop 1A repayment legislation authorizes the cities and local agencies to sell the debt that the state would owe the city with the state paying all the interest and issuance cost to the debt to a joint powers authority sponsored by the league of California cities or CSAC, otherwise known as California state communities development authority or California Communities, and in return we would receive a portion of the bond proceeds from the JPA long before the state would be required to pay us back. While details related to this financing are still unfolding, we believe that the JPA issuance of that debt could likely be in October or November time frame. So our property tax distribution would not be impacted, but it would depend upon cleanup language by the legislature. We do understand that the JPA is planning on meeting this week to begin discussing these financing details, and may be discussing a deadline for local governments to participate in such a financing mechanism. The other option that we're looking at is borrowing from other city funds to mitigate the temporary property tax loss. Although we have more than 100 different city funds and have developed a short list of funds that we believe could be viable candidates for such a loan, significant consideration exists has made this borrowing option challenging. Some of those considerations include any fund balances in those funds and cash levels, the source of funds that go into those funds, for example, if they're ratepayers or federal restrictions, impacts on project schedules and our five year capital improvement program and also stakeholder outreach. Interfund borrowing therefore is not really an easy option for the city due to these considerations and limitations that are placed on these funds, and are flexibly to fund projects over the next three years. Again further analysis would be needed on both options before we could bring back a recommendation to the city council. We would hope to do so in conjunction with the 2008-2009 annual report that would be heard by the council in October. I'll turn it over to the executive director on the redevelopment agency impacts.

>> Harry Mavrogenes: Good afternoon. This is one of the biggest hits this agency's ever had. We've had financial crises in the past. We've gotten through them. I think for the context I want to point out that long term, this agency has a very good future. And we've invested properly in new technology and new industries. And again, long term, we'll be fine. It's the next two years that are going to be a problem getting through. And we will do our best to try to bring us through that time. The impact from the State is basically over two years. The first impact will be due in May of next year, of \$62 million, in our case. The second installment of \$13 million would be due a year later. Now, the California redevelopment association feels that we have a very good case, and we will be filing a lawsuit, again, against the State. And -- but that takes time. And that -- we will not know the results of that for probably a year and a half to two years with appeals and everything being considered. So whatever we do, we're going to have to prepare a budget assuming the worst, and then hopefully, if we prevail, then we can work backwards. But we will be working on readjusting our budgets, and we have another impact of course with the financial situation. As we know, our tax increment is not up as high as we thought. We are up 2.4% over last year but we had anticipated a higher increase. That's going to affect our ability to move projects along, as well. Because of the amounts of bonds that we can issue. It would not be as high as we had predicted before. And of course the financial markets because of what the state has done are in disarray. And it's going to affect any city's ability to borrow. We need to be cautious and we need to explore all financing options available to us as well as cutting back on the programs.

>> City Manager Figone: So Harry and I will each talk about next steps from our different perspectives. On the city's side I view this as we have a window of time between now and when we return to the council in October to do a few things. First of all, to continue to analyze, and evaluate, all the immediate impacts which continue to unfold. This includes monitoring the legislative actions. The devil's in the details as you know more information will come forward which will help to drive our final recommendations to the council. We're also going to be identifying contingency plans for further impacts and we've already gun to prepare for the 2010-11 budget development. Our theme and mantra is early engagement and in fact senior staff teams have already formed around reviewing the structural deficit plan comparing that blueprint to the actions that were taken and evaluating what budget-balancing scenarios might be feasible to bring to the council for an early discussion. And right now, our target, I have yet to solidify this with the mayor but would be ideally in early November to begin engaging the council in some preliminary planning, including what I heard loud and clear, as we were working through June, which is your desire to really focus on what our core services, what do we mean by core? So we're in process of trying to

structure a way to have that conversation with you. And as Jennifer mentioned, we will return to you in conjunction with the annual report in October and remember one of the significant parts of the January report, is that's where we present to you the final numbers, based on the year-end close, and we know what the status of our fund balances are, and how much we might be able to set aside in our reserves. Harry.

>> Harry Mavrogenes: Thank you. In our case, obviously the CRA lawsuit is something we want to support and work forward. We will explore some different financing techniques. There are some laid out that we will explore with the city. We will put a hold on major expenditures over the next three months as we evaluate these impacts. So some of our projects that we were going to move ahead with we will probably delay for at least the short term. We will maintain our hiring freeze that we've had over the last year. And we will also be analyzing all of our assets. This is not a good time to dispose of assets obviously, but there are some things strategically that we might want to look at and of course we will bring our budget process forward a little later. As we know more information, probably around the same time as the city will bring its budget adjustment in November, late October-November we'll probably bring our budget forward. But we'll work together with the city to minimize further impacts on our local entity and see what other resources might be available.

>> Jennifer Maguire: And we do have that slide available.

>> Mayor Reed: Okay, let's see the damages slide.

>> Jennifer Maguire: Yeah. So this slide summarizes that almost \$500 million cumulative cost or revenue loss to the city in areas you see in many different categories. Of course the largest being ERAF property tax shifts from the past and the annual cost if these shifts did not take place what would be in our city coffers today.

>> John Weis: I'll add, since 2003, including this year's take is \$124 million.

>> City Manager Figone: So, Mayor, that concludes our presentation and we're open to council questions.

>> Mayor Reed: All right. Councilmembers have questions on this. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. For the budget director, council could choose to borrow, for example, the HNVF funding, contradict?

>> Jennifer Maguire: Yes, there is fund balance in the HNVF fund. But that -- that fund balance in there currently is used for cash flow purposes within that fund.

>> Councilmember Oliverio: But in the next allocation it is merely a council policy versus restricted funding?

>> Jennifer Maguire: Yes, that's correct.

>> Councilmember Oliverio: And then a question for the RDA director. You laid out some of the things that your staff will be doing to figure out what to do. Will your staff be considering the borrowing that the State allows from housing, were you allowed to borrow money from the 20% funds, as long as they're paid back by 2015?

>> Harry Mavrogenes: That is an option that has been made available to us, and we will very strongly look at that. We have the ability to borrow from the housing fund. It's a payback of five years that's required so the money would return to the housing fund in a very short period of time. But obviously, we need to look at the impacts to the housing department as well. But that is definitely a source. I don't want to dismiss because the way the bond markets are right now and the uncertainty of the State financing alternative may lead us to that as one of the better options.

>> Councilmember Oliverio: Thank you. And as the City Manager mentioned, I think has been mentioned on this dais multiple times by multiple councilmembers in multiple meetings is the desire of the core service. It is the General Fund and what that core services provides and when it comes to RDA when we have the option of economic development or building yet more affordable housing with no parks. I think those are the questions we

have to ask ourselves at one time or another. I look forward to staff feedback on the pros and cons of that, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. First of all, I wanted to know if we could get a copy of the presentation. That would be grade, thank you. Secondly, we have not even begun to see the impact of the cuts from the state regarding the hundred parks that will be closed, and that kind of thing. I don't know, maybe I read it wrong, so Roxann maybe if you could set me straight. But I thought I read in the paper that the mayor, governor, sorry, mayor -- was left to cut \$1.5 billion, in damages once the legislature convened. Is that accurate?

>> Mayor Reed: It was definitely not the mayor. [Laughter]

>> Roxann Miller: Thank you. Yes, the governor was left with the option, when the budget package was delivered to him, to make a decision as to whether or not to provide for a, quote unquote, prudent reserve. The package was intended by the big 5 to include a minimum of about \$921 million on an \$84 billion General Fund state budget. When it got to him, the cuts had not been accepted by the caucuses in the deliberative process before the package got to him. So he and the staff, Department of Finance made the choice to cut over \$1 billion to turn around and allow for a \$500 million reserve for 9-10.

>> Councilmember Pyle: And I understand that some of those cuts were really questionable, in that, SEIU, for example, had agreed to one day a month furlough, with their choice of what day it would be. And that has now changed, courtesy of the governor, to three days, without choice, on the part of the individual. So I would imagine some of those cuts are going to be contended. Would you believe that to be the case? I mean, this is a meet-and-confer and he's heart in a position to meet and conofficer. So I would imagine that there's going to be some changes, some further changes, that will catch up with us after the fact.

>> Roxann Miller: Yes. The membership has just voted in the last couple of days, instructed their leadership on a range of different actions that could take place. If I may, with regard to your question, other impacts potentially state facilities in terms of parks. Interesting, and the dollars that have been in play, when you look at the jeopardy to the state park system, to keep those parks open would only amount to \$14 million. That shows you the huge disparity as far as value, et cetera. I can tell you that in talking with the Governor's Office, as well as the director of the state parks department, they are looking at some they will wait until after Labor Day to make those decisions. Obviously, the least used facilities will be the first to be considered for close. But they are very honest in working with the California parks foundation, as well as individual communities like ours, to see if there is a way to work collaboratively to keep facilities open.

>> Councilmember Pyle: I'm glad to hear that. Because obviously there would be some unintended consequences if we close 100 parks. That's a great place for drug dealers and drug makers and people with all kinds of nefarious activities to hide out. And I can't imagine the cost of trying to bring that back into some semblance of order. That really disturbs me greatly. I think that would certainly undermine all of the efforts on the part of our police departments throughout the state, as well. All kinds of places to hide people. So my question is this: The state is now at a junk bond status. And if I heard correctly, what heard was that the state was going to try to borrow money so they can pay us back in '13 so that what, they can borrow again? I mean, this is a round-robin as I see it and I don't see too much of an end to all of this. Fortunately we will probably have a change in leadership in 2010 or '11, the beginning of '11 so I just wondered how you -- if anybody wanted to comment on that. Did I hear you correctly, Jennifer?

>> Jennifer Maguire: Yes, well, the property tax borrowing per the position 1A protections, they can only borrow from us twice in ten years. So the fear is they go first, something else creative to take from the city. So -- and there seems to be no shortage of that. The latest has been going after the gas tax payments which I think now is, from today and going forward, we need to consider that at significant risk.

>> Councilmember Pyle: Yes. I think it's important for all of us to get the message out to the taxpayers that these were not our idea. And there's plenty of questions, too, coming in from constituents. I appreciate all you're doing to help us with that.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I know a lot has been made over the fact that the State was able to balance, quote, balance a budget with no new taxes. But I think it's important that the public really understands that there was a significant tax on local governments. And we're paying the price shortly after having our, bad-enough budget balanced, and now to be dealing with this. And I agree that this is just the first of many cycles of things. Even if we win the RDA fight in court, they'll just find something else to take. It's kind of a vicious cycle. But I kind of wanted to just reinforce some of the things that Pierluigi said. As we go forward and we're making these decisions, we have to really get to the core of what we're supposed to be doing. And you know, we have our residents who are being denied services on multiple levels of government and we're struggling to provide even core services or essential services. I hate that word core because the city thinks everything we do is core. Essential services and yet we do provide other things that are not essential or core. Things that are -- that we really need to, or should be doing. And I just want to reemphasize that as we go forward, we have to give special attention to those things that are essential. I know there were a lot of people unhappy in my district when I announced yesterday that we were cancelling our once a year annual festival. And you may remember, in the budget process, I asked the City Manager if they could look at how much it costs in time, outside of the council office, to put on one of these events. And it takes about \$10,000 worth of noncouncil staff, staff throughout different departments city, \$10,000 of their time to help us put on these events. And it's really hard to go out there and celebrate community when there's not a lot about our budget or what we're providing to our residents that really deserves celebration right now. So I cancelled it not only because of the cost savings, but those employees have essentially services that they need to get out and they're stopping those essential services to put on an event in my district. I think we have to make that evaluation on every single thing that we're doing. And I think that they not only have to be essential services but they have to be genuinely local government services. Those things that we must do as a local government. And I completely agree with Pierluigi on the RDA money, we have to make sure as we're spending our redevelopment agency money that it's spent in areas that promote economic development that have a tangible return. We can't just simply start paying for other General Fund services as a way to get by. That money, if we don't spend that money wisely and appropriately and in areas that are going to bring businesses, and visitors, to San José, we really shouldn't spend it. Because that really is the core essential service of the redevelopment agency. And then one other thing I want to touch on, because I'm trying to keep it brief, is the matter of furloughs, I know that furloughs have been bantered about as ways to help us deal with our budget deficits. And in some areas, like with the building staff where we did furloughs because the volume of work is going down, those may make sense because they're paid based on the services that they provide. They're a cost-for-service, reimbursement type of service and those building inspectors are make sense to do a furlough to keep everybody employed. but widespread, we have to remember that our number one job as a government agency is to provide service. And if we're already not being able to provide services because we don't have the money to do so and then in order to save a little money, we furlough employees, we reduce the amount of services they can provide to the citizens. And the citizens in effect get a double taxation. They're paying for the services, not getting the essential services and getting a little less services because we're furloughing the employees. I just urge the council to keep that in mind as we go forward, stick to the essential services and tangible return and let's not really hope and put our prayers on furloughs as a way to continually balance our budget. Because ultimately the tax paying residents of our city lose out on what we're supposed to be giving them and that is service.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Pierluigi just reminded me of a conversation we had a few months ago when we were talking about projections of RDA tax increment growth. I recall questioning what our consultant was saying several months ago, projections 5 or 6%, and I'm hoping we remember when we engage those consultants and economists in the future that we're I guess as critical as we need to be. It just seemed I think to many of us at the time that seemed really optimistic, and I know obviously things, it's terrible news that we're hearing today. But I think we need to hear the bad news as early as possible. I know you agree with that, John, and I know I don't need to tell you any of this. I'm just concerned about our reliance on some of our economic consultants going forward. The question I had for Jennifer is relating to how we're going borrow the \$20 million. I understand you presented two potential options between interfund loan and JPA. The J PA I'm just trying

to understand what those bonds would be secured by would they be by the General Fund of all the participating cities?

>> Jennifer Maguire: We don't have those type of details at this time. All the financing details are supposed to begin to discuss this week, and we just -- this was late-breaking news that they were formed, and we're just going to start to meet. So I don't have that information, unfortunately.

>> Councilmember Liccardo: Okay, I appreciate everything is moving very quickly so it's hard to nail down all the details. I'm a little suspicious about how well the financial markets are going to receive bonds from a consortium of cities that are all desperately running to the financial markets to bail them out, problems dealt with by the state and by the economy. And I'm guessing that those rates are going to be awfully high and the cost of borrowing is going to be very high through those means. I'm hoping for a means through interfund loans rather than going out to the markets for other cities. What I keep hearing is that our bond rating is much better than all the other big cities in the region and I know how challenging things are internally. I can't imagine how bad they are in other cities. A question, I guess, for Ed, in terms of enforcing the judgments that we might be able to, say everything goes well with our RDA lawsuit and we win, I know Pete suggested it would be something of an empiric victory, grab the money from somewhere else. How -- do we have any challenges in 23rd enforcing the judgments against the state, if the money is already spent? Are we --

>> Well, the State is going to be like any other judgment that we -- that we or anybody else gets. You have to look for assets. You have to go to the court, to the extent that the person is a debtor fails to pay you. So to the extent that we get a judgment against the state for any moneys that are owed to the state -- to the cities, cities would have to look at all the various remedies that any other -- any other person would go to when they have a judgment against a party.

>> Councilmember Liccardo: Okay. Well, we'll let that work its way out and hope for the best. And then my last question, I guess, was for Jennifer, regarding the increase potentially in the \$20 million. I think there was -- forgive me, I think the suggestion was that some states, or rather, some cities are exempted because of hardship then the rest of us are going to be bearing a larger load. Is that the analysis?

>> Jennifer Maguire: That's correct. Although we understand the legislation says that if hardship is granted they specifically reference a county. So if the amount borrowed from other jurisdictions within that county would increase, so I assume it's -- a city within the county. So if one of our neighboring cities declared a hardship, a hardship was granted, the deadline was December 15th, that cause our property tax take to go up.

>> Councilmember Liccardo: Okay, thank you, Jennifer. I'm just hopeful if this continues, we'll find ways to legally Ceseed from the state. That may be our only legal alternative. .

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I agree with the comments made by some of my colleagues, in regards to the \$20 million alone forced loan to the state I agree with Councilmember Liccardo that if it's more feasible for the interfund loan, it might be less risky. But on that case, required repayment hopefully that can avoid any further cuts that we're going to have to make anyway, based on the next fiscal year end, what we can see coming down even more from the state postlabor Day as they continue to roll out their initiatives. In regards to the -- kind of the state taking from a local jurisdiction and Councilmember Constant was talking about how the no new taxes and how -- what happens when you get stuck on an ideology, the reality is, they are coming, off after the local government in a way that really is hurtful. With the RDA, RDA of course, the value of economic development and RDA is critical. And I know that with some of that function, there certainly is an important role with RDA in attracting businesses around marketing San José as well. And to whatever extent possible, that those same functions can be done or in cooperation or collaboration with OED, it looks like we're all going to have to tighten up I 30 we should take advantage of that as much as possible. Particularly when it comes to the attracting business here and marketing. I think there's definitely a great opportunity to continue to do that. I know that we already do but given the fact that RDA is really, really going to get hit hard, there might be more opportunities or more urgent opportunities to do that. And I do feel that I mean, obviously RDA is critical with economic development but in terms of prioritizing what RDA does, I think that when we see increases in blight or crime or

breakdown, breakdown of the basic infrastructure in our neighborhoods, that certainly deters businesses from coming to our city as well. So it's not just a matter of pure economic benefit, it is also the quality of our neighborhoods and to whatever extent RDA does help with that, that is critical as well. So it's going to be a hit to our neighborhoods, significantly with the RDA, with RDA being hilt also. And finally, I agree with the comments that you know, we should certainly start taking a look at our services. And would I just add to that, and I note that the mayor is going to be meeting with the city labor alliance, that we start those discussions early and often, as well, with our bargaining units so that not only can we keep them informed of the dire situation we're in but that we can partner early on finding creative solutions to try to make it through again a really really rough if not worse year, this year. Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I pretty much agree with a lot of the things that have been said but what I wanted to add is the importance of being conclusive and reaching out to our residents and our key stakeholders when we have this budgetary discussions. I think that we've done a good job in the past in terms of being conclusive. But now more so than ever I think it's more important because we're being impacted in so many different ways and in particular, I've been hearing a lot about the closures of the fire stations, particularly fire station 33. I think it's not feasible to talk about those kind of things at this time. We don't know what's on the table. I think everything needs to be evaluated and put on the table. I don't think it's effective for us to send a sort of a scary message to residents when we don't know what we're being evaluated. So I think that it's important to have this discussion on a broader scale, talk to as many residents, possible talk about in community meetings, get as many suggestions and input from a resident before we start throwing things out there and make people afraid of what's to come when we don't really know what the outcome is going to be. My suggestion is trying to be inclusive and reaching out to our stakeholders and our residents' groups. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I think that's a good point. By the same token I think we need to inform our residents and teach them how to contact their representatives in Sacramento because I think this will make a lot of difference. There's a lot of frustration out there in the business community, education community, you name the community and there's frustration. I just recently, last Friday, went to a session with a constitutional convention group that's being formed and I heard massive frustration. How effective the group is going to be I have no idea. It's being continued and there's tremendous amount of energy being put into. It's interesting this year, nobody was walking the floor. Nobody was trying to as Fred keyley did in the past. Trying to figure out the other person that was good at that, John -- just isn't coming to me. Hmm? No, not -- did you see anyone there that was trying to make some inroads in reference to getting people to cooperate with one another? Did you happen to see that Roxann?

>> Roxann Miller: During the session?

>> Councilmember Pyle: Uh-huh.

>> Roxann Miller: There was -- there were tremendous amounts of caucus meetings in which those kinds of discussions did, indeed, take place. You're correct, though, not as much on the floor. By the time things got to the floor, it was pretty much up and out.

>> Councilmember Pyle: Yeah.

>> Roxann Miller: It was not at all the usual process.

>> Councilmember Pyle: One of the three things that was important to the constitutional questions is number 1, we change the rule so we get past always have supermajority vote. However, there are 30 states that still require a supermajority for matters that involve any kind of taxation. It would be pretty tough to change that. 16% of the states, you still have that and want that. I think it would be -- we have to be very selective in whatever the constitutional group decides to bring before the voters. With money they will be raising they will be able to do that. I just hope that they're cautious to realize you have to have a very clear message and you have to have a

very limited ballot so people don't become overwhelmed as we have been in the past. But it's very interesting to see, people are ready to say I've had it, I'm not taking it anymore and God help the incumbents that are running for office this year. In Sacramento. They're going to have a tremendously tough time. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I just wanted to piggyback off of what Councilmember Nguyen and Kalra mentioned about community participation and stakeholders. We know we're actually going through another budget process so I'm asking the City Manager's office, have you thought about how you are going to communicate this message to the residents of the City of San José, so we don't create a panic, as Councilmember Nguyen basically stated? How are we going to bring the residents along in this process, and have we thought about that?

>> City Manager Figone: Yes, very, very much so. We are in the process of working through what those processes would look like. As I they about them councilmember there is certainly the education and information, which is an important part of the engagement. And then there's this stopping point with the council, where we, you know, check in with all of you about what you're willing to entertain or how we are empowered to explore new ideas and bring them to you. So that's really an important juncture for me and that's what I'm thinking about, when we talk about the early engagement of council in early November to you know, get your sense for how much engagement you would like, from the standpoint of getting input that then shapes proposals that you react to. So education and information. And then, as well as input from others, that then influence what we bring before you.

>> Councilmember Campos: And when do you anticipate that you may be able to have at least some outline on the direction that your office will be working with councilmembers and their office?

>> City Manager Figone: I would expect that we would be able to talk to you no later than the October discussion, if not sooner. as I mentioned over the next six weeks senior staff is really taking its first cut as what that process could look like and what the options are. It is out of that that I will have a better sense for how soon we can have the council discussion. But certainly wouldn't be any later than October.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Any other questions or comments from the council on this item? Okay, we're done with this, thank you very much. We'll move on to the next item, before I move on, I just wanted to note there was no closed session report, nothing to report out of closed session, which is why we didn't mention it. Item 3.5 is a report of the Public Safety finance and strategic support committee for June 18th. Councilmember Nguyen chairs that committee.

>> Councilmember Nguyen: Thank you. The minutes have been circulated, if there are no questions I move for approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Item 3.6, is an agreement with the association of engineers and architects, international association of professional and technical engineers.

>> City Manager Figone: We're here to answer questions. I would just like to take a moment to thank John Mukar and Nancy Ostrowsky on their willingness to agree to a true wage freeze. Thank you.

>> Mayor Reed: Thank you. I just want to add, as you noted in your earlier discussion on the lead up to the budget, \$9 million that our employees contributed to solving the budget gap this year across all of the units and we really appreciate that. This was one of those. Anything else on 3.6? I have no request to speak. Motion is to approve. All in favor. Opposed? None opposed? That's approved. Item 3.7 is a hearing on sewer service and use charges and storm sewer service. We have a motion to approve. I have one request from the public to

speaking. Alice Walker or Waters. Let me get my glasses. Warren. I'm sorry, Alice Warren. Abby Warren. I think I'm going to get it here eventually.

>> If I could write better that would be --

>> Mayor Reed: It is not your writing, it is me.

>> Mr. Mayor, councilmembers, first of all, I question why a public hearing is being held sometime in the afternoon. Inability to estimate when they need to be present to hear. This is particularly important to mobile home park residents like myself in this matter. If there is any possibility of this hearing resulting in increased fees for us to pay. The increased sewer and storm charges which became effective July 1 already represent a hardship to many of the people in our mobile home park who are already living on the edge. In previous years, these charges, along with trash and recycling and water, were part of our space rent. But in the last year or so, the owners have broken these charges out so we pay them in addition to the space rent, which was pursuant to the law to represent for the separation of the charges I understand there are subsidies for help for people who are sufficiently impoverished but the subsistence drops out in an income level which is much lower than appropriate for the unusual expenses of living in this part of California. I would urge adoption of the elder economic security standard index guidelines. They are much more realistic to this area. Thank you for your attention.

>> Mayor Reed: Anyone else wishing to speak on the storm sewer service use charges matter, 3.7? No, that concludes the public testimony on this public hearing. We have a motion to approve. All in favor, opposed? None opposed? That's approved. 3.8, is a report on the audit of employee medical benefits. City Auditor is here.

>> Sharon Erickson: Thank you. In 2008, the City of San José provided medical insurance coverage to about 14,000 active city employees and their dependents, and about 3500 retirees and their dependents. The objective of our audit was to identify ways to improve the administration of employee medical benefits program, and to optimize employee medical benefits. This graph shows it in one slide, medical insurance expenses continue to increase at rates that exceed most public employers' ability to pay on medical growth. San José's lowest cost family plan have increased on average 12% per year. It was as high as 20% in 2003. What cost us \$375 a month in 1999 now costs us more than \$1100 per month. Despite the alarming nature of these rising costs, our review did show that the City's rates are actually reasonable, when compared to the rates of other public sector employees -- employers. As we all know, this is a nationwide problem. This graph shows you the impact of how big this problem really is, for San José. Costs have increased from about \$76 million in 2005, the bottom left-hand corner, to an estimated \$107 million in 2009. For 2009, estimated costs include about \$69 million for active employees and their dependents and about \$38 million for retirees and their dependents. Our review of the administration of the program identified several potential improvements. These include the need for more frequent eligibility reporting, the need to resolve past billing discrepancies with providers, the importance of processing timely and collecting outstanding premiums from employees who are on leave. We are also recommending the department human resources department develop policies and procedures and implement such things as potentially more frequent stunt verification from once a year to twice a year and obtaining a broker contract. The administration agrees with these recommendations and has begun the implementation of some of them. The report also addresses several cost containment strategies our goal here was to preserve essential medical benefits. The first of these is eliminating redundant coverage. From employees who simultaneously receive benefits as an employee and a dependent of another city employee. Both CalPERS and Santa Clara County explicitly prohibit this duplicate or redundant coverage. We estimate that we have about 50 employees who potentially may receive health benefits plus duplicate health benefits and about 110 employees who have health benefits plus in lieu coverage. The estimate of these kinds of savings would be about \$1 million. Secondly when looked at reducing health in lieu payment amounts. The plan shares the cost savings of active employees who suspend their city-provided medical coverage because they have some other form of medical coverage. For example, if the city pays about \$10,000 toward an employee's medical premium annually, those who participate would receive cash payments totaling about \$5,000 a year, and the city would save \$5,000 a year. Obviously, this is good deal for both parties and this type benefit is common. But it's frequently, during our review, we found it's frequently less generous. Reducing the health in lieu payments for the approximately 900 employees in the program from this 50% level to a 40% level or even a 30% level which would still be \$3300 a year, the estimated annual savings to the city would be one to \$2 million. Third, retirees have been interested in pursuing a retiree health in lieu program for some time but there have been a number of barriers. We're recommending that we clarify retirees' ability to

suspend and potentially reenroll in their benefits, which has been a barrier for them, and implementing a retiree in-lieu program which would pay medical cost which would also address another potential barrier. For example if 50 retirees participate fled this kind of program it could save the system approximately \$250,000, 200 retirees participating out of the 3,000 plus, would generate a savings of approximately \$1 million. We also recommended the city pursue at least one or a combination of the second three items on that list. The second three cost containment strategies. And to work with the office of employee relations, and bargaining units, on the potential meet and confer issues these changes would represent. First is increasing cost sharing. San José generally pays 90% of the lowest cost health insurance plan. Although San José's 90-10 premium split as we show in the report is not dissimilar from other California agencies, this may be an area for potential cost containment. According to a 2007 survey, the national local government average was about 73%. Increasing our cost sharing from a 90-10 split to an 80-20 split would generate an estimated annual savings of \$4 million. The fifth item on this list is, potentially introducing a deductible plan that would also offer insurance cost savings of \$1500 deductible, similar to that offered by the City of Sacramento, would save approximately \$10 million in premium cost. And sixth and timely, increasing employee co-pays from \$10 to \$25 which getting to \$10 has not been easy. Potentially raising it to \$25 could save about \$2.8 million annually. Our report includes a total of 17 recommendations for the city administration, including human resources department, office of employee relations, and retirement. There are no easy choices, no easy answers to these problems. They are all difficult. But we're faced with a program that cost us \$76 million a few years ago, is estimated to cost us \$107 million this year, and without action to contain cost could go even higher. I'm happy to answerfully questions. That concludes my report. The director of human resources is also here to answer any questions.

>> Mayor Reed: Thank you. I think we have a few questions. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. This is a fantastic report and I think you're a very smart man, Mark because not only did you say yes to a woman but you said to this woman who has an auditor behind her name. So very good. One question that I had is this: The costs have grown, there's no question about it. What I would like to know is, what about the enrollment? In other words, we look at the chart, it's gone up. But has the number of people that we've ensured also gone up? Certainly over ten years that probably the case.

>> Mark Danaj, director of human resources. Councilmember Pyle, off the top of my head, surgeonly over the ten year period the enrollment has increased. But I would say over the last five or six years of my tenure in this organization, that the overall enrollment has not changed. It's been roughly about 10,000 lives that includes active employees, dependents, retirees and dependents of retirees.

>> Councilmember Pyle: So whatever new hires have been, they have either been not covered and/or part time or some combination thereof?

>> I would say whatever movement we've had in our employee population, whether it's people retiring being eligible for health care or not or hiring new employees we've been relatively stability in the last five years in terms of employment.

>> Sharon Erickson: If we could, talk about the reasons for that increase. Rising prescription cost oops any number of things that face any employer in this country. We are faced with these same issues.

>> Absolutely.

>> Councilmember Pyle: I have a question first on page 14, I'd like to take a look at that first. If I could get to that page. On that page, it's mentioned that the providers or the benefits division fell behind in resolving discrepancies. Is there a reason they fell behind? The workload increased or what would be the reason for that?

>> It is a combination. In fact councilmember including workload over the last five or six years, reductions in staff also some of the aging infrastructure, the I.T. systems that we have in place, as well. I also would add that sort of the ongoing reconciliation of a large employer like ours, and the status in which we actually try to collect premiums in the month that we're actually providing the benefits lends itself to that. However there are clearly some things we can do to better identify those discrepancies earlier. So to a degree the discrepancies oar part of

the larger system but there are places where the auditor pointed out how we could do it in a more timely fashion to avoid those or mitigate them even further.

>> Councilmember Pyle: So it's primarily people, you're satisfied with peoplesoft.

>> The staffing level that we maintain.

>> Councilmember Pyle: It's both?

>> Yes.

>> Councilmember Pyle: You're going to be investing in more updated software?

>> We're working with I.T. and prioritizing some expenditures to find the appropriate cost balance in order to again catch these earlier and/or mitigate them in the future.

>> Councilmember Pyle: Sure. And on page 16, there is mention at the very end of the page, there are no formalized procedures for reporting termination. Someone, perhaps yourself I'm not sure who, will know what those procedures should be and then those will be manualized, how will that be resolved?

>> We are going to coordinate with departments, and do additional training on procedures for people separating from the organization separations are done at the department level, they are reported into human relations. The timeliness of those separations determine how we take people on and off benefits. It determines a larger discussion and responsibility for the whole organization and all the variation departments that make up our organization.

>> Councilmember Pyle: In article number 8 on page 19, the benefits division does not currently have formal policies and procedures. And how do you solve that? Is that another situation where there has to be manuals or there has to be something on a computer somewhere? Manuals don't necessarily work because they get dusty and nobody really looks at them after a while. I just wondered what is the preferred method of handling this?

>> Again, I think it is a combination of the staffing and the I.T. systems to specifically on the issue of desk manuals, we do think it's important to bring our desk manuals up to date. They don't necessarily have to be that physical thing sitting on the desk, this clearly understands the steps and the timing of each of the steps.

>> Councilmember Pyle: Greatly, so they have easy access and delete things that become deletable?

>> Yeah.

>> Councilmember Pyle: And add things that come along the way.

>> And I also would add I think there's a natural tendency when you're working hard and it's busy and you have a lot of work, you go about doing that work and you don't spend sometime documenting your work and those procedures for people who come behind you or better ways to do your own work.

>> Councilmember Pyle: Do you need to hire experts to make that happen or is that something that can be done in-house?

>> We think in large part the work that is in this audit and the auditor's office and the HR department can identify those items.

>> Councilmember Pyle: Great. Item number 10 on page 22, there's a mention of the broker who takes care of the compensation from the health plan. How much money does he or she generally receive? How expensive is it?

>> Councilmember, I don't off the top of my head.

>> Councilmember Pyle: Okay.

>> But it is a competitive bid that's a result of a competitive process.

>> Councilmember Pyle: Okay.

>> If I could get back to you.

>> Councilmember Pyle: So the broker that goes between the medical institutions and/or insurance companies. And deal with employees, directly or not directly?

>> The broker is hired by the City of San José to help procure insurance. So it is somewhat akin of us using an insurance agent when you buy your homeowners insurance or your life insurance. It is a common practice to have a broker/consultant to be your advocate, help you find the best price, make your best case if you will for your organization in the marketplace.

>> Councilmember Pyle: Definitely. You couldn't keep track of that if you did it all the time.

>> Yes.

>> Councilmember Pyle: And then on item number, it's not an item number but it's on page 23. The retiree in lieu. This really enchants me. Is this a common practice in some of the other cities? Or-d.

>> Sharon Erickson: You know, I think everybody is going to have -- I don't believe we found other cities with retiree in lieu programs. They've run into the same issue that we have but we can't make a cash -- an additional, the same kind of payment to a retiree out of retirement funds that we can to active employees. It's clearly a deal that benefits both employees. We were actually approached by two different employees, asking us to take care of this issue and we folded it into this review. It has been a subject of discussion for a while. The two critical points I trade to raise was, they wanted the ability to waive their insurance. If something happened they could get back into the City's system. Okay we can work on that. And then the second part of this we can't just make a cash payment but we can pay medical expenses. If a person is retired military as well as retired San José, they're using their federal insurance, they've got co-pays, the City of San José can pick up those co-pays, we can't make a cash payment but we can pay for their co-pays. It is my understanding as long as it's medical. There are legal issues to work with this, if we can make it work, it can be a boon to both parties.

>> Councilmember Pyle: It's truly not ready for prime time yet?

>> Sharon Erickson: No.

>> Councilmember Pyle: On page 29, you refer to a situation -- -- I thought this was really an interesting way to solve the problem, somebody who is insured by the United States government, was he or she in the armed services?

>> Sharon Erickson: Yes.

>> Councilmember Pyle: They get \$100 from you but you save \$1,000.

>> Sharon Erickson: Exactly.

>> Councilmember Pyle: That seemed to be a really good program. The rising -- we already talked about that. I think that's it. I really appreciate all the hard work that you did and I learned so much from this audit. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Just a quick question for Mark. When we're looking at the potential of reducing payments for the health in lieu program, obviously it's a double edged sword. We'd like to see employees making this option if they're able to because it saves us money. Have we figured out where there's a point at which we actually get lower enrollment of the program, based on other cities? At what point does reducing in lieu payments end up in we reducing the payment?

>> Councilmember Liccardo, I think that's a good question. That's something we will engage in around these various recommendations. Clearly you want to retain incentive to actually remove people from your experience to this extent they can demonstrate they have coverage because we want people to have coverage. I think the auditor did a good job of pointing out that there are many significant employers in the State of California who are able to offer that incentive at a lower price. So it certainly -- I don't have the answer on what that level should be but clearly it's lower than what we're providing today.

>> Councilmember Liccardo: Thank you, Mark and thank you Sharon for your team's excellent analysis here, very helpful. Seems to me a couple of these items, Councilmember Pyle alluded to the retiree in-lieu payments and also redundant coverage. I think there are items that we can work collaboratively with with our bargaining units and hopefully uncover quickly assuming there are no legal obstacles so I'm hoping we're able to tackle at least the lower-hanging fruit fairly quickly but thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Again as others have said, thank you Sharon for putting together an excellent report. I had a couple of questions. On page 5, even though yes, the amount of -- the total is going up, it seems to be going up by a lesser amount over -- from 2009 year over year, as compared to 2008 and previous years. Why is it going up in a lesser percentage?

>> Councilmember, the -- I guess would I answer it somewhat in the reverse. In 26, for whatever reason, we had a spike in hospitalization. So that was perhaps a bit of an inordinate year. We were a little bit above the average trend increase, in terms of health care inflation, where the latter years that follow a little bit more with trend or a little bit below. I'm sorry, I think it was more of an anomaly of 2006 than a sense of it's going down.

>> Councilmember Herrera: So we haven't found a way to reduce it and it's still going down?

>> Not in this chart. We have a significant wellness trend that is about to be launched meaning we would do better than the average trend of other organizations .

>> Councilmember Herrera: Thank you. I was also wondering in terms of page 17, when we talk about not -- not always collecting the premiums, I think it's already mentioned in here but is there some way to put this on sort of an auto-withdrawal kind of thing, so we don't have to manage the collection issue?

>> We are going to look at some other avenues to keep this more up to date. Again in large part this is reflection of how we as an organization decided long ago to collect the premiums for the very month that we're providing service. So for example, if someone separated today early in August, they may still have -- be on the health plan but yet we're not collecting a premium later this month because they're already off payroll. Other organizations collect in advance. Many organizations if you go to work you don't have health coverage until the 1st of the month following 30 days of employment. So they're collecting it in advance and leads to less of this activity. Since we are the way we are and there's a cost to switching we're going to look for other means of trying to mitigate this issue of missing collections or deductions from people.

>> Councilmember Herrera: Thank you. Those are most of my questions. I guess my comments are similar to what others have said, that I think some of these changes, I think, could -- can be made more readily, the redundancy, the retiree in lieu is very attractive because retirees are asking for it and I wanted you to comment on what you see is the biggest obstacle to facilitating that change and how soon do you think that could happen?

>> Sharon Erickson: There are legal issues that we need to sort through, and I think that really is the largest challenge.

>> Councilmember Herrera: Okay.

>> David identified that in fact the way the in lieu payment usually occurs is you make a cash payment to the employment. As David remarked, you can't do that with the employ we'd have to look at that to see that it could be done in a different manner than what we would normally do with a regular employee.

>> Councilmember Herrera: And I guess my last comment is wellness. I think wellness is going to be critical as we go on, not only for keeping our cost down with our city programs, but for our whole country, wellness is going to be very, very important. And I really applaud our efforts at doing that and I look forward to seeing us work together with our employee groups and city, too, to achieve that. Thank you.

>> Mayor Reed: That concludes the council questions. I do have some requests from the public to speak about this. So we'll take that at this point. Please come on down when I call your name so you're close to the microphone. Bob Brownstein, Jay Wendling, Pat Boyd.

>> Bob Brownstein: Mayor Reed, members of the council, I'd first like to call your attention to several specific statements in the auditor's report. First regarding contribution rates. And I quote. The City's contribution rate appears to be in line with those of other government entities. In regards to co-pays, and I quote, most comparable employers we surveyed offered their employees medical plans with co-pays that were similar to San José's end quote. Our benefits are comparable with benefits in our labor market. Unfortunately, the auditor also made reference to national data. Our labor market is not Alabama and Mississippi and Arkansas. Of course health plans wages and the cost of living are much lower there. The Mercury News has also weighed in on this issue, pointing out that city health plans are better than the average health plans enjoyed by people in the private sector. That's to be expected, city workers are largely higher skilled and higher skilled workers in the private sector have better plans than the average. Think in terms of average health plans in the private sector. It suggests that many private sector employers are paying more than the average. They're providing something better than the average. It's not uniform. How can this be? Why aren't they following the Mercury News's advice? Could it be because they want to hire and retain qualified personnel, that they want to reduce turnover, that they want high morale and they want high productivity? The answer of course is yes. Good employers in both the private sector and the public sector provide decent benefits because that is the way they succeed not for altruistic reasons. Thank you.

>> Mayor Reed: Jay Wendling, Pat Boyd, Bob Lininger.

>> Good afternoon, Honorable Mayor Reed, city council, my name is Jay Wendling, I'm a retired police officer with 28 years of service in. The association of police officers and firefighters is greatly concerned with the auditor's recommendation to drastically increase the cost of health care to retirees. Health care options such as wiring retirees to pay \$1500 up to 3,000 deductible will financially be devastating to the retirees and their families, particularly in this city. Contrary to a misleading editorial this this past Sunday's Mercury News, most retirees do not receive pensions in excess of \$100,000 annually and do not receive pensions equal to 90% of their salaries. In fact over 50% of the retirees receive a pension that qualifies them for low-income or below according to the City's Department of Housing, income eligibility requirements. We ask that when you evaluate the changes to the health care plans, you take into consideration the impact on retirees, especially the majority of them who retired prior to increased pension benefits in the last few years. Thank you.

>> Mayor Reed: Pat Boyd, Bob lininger Fred Hirsch.

>> Good afternoon, mayor and city council. 29 years, almost with the police department, what we're here for is really simple. We would like to place at the table, we represent 1600 retirees who are going to be affected greatly by this but we don't have a voice. We're relying on local 30 and the POA to speak to us. There are a lot of things I probably wouldn't have thought of when I negotiated contracts for almost 20 years when I was a member of the POA. They now affect us when I was a retiree. How much we go to the doctor when we get older and how much those co-pays start adding up the number of visits we have to done. Again, we want a place at the table it will want to use our skills. Most of us wrote these contracts, we still sit around here in town. We want to save money in the long run, we want you to come to us so we can help you. Thank you.

>> Mayor Reed: Bob Lininger, Fred Hirsh, Tom Riley.

>> Bob Lininger, president of retiree association. We support the in-lieu opportunities that were shown in that report, my own circumstances would prove that to be the case but there's interpretations and things that have to be done. We think there needs to be more creative work that needs to be done on the part of the attorneys. We can get together and talk about that. But this cash payment difficulty, we have opinions out there already, we have contractual rights, there must be a way on a basis here, two-way basis for consideration to support something and I think there's a huge gold mine in cost savings for this duplicate coverages and I think you're looking at this a lot harder than we have. What Jay said I'm looking at statistics, it's on the pension amounts. You talk about the federated side where there was 2900 of us we're close to 2,000 that fit the city's income categories of very low and extremely low income. We feel going all the way back two years to the GASB hears, let's go after prevention wellness, let's address the in-lieu and let's not go after right away the easy cost which may not be if you raise these co-pays and deductibles so far, may in fact be counterproductive for people's utilization of the plans and what could be prevention could become chronic. tread lightly and give these other ideas 100% for some time here and let's realize these savings which we think are there, but let's not put this burden on these low income and extremely low income folks because they're older, they go to doctors five or six times a month, they get six, seven, eight prescriptions, doesn't seem like a lot to me and some other people in the audience but for those folks and there's hundreds of them it's a big hit. Thank you.

>> Mayor Reed: Fred Hirsh, Tom Reilly and Bill Alexander.

>> Good afternoon, mayor and members of the council. It seems to me that instead of considering these various ways of rationing health care, essentially, you're looking -- you should be looking at the larger picture. Congress member Anthony Wiener has introduced an amendment to consider HR 676 on the floor of the Congress. Nancy Pelosi says that will happen. That's the single-payor health care bill which will eliminate this whole problem of 170 -- \$107 million and the city's budget will be saved, at least next year, if we could pass such a bill. You would do us all a favor, every working in the city and every constituent in the city, if you would make a unanimous vote to push our members of Congress, our local representatives and our senators, to push for a single health care payor thank you.

>> Mayor Reed: Tom Reilly and Bill Alexander.

>> Mr. Mayor, council, I'm a public employee, I work at the water pollution control plant looking towards the wellness of the city employees, I think that increasing the cost, to deductible and the co-pays, and the rest of this, is going to be a back fire. Because especially to employees that have a single parent and have many kids, two, three kids, it's going to -- it's going to -- people that are -- where their income is challenged, they're lower income, they're not going to be able to afford to go to the doctor, especially if all three kids are sick. With the swine flu and all this other stuff that's in the newspapers recently, you know, that's a big concern and that's what I've got to say, thank you.

>> Mayor Reed: Bill Alexander is our last speaker.

>> Mr. Mayor, councilmembers, I'll be brief with this. I didn't realize this was on the agenda for today. But to back up what brother Hirsh said earlier, that is, the city of Philadelphia did a survey, \$1.25 billion in wages, they stand to save \$539 million in health care savings if a single payor was enacted. The county of Santa Clara actually, on \$773 million in payroll, realized a \$450 million savings per year. All you're talking about doing with this is, I don't know how familiar everybody is with this, is your Medicare payroll deduction right now is 1.45 and the deduction would go to a 4.75. And in spite of that increase there was that kind of savings just on the county of Santa Clara. That is a conservative figure because some of the longer term costs have not been accounted for yet. What you have to hold over in money to pay retirees for example is not in this figure. I mean it just bears looking at and certainly the people behind 676, California nurses association, people like that, would appreciate you at least investing staff time to look at figures. Don't take my word for it. There's enough information out there and it certainly makes fiscal sense to the stiff Santa Clara or San José, thank you.

>> Mayor Reed: That concludes the public testimony. I think we have a motion on this. No we don't. Motion by Councilmember Pyle. Seconded further discussion on this, all in favor opposed none opposed, that's

approved. Our next item is 4.1, report of Community and Economic Development committee for June 22nd. Councilmember Pyle chairs that committee.

>> Councilmember Pyle: Mr. Mayor, the information is in the packet and with that I move for approval.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor? Opposed, none opposed, that's approved. Item 4.3, funding commitment for site acquisition for Markham terrace apartments. We have a motion to approve by Councilmember Nguyen. All in favor? Opposed? None opposed, that's approved. 4.4 is a funding for archer street apartments project. Motion is to approve. All in favor? Councilmember Oliverio, sorry?

>> Councilmember Oliverio: Thank you, Mayor Reed. I did not support this project at the zoning and won't be supporting it at the funding because of the outstanding issue that has not been resolved for the last 11 months which is how do we provide parks for the affordable housing in the city. As a matter of infrastructure and I look to the City Manager to come forward and say what we've been doing for the past 11 months and Joe I look forward to at some point in Planning, what are we losing in park fees, what are we losing in crim fees, et cetera. Thank you.

>> Mayor Reed: I think we have a motion to approve on this. All in favor, opposed, Councilmember Oliverio registering opposed. That's right, one opposed. That's approved. 4.5. Santa Clara Valley habitat conservation plan. I want to thank our two members who serve as the members and liaison on that. Councilmember Chu and Councilmember Kalra worked on this, I think Councilmember Chirco had this a while, and I appreciate their efforts. Staff.

>> Joe Horwedel: Thank you, mayor, Joe Horwedel, Planning, Building, and Code Enforcement director. there are issues that the council will be grappling with related to the habitat conservation plan over the next year or so. So these are the questions, I'm going to put them up front before we start the presentation. You may remember, that previously we brought before the city council the question about the types of fees for the habitat conservation plan, zone D was related to air quality, there was a lot of concern from the development community and the council. So we want to talk more about that. What approach should we use for how we finance and start out the habitat conservation plan, assuming it is adopted next year and becomes operative in 2011. What is the structure for the authority that runs the plan and set the fees. We have a number of options we want to talk about at the council today. And lastly burrowing owls are an important species and are becoming more significant in the endangered species act at the state and federal level, that has impacts for city facilities we want to talk about strategies around that. It is important to note that while the city has been an active participant in the plan since 2001, we are still working through the process. The city has not agreed at this point to adopt the plan. Our willingness to walk away from the table is still intact. I would say this is a very important policy decision ultimately for the long term for the city as we look at how we grow, and that is why we've been -- have taken such an active role in the preparation of the habitat conservation plan. With me today is Aconi Danielson who is leading the effort for the city and walking through a number of slides exploring those questions and then we also have some of the HCP team here today of Ken Schreiber and david Zippin, so aconi.

>> Thank you Mr. Mayor, councilmembers. So it's been a little over a year since this item was before the council for a status update. And reflecting that period of time, I did want to go through a background slides to inform those key issues so as a way of wick background, as part of the new fish and wildlife service approval of projects starting at the beginning of the one, what was known as the Cisco project, the Coyote Valley research project done at Coyote Valley and the improvements of Bailey avenue and the 85-101 interchange, the U.S. fish and wildlife program the city signed a memorandum of understanding with other local partners, the Water District, the county, the valley transportation authority in 2004, and the in 2005, the cities of Gilroy and Morgan hill joined and the city is one of those local partners. we are U.S. fish and wildlife service and the national marine fisheries at the national level. So those are the key stakeholders who are putting together the plan . The plan covers a majority of the county. All of the South county, all of Morgan hill and Gil Roy, almost all of San José but the extreme northern end where you get into the bay land or marsh habitats of the city. By and large most of San José is included in the plan and the plan area as a whole is just over a half million acres. What will the plan do? The plan will provide permits. So essentially the state and federal wildlife agencies will be issuing endangered species take permits to

the local partners, and as a result of that we expect that that will streamline the permitting process both for private development that comes through the city for permits as well as the city's own capital projects. The plan will also provide a program of mitigation that we think will be much more effective than the individual project by project approach that we currently undertake. The plan will also attract or make the county eligible for state and federal grants that are eligible for habitat plans. So we expect that it will attract additional habitat conservation money to the area. So what are the benefits to San José? The plan will protect species habitat and open space which is one of the major strategies of our general plan, sustainable city general plan strategy. It will create new recreation activities as I mentioned having take authorization issued to the city that should streamline our own exam projects as well as development projects. It will give local control over the endangered species process, the plan is designed to protect the habitats that feed into our streams and by protecting important habitat outside the city and outside the urban growth boundary and regulating development green line strategy and it will also by providing coverage for the water districts projects will help our local flood control and water supply projects. So the plan is intended to cover the next 50 years worth of foreseeable development so it is a if 1 year term. And as a result of that, we anticipate there will be about 25,000 acres of habitat that will be enacted as a result of the combined efforts of the seven local partners that I mentioned. So that would include urban development impacts within urban growth boundary also and Gilroy general plans. So those in combination will be about 15,000 acres of impacts. The flood control and water select projects of the Water District, the transportation projects of the VTA as well as the City's own bridge and roadway and other capital projects are expected to have about 3 and a half thousand acres of impacts. So on the whole, there will be about 20,000 impacts that will be authorized under the plan so there's a substantial amount of development and capital infrastructure that will be covered by the plan. Dead. How do we advance to the next slide? There we go. So the plan has a substantial amount of development that's covered and in turn it has an obligation to fund the acquisition of an extensive reserve system and actively manage that reserve system. So you can see, the plan as a whole is, as I said, cost about a billion dollars over 50 years. The annual cost is about 20 per year. The funding sources for the plan come down to two main categories. Fees on development, and other funding sources. And so you can see that slightly less than half of the overall fund being for the plan would come from fees and the majority would come from grants or in-kind services by agencies such as the Water District or the open space authority or the county parks system. The study area, the 500,000 acres that are covered under the plan are based into fee zones and the zones have different costs. You can see that there is a zone A which is existing natural land so this would be largely be hillsides outside the valley floor, unincorporated areas that are natural habitat today, zone B is agriculture, so things that are inactive or previous agriculture uses, South Almaden valley in zone B, zone C is small one to ten acre parcels that are vacant and then the zone D which director Horwedel alluded to earlier, the major issues of San José, the majority of San José, that would be based on trip nitrogen which I will get involved in next slide. Most of the county over 500,000 acres, the golden colored portion of the county, that's in zone A, largely unincorporated, natural hillside, those would pay the highest fees for new development. The green areas which are located sort of in the southern part of the county, and up into Coyote Valley, those are agriculture, those would pay the second highest fees, and the bulk of San José is in the gray, which is zone D which is the subject of the next slide, if I can advance again. So you can see there is a fee breakdown for what the different zones would collect over the 50-year term. The largest fees would be paid over time by zone A and zone B, primarily unincorporated existing zones in the hillsides, the zone D fee which is the majority of San José, which would be \$600,000 a year and that's about 300% of the overall plan cost. So again focusing on the zone D as was mentioned when this item came to the council over a year ago, and this fee was discussed there were concerns about charging fees for urban development that wasn't having direct impacts to habitat. And those concerns were brought back to the wildlife agencies and to the management plan team and at that point we discussed that one of the original reasons for this plan, the origin of the plan was related to the indirect cumulative effects of development that was occurring, whether it was in the Coyote Valley research park or the widening of 101, that one of the basic reasons for the plan was to deal with this issue, that there was indirect effects from development. And that was really the purpose of this fee. And that the -- it's a high priority for the wildlife agencies to have the plan deal with the indirect effects of development on serpentine habitat and specifically bay checker spot butterflies and the purpose of the fee and the conservation strategy of the plan would be to fund the acquisition and management of habitat serpentine habitat to mitigate for nitrogen impacts. So nitrogen that's coming out of the air which is in effect fertilizing that habitat and making it less viable for those endangered species. Recognizing the council's concerns the habitat plan, the consulting team did extensive modeling of the local air quality, to understand how much of the nitrogen was coming from the plan itself versus emissions elsewhere in the county outside of the plan in other counties other parts of the stays or even Nevada. There was half of the emissions were coming from within the plant itself and so therefore the fee has been set to only deal

we emissions that are directly attributable to uses within the plan. Other planning sources would be generated to deal with emissions from outside the plan. We are not expecting for development within San José to deal with the plan there are other effects from the other parts of the county and the state . The other point to make is this issue about nitrogen deposition, we think that we will likely be negotiating this issue with the wildlife agencies specifically, U.S. fish and wildlife service as a part of our general plan update process. We expect if we don't address it here it is something the city will have to deal with on its own as it goes through the process in the next year or so. Next slide. As I mentioned over a 50-year plan the conservation, impact of these would be about \$600,000 a year across the plan area, so that would also include the development area of Morgan Hill and Gilroy. And so San Jose's share of that is in the order of \$400,000, it would be a one time fee based on the new trips that are generated by use, so for a typically single family house would be about \$62 for a multifamily or condo unit would be about 43, for nonresidential about 10 cents a square foot from most office or strum, and about not insignificant fees, in relation to typical traffic impact fees or park fees for those sorts of uses, they are relatively modest but it is a new fee. It is important to note that the city would be in the position of calculating the new trips that would be generated by a new project project was mixed use that it was near transit or that it had other types of vehicles let's say electric vehicles that don't produce this sort of emission. We would be able to take that into account and adjust the fees accordingly. Over time this is a 50 year plan so as we evolve, more transit oriented the city would again be able to adjust the rates and the fees that would result from the development. So another key issue we want to touch on today and get the council's direction is, again, assuming the plan was forwarded as adopted by the local partners and permits were issued, there is a concern of the plan being short on cash in early years, in that the pace of development due to the economy has slowed and we expect that there will not be substantial fee revenue coming into the plan in the early years. And so given that we expect that the plan will be -- have an operating shortfall of on the range of \$1 million to \$4 million annually and that has to do with how aggressive the plan is according to land acquisition and how much staffer is available to manage the acquisition and to manage the land once it's in hand could involve deference of line acquisition, consciously keeping that budget low until fee revenues are in hand. There's a down side to that though in that we actually could take advantage of the current land prices that are out there and have that plan -- could acquire land at a relatively good rate now but the trouble would be to manage it. In terms of bridging that gap there could be contributions from the local partners in the same way that the city is now providing 20% of the cost to prepare the plan, the city could choose to make a contribution to the plan. That's going to be difficult given ought the other challenges that were discussed earlier in this have agenda but it is an option that's out there. Another one is that the city could prepay for certain of the fees that the city will pay for its only capital projects that are covered in the plan. We could in a sense loan the plan money and get credit as the city needed them and then finally we could look at reducing operating costs to the bear minimum, skeletal staff necessary to implement the plan. This is just to highlight now. Let's move on. I alluded that there would be implement the plan over the 50 year term. Looking at the comprehensive set of issues that go over the 500,000 acres and so at this point there are questions about what structures should be implemented or what employed for this agency. There are five of them listed there. I would say at this point that the liaison group discussion on June 18th focused primarily around the joint powers authority on the basis that it would allow the local partners to have an equal seat at the table. There is a question about whether all of the seven local partners have the necessary powers to all participate in the plan, in that joint power authorities are limited by those powers that are shared in common. So the attorneys are off investigating whether the open space authority or some of the other special districts like the VTA or the water district have the ability to collect mitigation fees and implement those. So that's an item that's being researched but at this point I think joint powers authority has had the most interest. So it's important to hear the council's feedback today so that Councilmember Chu and Councilmember Kalra and staff can report the council's preference at the July -- I'm sorry, August 20th liaison group meeting when this item will come up again. Let me just lastly in terms of the timing of this there needs to be decisions made formed sometime in 2010. Moving on, this is the final substantive issue for the council which we would like some direction. The burrowing owl is an important species for the city. It is largely concentrated in the north part of the city, doesn't appear to be very common throughout the rest of the plan area, so it's not so far been an issue in Morgan hill or Gilroy or unincorporated section of the county, it's been surveying has showing the owl population is in a steep decline. Accordingly we have been advised by the Department of Fish and game that we can expect that physical be a listed agency in the next several years and therefore it's important to include it in the plan so we have coverage so that we can continue to pursue our economic development goals in the north part of the city where so many ever our key industry and housing is located. The two main locations of the burrowing owls is at the airport and the treatment plant, but those are both not covered by this plan. In active conversations with the wildlife agencies and the biologists to identify an acceptable conservation strategy that allows the city to achieve its economic strategy and housing goals in the

north part of San José that provides habitat for the owls. I guess what we're hoping is that we do find a solution between now and the end of the year. We're here today to confirm that it is important to that that is an important goal of the plan. So in terms of next steps, as I mentioned there will be a liaison group meeting on August 20th so that will be an opportunity for staff to report back on these issues to that group and for our representatives on the council to voice the collective direction of the council. The comments on the second administrative draft of the habitat plan are due at the end of the month. And staff would propose to come back to council to provide an update on unresolved issues related to the implementing entity in -- for the progress on the burrowing owl later this year in the October time frame and then towards the end of the year we expect that the public review draft of the habitat plan will become available, and assuming that schedule will hold that would put the plan up for adoption by the council by the end of 2010, and we expect then permits would be in hand by the wildlife agencies in about two years. I have one more slide. Will you advance one more? So returning back to the initial question, we would like the council's feedback and direction on the whole concepts and structuring of the zone D fee as it relates to urban development within our service area initial forecast shortfall, in planned funding, if you have a perspective or direction on the implementing directive burrowing owl conservation strategy. Thank you.

>> Mayor Reed: Okay, we do have some comments from council, Councilmember Constant.

>> Councilmember Constant: Thank you. I'm the first to admit that I don't know a whole lot about it. My exposure is what I've been reading about in the last week or so. My first, contrary of a lot of our other smart growth infill higher density. How do we reconcile those type of competing interests?

>> Joe Horwedel: That is really an important concern. It is one that staff has shared back through the working group over the last couple of years. I think the zone D fee the way that it's structured now is down at a level to write think it gives the city some flexibility about how we would actually apply it. So I'll throw out one idea that we've been talking about that not all development in San José is infill. A lot of it is called infill but it's still sprawling lots out on the east you know kind of the edges of the city. And I think those would be very appropriate to charge the fee for. I think we have a lot of development near transit that I would suggest that we look at maybe some ways of exempting that development, of essentially paying that fee through some other sources, that as a way of incentivizing it the same way that we've looked at some of our other fees such as construction taxes, park fees, those type of things. As we make a policy decision what we want to encourage, we reduce the barriers for that, parts we're not trying to encourage essentially pays the full freight.

>> Councilmember Constant: Yeah, I think as we go forward we really need to consider these fees for not only the conflict in our other stated goals, but also, in the overall context of all the increased fees we seem to be putting on all sorts of development, whether it be commercial or residential or anything and what the totality of all these fees piling up on top of each other are doing to an industry that's already kind of way below falling to its knees and struggling. And what we're going to do to stymie it more or to encourage it to come back sooner. So I think given the economy, and given the state we see ourselves in, we need to have a lot more discussion over these fees and how we're going to assess them and things of that nature.

>> Mayor Reed: I have one other follow-on comment on the fees. How do we know it's a fee and not a tax? The mitigation that we've been looking at it, we have really been starting habitat in species liability, what would be the cost for that and then looking at what is the root cause. And so like the zone D fee, the version that the council saw last year essentially took the cost of buying all of the serpentine habitat in South San José, divided that by the amount of development that was going on in the urban areas, and assigned the full impact there. We knew that that was not a correct methodology. We had raised the concerns with the consultant team around that. Council raised some concerns, so went back and have an analysis that shows that it is directly related to the impacts. Even with transit other thanked development, we know that at least half of those trips are not happening on public transit, they are not happening on bicycle, they are not happening on feet. They are still happening on cars. They are still putting nitrogen into the air. We have worked hard to make sure we have a legally defensible strategy, the strategy has also been to solve enough problems so that it is a much cheaper way to do it, rather than do it on a project by project basis, too. But the guiding philosophy has been it's got to be, stand the legal test of a fee.

>> Mayor Reed: The \$6 a trip would be assessed on new development?

>> Joe Horwedel: Correct we recognize that the existing development is putting nitrogen every day onto those lands. And that that would be the source of going after federal grants, state grants to buy habitat and set up long term maintenance on those lands as essentially mitigation for the existing impacts.

>> Mayor Reed: The other questions I have have to do long for years and then suddenly people are going to discover it and it will be a big fight at the end of people who weren't engaged in the process. So could you talk a little bit about the outreach to the property owners who might be affected by this?

>> Joe Horwedel: Sure. It's really important to note that under the state legislation for an NCCP it is required for an extensive outreach program. That is one of the key differences from the federal program. We really embrace that in putting together the program. Ken why don't you walk through how the whole stakeholder group works and how we have been working with the.

>> Ken Schreiber. local 2 through Santa Clara County. As Joe indicated there is a requirement for a stakeholders group and in some of these plans other jurisdictions that is more of a pro forma, you have that group, it isn't that involved. In Santa Clara County we have a group that is very heavily involved, it is about 24, 25 people, they've met monthly just about every single month except December since late 2005. So they are coming up on four years of participation. And we have from the beginning had very active involvement, certainly the environmental communities, Sierra Club, committee for green foothills, et cetera. And some portion of the development and property owner communities and that has picked up in the past year and a half. And that's not unusual, as these processes go along, later in the process private sector interests tend to show more interest. So we have added to the stakeholder group in the last year, on any number of representatives of major property interest in San José and Santa Clara County. And they have been heavily involved in these discussions, stakeholder group discussions go for two and a half hours and they get into significant policy issues and significant details. In addition to that, we have had community meeting. We have encouraged and I know San José has done outreach through the development round table, Santa Clara County planning staff is doing outreach to -- they have a similar development round table organization, and they are doing outreach and discussions with those people also. We have an extensive mailing list, Website that we keep up to date, and is generally regarded as a very good Website. They perhaps aconi and Joe, you may want to comment on the development round table and what sort of interest has been generated there.

>> Joe Horwedel: We have been to the development round table a half a dozen time in the last two years, it is a regular group and we were just talking about the HCP again it is something we talk about on a regular basis and with the next year I expect it to ramp up even more, there's something tangible to talk about .

>> Mayor Reed: One other question has.

>> Councilmember Herrera: To do with the burrowing owl. I wasn't quite sure about the connection with the HCP, where we don't have any burrowing owls to talk about and the request of the agencies to do something about the burrowing owl, what is really the question that has been put to us?

>> With the HCP we have an opportunity to include the burrowing owl as a listed species. It is not yet species of permit now, to develop property that might have breeding or foraging habitat. So it's not yet listed but why expect that it will become listed in the foreseeable future, in the next couple of years. Under that circumstance if it were not listed or not covered within this plan, an individual or the city would have to go on a project by project basis and come up with a meaningful strategy for the owl for that specific development. What we would like to do is through the habitat plan, come up with a more comprehensive strategy so we're not getting into the project by project and incur substantial delays for each project as it moves forward. If the new Tesla was coming through to the city the last thing we would want is to have the owl not covered but listed as a species and have to go through a lengthy negotiated process for that one comprehensive strategy for the owl hopefully attract additional resources to deal with set ago side land as habitat.

>> Mayor Reed: What about other species that might be come listed in the future?

>> that was taken into account in the future. There are 30 covered species in the plan, 12 of those are listed and 18 are not listed. One of the purposes of the plan actually is to prevent them from becoming listed by setting aside habitat in other areas of the county that are not in the future.

>> Mayor Reed: I'm trying to find out what the developer gets out of it and what we get out of it. If there is yet another species that is not covered by the plan that suddenly becomes listed we would have to go through the HCP process and a separate process so over time do we degrade to where we're not getting much benefit because we continue to add new species and we're just back into where we are now?

>> I think this would be a good point for our lead consultant to chime in. David is a lead biologist and what's heavily involved in the selection of the species that are proposed for coverage in the process. You should cover nap.

>> Again I'm David Zippin, species, we looked at almost 150 special status species and only selected those that were either currently listed or had a high chance of becoming listed during the permit terms. So the benefit of covering those additional 18 species are that number 1, we could actually prevent them from getting on the list in the first place. That's a very real possibility. But I think more importantly even if they become listed in the future and we expect they will there will be no additional mitigation required. So we're treating them as if they are listed right now and then the fee that folks pay during the plan will cover their mitigation obligations under the state or the federal act. And under CEQA. I think it's important to recognize too, that the benefits of this plan go beyond the endangered species act. A lot of the mission that we are proposing will also address all of the biological needs of these species under CEQA as well.

>> Mayor Reed: Okay, well I think we need to include the burrowing owl, might as well get ahead of the power curve because we've been talking about it and it's we're getting to the point where it's going to be listed I think. I have no comments from the public anything to do, I think it's a comment on the report. Councilmember Chu had a comment.

>> Councilmember Chu: Thank you, mayor. I also wanted to thank the staff for bringing forward this presenting. I will support including the burrowing owl as a covered species so we don't have to deal with it on a project by project basis. As far as the implementation entity structure is concerned, I would proposal the JPA because I people that is more focused and give the City of San José more power, I know the power is limited because with some other agency, it's limited by the power of some other agencies. Regarding to the fee, the zone D fee acceptable, the answer is yes, I think this probably the most reasonable for the City of San José approach to fund planned startup cost. The staff has listed some recommendations, I don't know, is this the place for further discussion by my council colleagues. So thank you very much, staff.

>> Mayor Reed: Any other comments? Okay. I think we're done. Thank you very much for the presentation. Next item is 8.1, the community policing center service delivery model.

>> We're here to respond to questions. If not, there's no formal presence.

>> Mayor Reed: We're here we need some action on this Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, chief, and city staff, thank you for finally bringing this report to the full council for a discussion. I know we're pressed with time. But I just have a few questions regarding the new proposal that you've put out. I'm just going to focus on my district and ask those questions around there. The new proposal is to actually now have centers, community policing centers at community centers. We're hoping that that's -- that we're going to move forward with that direction. How will you and your team start identifying the community centers? I know that my staff had a brief conversation about a few centers that we think would be great for a community policing center hubs, I guess. So I just want clarification on your processing internally on how you are going to handle that .

>> Rob Davis: Yes, if the council approves the new community servicing level, new criteria but we would also do outreach to obviously those council districts and communities affected by those decisions and see if they also had

recommendations so that we could take a look to see if there's not a mutual way of trying to come to the same conclusion in terms of where we could provide the best service.

>> Councilmember Campos: And chief how soon do you anticipate having enough discussion with those stakeholders?

>> Rob Davis: as soon as the vote is taken.

>> Councilmember Campos: That's great. How many areas are affected besides the obvious that you're looking at implementing community policing centers?

>> Rob Davis: Yes, clearly given the current situation with the budget in general, we're going to continue to look at our operations at all of the centers. The memo outlines, continuing reduced hourly rate at some of these community centers so at the ways that we can perhaps increase the hours, decrease the hours at some places maybe relocate try and impact as much as we can the delivery of services, as much as we can but in terms of what we specifically are looking at in your council district or that general area would be where do we have a high geographical high visibility where do we have a lot of foot traffic where do we have a lot of people who would know where they're going if they would hear that there is a community policing center, how do we leverage other departments within the city where are we going to get the most bang for our buck. Because clearly we have to look at where we can deliver.

>> I'd just like to add a couple of extra comments. For purposes of looking at the CPC citywide. For the southern division CPC which is located in the Oakridge mall, in the parking lot of the Oakridge mall we would recommend that we hold off on evaluating the CPC unless thing district up and running. for the western division CPC that is the division that we found models the revised service delivery model so it is already providing multiple services out of one facility and it has the opportunities that we would like to explore such as having general information services provided by other department from park and rec department to provide those general information services. The central division our recommendation right now is just to hold the hours at its current state recognizing that there's already the evolution of the Roosevelt community center where police officers are providing services. We want to see how that's further evolved before we make any other determinations. So this is -- we are still evaluating the process. There is an element of fiscal reality to expanding the CPCs. We want to make sure that we leverage existing resources that we not create resource given the budget sensitivity. So this is a service delivery model that is purely based on optimization, cross-department training between parks and rec and the library and I want to thank them for taking -- stepping up to the plate and advancing this concept, and allowing us the opportunity to implement over time which I think is going to be really important in this environment.

>> Councilmember Campos: So from what I'm hearing is that if, when and if this passes, we could move as quickly as we would anticipate you would need to evaluate that internally and then get back to us at a later date, and what do we think the time line would be on that date? I know I'm anticipating for a very long time.

>> I would suggest we work out a work plan that responds to competing priorities and we work with the council district to identify what side we I think we have made some in here that would fit within if revised service delivery model and continue to implement the work plan items and reach agreement so that we're on the same page moving forward.

>> Councilmember Campos: So could I anticipate maybe having an opportunity to sit down --

>> Oh certainly.

>> Councilmember Campos: -- with you all to see what is feasible and what is reasonable?

>> Yes, certainly.

>> Councilmember Campos: With that I would move for approval.

>> Mayor Reed: We have a motion to approve. Further discussion on this? I have no cards from the public on this one. All in favor, opposed, none opposed, that's approved. That takes us to item 5.3, contract for the educational park branch library which we'll take up now. I have a lot of cards from a lot of people who want to speak on this. We've already had one hearing and a council debate on it and tonight is National Night Out so I know every councilmember is scheduled to make some appearances. So I'm going to limit the public testimony to one minute. We have two items on the agenda. I'm not going to try to ask people to distinguish, and then we'll just take all the public testimony on whatever people need to say. But ultimately we'll have to take a first, find out if anybody wants to make a motion to reconsider. We would then, council would debate that, if that passes, then the council would consider the item in chief. And debate that. And then ultimately take some action. Given A cards we have, I think councilmembers, we're not going to get out of here before 6:00 so you can plan ahead for National Night Out, and it could be later depending on how long the council debate goes. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. At this time I'd like to make a motion to approve 5.3A to reconsider the city council's action to reject all bids and direct staff to readvertise and rebid the educational park branch library project.

>> Second.

>> Mayor Reed: I know there are people who would like to speak, I would like to take the testimony on the motion to reconsider.

>> Councilmember Herrera: I would like to make a short statement first if that would be okay, mayor.

>> Mayor Reed: Okay.

>> Councilmember Herrera: Thank you. I requested reconsideration of the council's decision to reject all bids on the agenda today because I feel that we, as a policy making body, should not shy away from reconsideration of our decisions, when there are compelling questions about the process. We work for the people of San José. And we should not be afraid to review our decisions, especially in the light of possible new information. I have received so much communication from my constituents about our decision, and so many questions about the information that was or was not available the day we voted, that I could not look the other way when the Rules Committee made it possible to rehear this item. The feedback that I received was my main key motivator that prompted this request. I am not saying that the decision we made in June was wrong. What I am saying is that I feel strongly enough that the request for reconsideration is valid, and so I am asking my council colleagues to re-hear this matter. We make many difficult decisions up here every week, and I'm not looking to set a precedent to rehear every item where the losing party doesn't like the outcome. Like each of my fellow dissenters on this item, I received a great deal of pressure from both sides of this issue. Ultimately it was the thoughtful reasonable decisions from those that I represent that I made the decision to put the memo forward. With that I will be supporting the motion to reconsider the council's June decision.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor. I just wanted to ask if any new and relevant information has been brought forward in order to prompt this decision. New and relevant information concerning the decision.

>> Councilmember Herrera: You're asking me?

>> Councilmember Pyle: I'm asking you.

>> Councilmember Herrera: I basically received requests that there would be information coming forward. The information I have received that's new is the information from Neil Struthers when I met with him yesterday and there was new information there. There was an overwhelming number of e-mails that I requested this.

>> Councilmember Pyle: I beg to differ that the information was new. That information was available in June as well as it is today.

>> Councilmember Herrera: I don't agree with that. I did receive some new information yesterday.

>> Mayor Reed: Let me just interrupt here for a second. The standard for motion of reconsideration is, if a member of the prevailing side wants to reconsider it, they can make that motion under our rules of conduct for our meetings. There isn't any standard of new information or changed information or anything else. It really is just whether or not a member wants to ask for it. So Councilmember Herrera has done that. Now, whether or not there's new or relevant information is probably relevant to the information of whether or not we should reconsider it. And the vote on whether or not to reconsider it. But the make of the motion requires nothing other than a prevailing -- member of the prevailing side to do that. So I would suggest that we take the public testimony on the issue of whether or not to reconsider and the substance of the matter that we have one set of public testimony and then we'll debate the motion to reconsider. And if that passes we'll debate the substantive item. I think that's the most efficient way to handle this and give everybody that's here a chance to speak. As you can see, there are a lot of them that want to speak. So I'd like to take that testimony at this time. Before we get into the debate on the motion to reconsider. So why don't I call names. Again I'm going to have to limit everybody to a minute. We've already had one hearing on this and we're short on sometime but what I've discovered over the years is that one-minute testimony is always seems a lot better than the two-minute testimony in quality. People get really focused so it's kind of an interesting phenomenon. But anyway we don't have a lot of time. So I have cards, got quite a few. Dan huntly, Wade La pearl, Barry Swenson. Please come on down as I call your name so you're close to the microphone. And we'll just work our way through this stack.

>> Is that Dan Reed, Mr. Mayor?

>> Mayor Reed: Dan huntly, Wade La pearl, Barry Swenson.

>> Don huntly.

>> Mayor Reed: Don huntly, sorry.

>> I'm here on behalf of Barry Swenson builder, I've done quarter of a century. I just want to say they are the most quality builders that I've ever dealt with. Of all the clients that I've highly qualified, and it bothers me, as a broker and citizen of San José to have someone awarded a contract, fairly, justifiably, and then have rug pulled out from under him. That's Chicago type politics we shouldn't have here in San José in my opinion. And that's my point, if they can do the job they're superqualified, supergood people and have done so much for the City of San José.

>> Mayor Reed: Thank you. Wade La pearl, Barry Swenson and then Pat Saucedo.

>> Mr. Mayor, councilmembers, thank you. I'll keep it brief, a minute. How can the voting citizens of San José be expected to trust their elected officials to represent their best interest when it comes to the following -- to following your own adopted policies if you allow yourselves to obviously contradict yourselves in order to allow special favors for entities such as Barry Swenson builders, yes, Barry Swenson builders have a large A money and influence to sway your vote in part one contractor who used false information to obtain your consideration. There are other contractors who played by the rules who deserve to see the process proceed with no further delay. I implore you to abide by your own policies and move forward with the bid process as you've already voted on and decide to do. Thank you.

>> Mayor Reed: Barry Swenson, Pat Saucedo and Chivago Jolly.

>> Thank you so much, being here, it's just overwhelming to me. I wore a hat city's state of California is going to want the City of San José to run the UC system. You get another budget surprise, mayor, you're going to need all the hats you can get. I just want to say, we make -- we do almost all our work union, when we get these bids, we get more -- we have 400 bids we don't know whether they're union or nonunion. We are just trying to do the best job. Right now at Marriott we have these two big towers going. They're almost all union. Why do they fight the local guys? The national guys don't do anything for the City of San José. I've committed before this depression all my inheritance to make camps for the Boy Scouts and the YMCA to help local kids to go camp. They're not going

to do this time of thing. And I really need this job. I need help. I'm going to have to lay off the most fabulous people if I don't get it. I want this help.

>> Mayor Reed: Barry, sorry, the minute's gone.

>> Thank you mayor.

>> Mayor Reed: Pat Saucedo. Chivago Jolly. Jim Solada.

>> Pat Saucedo. San Jose Chamber of Commerce. Barry Swenson is a San Jose general contractor and businessman employing thousands of San José residents over the years. Generating millions of dollars in local payroll and contributing hundreds of thousands of dollars in sales, business license, utility, property and other General Fund tax revenues for the City of San José. Today you have the opportunity to award a \$7 million contract to a local businessman who submitted a responsive bid and a legal bid and met all specifications required within the bid package for ed park library. Additionally your local businessman Barry Swenson stands behind his bid, his subcontractors and has 30 years of experience in San José. The chamber urges this council, do the right thing for San José. Do the right thing for the San José business community. Your business people. And do the right thing by Barry Swenson. Thank you.

>> Mayor Reed: Chivago jolly, Jim Solada, Jesse Woodward.

>> Good afternoon, mayor and councilmembers. I'm a single father, ironworker, an ironworker taxpayer, homeowner, whatever you want to say, small business owner. I pay my taxes here in San José, I work hard here in San José and I've been out of work going on five months. To hear that Barry Swenson is going to hire subcontractors to bring people into San José to take food out of my kids' mouth it hurts me, it hurts all of my co-workers. Because we're all out of work. We've been out of work for a long time and a job like this, man, I'm running out of unemployment. I'm running out of insurance. Please, make the right decision. For me and my kids and my co-workers.

>> Mayor Reed: Kim Solada, Jesse Woodward and Bob Keith.

>> Good afternoon. This is my 30th year working in San José, 20th year in business and we've had the joy and pain of bidding Public Works. The joy being doing the 2 E building tower hall, joint youth centers and others. The pain being losing the historic move of this improvement by \$5 million, a \$1.2 million job. Everybody in Public Works knows how hard it is, everybody here knows how hard the economy is. But at this particular time to change a process, a set process that's been going on for years and all of a sudden change the rules when where was everybody before? Where was everybody when contractors were going broke on Public Works jobs in San José? Where were people a few weeks ago when out of town contractors got the convention center job? This is wrong. This is absolutely wrong. It's not time to change the process. It's time to stick with the process. If you want to change it it should be done under another forum, under the legal rules that the city council has to abide by so please, don't do this. It's wrong. Thank you very much.

>> Mayor Reed: Jessie Woodward, Bob Keeve, Christine Welch.

>> Mr. Mayor, councilmembers, my name is Jesse Woodyard. I'm a citizen of San José and also an employee of Barry Swenson builder. This process two months now who knows how long this process is going to be dragged on. As a citizen here, it is disappointing to see that all this time and energy has now been waisted when we could have all gotted started on this project. I know working with the company there are -- there is a huge A integrity and longevity of Barry Swenson in this community. And I believe that everything that has been done with this bidding process has been fair, it has been under all legal constraints, and I therefore am in full, full agreement that this project should not be rebid. So I hope today, you will all consider not revoting, and take this staff recommendation, and award the educational park branch library --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Bob Keeve, Christine Welch Ry Yee.

>> I got to say what a great job I think labor does that affect our city. And I really mean that. I admire its representatives for their success. I do mean that. But as a member of the chamber of commerce, I want our city to be run neither by the chamber nor by labor, nor by any other special interest group. When there's a bidding process, I want that process to determine the outcome. I am not interested in technicalities offered by one side or another, if one contractor has underbid others by some 15%, and if that contractor has a sterling community reputation, I want the council to award that contract to him. Thank you.

>> Mayor Reed: Christine Welch. L.Y. Lee, Ira Harris.

>> Good afternoon honorable mayor and distinguished councilmembers. I just want you to know that when I first walked in this door, I let the nice policeman at the top of the stairs know that I'd rather be arrested than speak publicly, because this is so nerve racking. I don't think this is right what is going on. I'm a San José resident and I'm a very proud employee of Barry suspensson builder. I was an integral member of the team that submitted the proposal. I know we worked responsibly to submit the bid on this job. We're a local builder and we have an innate interest in the community because we are responsible. thank you.

>> Mayor Reed: L.Y. Lee.

>> Honorable mayor Reed and councilmembers, we the citizens of the great city of San José, have a high A forthcoming and to be fair and just. Not that we ask too much. The low bidder, Barry Swenson bidder, is a liely qualified and reputable local company with excellent 30 years of local track records. When this contract is rightfully awarded, the workforce will encompass both union and nonunion workers, a project with the best of both worlds. There are times that it's only fair for the energy and time around cost-consuming politics to take a back seat. And during a difficult time such as we currently undergo, this is the high time for just one of those occasions. Thank you in advance for being fair and just. Thank you.

>> Mayor Reed: Ira Harris, Forrest Serado, Christian hagge n.

>> Good afternoon, mayor and council, my name is Ira Harris, I'm counsel for Barry Swenson builders. fair and impartial process that the bidders would go through and if they went through that process and were the low bidder they would get that bid. Looking at the transcript of the last proceeding what we see is people attempting to disqualify Mr. Swenson and his company. That did not happen. In fact, at the 11th hour, instead of that happening, the council decided to reject all bids. The disqualification would not have found firm ground. Public contract code 3300 clearly separates licensure and experience and that was the sole issue that the protests were about at that time, was whether license and experience were melded together, and that the three-year requirement somehow disqualified Elmer's welding. It did not.

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

>> Excuse me?

>> Mayor Reed: Sorry your time is up. Robert Herado. (saying names).

>> My name is Forrest Serado and I'm an employee for Barry Swenson builder. We have a face and a system, the system works, we come and build projects and we follow through all the guidelines. We're awarded this project, there are a lot of great people that put in their time and energy to do this. Everybody had as much opportunity to bid it we happened to be awarded it so I'm coming to you to implore you to just come through, and give us what we deserve. Thank you.

>> Mayor Reed: Christian Hagen, Robert Van Epps, JosuE Garcia.

>> What's going on here? seeing how the city doesn't have any money. We're going to rebid this thing and have the chance to pay more? How does that make any sense? The Public Works said it's a gone let's not second-

guess them. Unless somebody here knows more about Public Works than Public Works, but let's get going with this thing. You know, the thing of it is Barry Swenson is the biggest cheerleader for the City of San José that I know of not to mention philanthropist. The more he puts back in San José the more that benefits everybody. More so than the tool that's been used to push this agenda on. Let's consider Barry and hiring the right guy for the rye job. Thank you.

>> Mayor Reed: Robert Van Epps, JosuE Garcia, Warren Barry.

>> Councilmembers, mayor, my name is Robert Van Epps, I've lived in the City of San José 20 years, local construction worker, 20 years with local 393 San José. Many people play ask the council for what the council is going to do for them. I'd like to tell the council what I've done for them. I've helped build Los Esteros power plant, san Jose State, on and on. I'm against the decision to reconsider. Out of the community, that sends two-thirds of their payroll out of our community. The recommendations, appear to me to be a back-room deal with Barry Sanders Swenson. I'm asking the city council to stick with the rule and not play favorites. The rule should apply to everyone. Thank you.

>> Mayor Reed: JosuE Garcia, Warren Barry, Greg bayhue.

>> Thank you, mayor and city council members. I grew up in San José and as a little kid I played soccer I still play believe it or not. Everyday before we started the game we set up some rules and we have imaginary lines, if the ball goes beyond that tree that's out little things like that. We were able to stick to the rules back then and it worked very well. And now it's another -- I'm amazed that in plain day light we are bending rules that you tried to learn as a little kid. Just in plain daylight, I have a question, maybe just for myself, how much power can a contractor have that will cause the city council to bend the rules in plain daylight. I'm sorry, Councilmember Herrera, I don't see anybody but Swenson's employees. I hope he has thousands of employees so they can come and speak again but I don't see community members.

>> Mayor Reed: Sorry your time is up.

>> Thank you very much.

>> Mayor Reed: Warren Berry, Greg bayhugh Daniel lee.

>> Honorable mayor, city council, Warren Barry, I'm a business agent for local 393, Bay Area, steam pipe fitters. I would like you to reconsider this that's all I got to say, thank you.

>> Mayor Reed: Greg bayhugh, Daniel Lee, Eddie Riss.

>> Mr. Mayor, city council, my name is Greg Bay hue, I've lived here 33 years, never been to a city council meeting. Just isn't my thing. I'm here as a taxpayer, okay? I've multiple properties in the city. I work here, my kids go to school here, I have a business here, I employ ten people. I think it's the height of irony, to be in this room and an hour ago, we were talking about parks closing and San José struggling to find funding for core services. Here we have is a contractor, who is as far as I know, as far as I can tell, is and outstanding person, outstanding company. It's a slippery slope to reconsider something that has already been considered. As a taxpayer, I urge you to reconsider. Swenson won this bid,.

>> Mayor Reed: Your time is up.

>> They're a good builder many I urge you to reconsider.

>> Mayor Reed: (saying names).

>> Mayor Reed, councilmembers, Ms. Figone. I i'm retired from the computer industry with no stock options and have no interest in this other than a citizen. Pat Dando's comment in the Mercury News caught my attention because I used to do some contract in software. Admitly not like the building trades. I believe your original decision was in error and I applaud Ms. Herrera for getting this reconsidered. It's hard for me to believe that with

as many libraries we have bid and by the way they're wonderful that this project has materially different subcontractor requirements than did the other ones. It's hard for me to believe that the staff and city legal would judge the bid from Mr. Swenson's company to be fit and yet you would overturn it, without having any material information to the contrary. I hope you will reconsider.

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Eddy Reyes, Fred Carroll. .

>> Have already spoken to the issues of the legality and procedure that have been ignored in bringing this matter back to the council after the matter was already considered and resolved with all facts at hand. The whole idea of bidding on a public works project is there is a level playing field and that taxpayer money can be used to grant favors and benefit one contractor over the other by manipulating the rules. We are losing confidence in this process. Not only us but responsible contractors as well, who meet city and state requirements. Train their workforce and put people to work for decent wages and benefits all the time. I think I can speak for many unemployed brothers and sisters who are filling our hiring halls in this economic downturn when I say that it is beginning to appear that some councilmembers are forgetting their commitment to represent the majority and those who need representation the most. In order to bend the benefits.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Sylvia Carrolled from Hirsh, Ross Signorino.

>> I don't like mistakes several years ago Barry Swenson used Pellier park for his construction equipment for building the condo on Julian Street for about three years. I called the city mistake, the very word. No one would tell me how, why, who, when the mistake was made. Oh, but not to worry, Mr. Swenson would redo the Pellier park. I went to the meeting to see the plan, a simplistic and frankly inadequate one. The park fenced on all sides except the side on his building. Pellier park does not yet exist although the condo tower is finished. Swenson can build 14 story towers on San Carlos street, I'm certain we will all describe those as a mistake. I smell a rat I don't want Barry Swenson to get the contract.

>> Mayor Reed: Your time is up. Ross Signorino and then Danny Garza.

>> Mr. Mayor, and members of the council, I can see no reason why this is brought up again, why Barry Swenson is given special consideration. In violation of the City's sunshine policy. Except, if it is for some wrong-headed personal political opportunism. I think you know the way to go. You know you don't need to bring this back. And it just gives me a slimy feeling, when Barry big bucks gets up here and slimes his philanthropy with using it as an appeal to this council. That is absurd. Thank you. [applause]

>> Mayor Reed: Ross Signorino. Danny Garza and then Bob Brownstein.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. Vice Mayor, Chirco. I hope you're doing well. There was not a confrontation but between councilman constant and the city council office when this project appeared on the agenda the last time whether it met the Brown Act requirement. It doesn't seem like it did but we're doing that and according to Bob Keyes on Kliv says it's a technical matter. The Brown Act is not a technical matter. We should watch it because it's the law that safeguards things. Now, as far as this goes, you have this bid, you send it out, the highest bidder qualified bidder comes in with 13% lower than the other bids. You are not going -- you are not going against the rules that you have established. These are the rules. When you have a qualified bidder, and he comes in lower, and they can do the job, there's nothing wrong with taking that bid. The people of San José expect no less.

>> Mayor Reed: Sorry, your time is pickup Danny Garza Bob Brownstein and then Neil Struthers.

>> Good afternoon, Mr. Mayor, member of council. Danny Garza, I sit on many organizations, I'm sure Mr. Swenson does too. But I tell you what, I don't see him at my meeting. I haven't seen him at the round stable, I haven't seen him at the Naacp. Just to say two. You layered that Mr. Swenson let's talk about the community. In the SNI the city taught us how to follow rules, regulations and time lines. We were taught how to fill out paperwork, or we didn't get what we asked for. No matter where it was, okay? In the short time, the SNI has existed, we learned those rules and we got what we got, especially plata arroyo. The first one in we have been there for 30 years. Thank you.

>> Bob Brownstein: Mayor Reed, members of the council, the ways the rules have been twisted or people have attempted to twist them are truly disturbing. It was on June 23rd that this council explicitly directed that this project should be rebid immediately and the director of Public Works ignored the council's direction. This bid has expired. You are good to be expected to retroactively continue this bid, although the city has no policy in existence indicating how you should make that decision, and under what circumstances. You are simply expected to create another new policy to satisfy the Swenson project. Councilmember Pyle, Councilmember Chirco, vice mayor Chirco, I watched you at rules. You could see what people are trying to do to move this project against the rules. You need to stand tough and firm. This is wrong. And nothing good comes from allowing this kind of twisting of the rules to succeed. Thank you.

>> Mayor Reed: Neil Struthers. [applause]

>> Mayor Reed: Followed by Dennis meekan and Luke Frutney.

>> Neil Struthers, I agree with Bob, the fact that we provided all of you yesterday, as it relates to information we have about Elmer's portable welding who have now apparently falsified information to show and demonstrated experience, work without a contractor's license illegally and now being pursued for claims against that. In addition to that, pact, additional information, it wouldn't have been such a difficult argument the first time. Let me read you a letter from Barry Swenson letterhead, addressed to the City of San José, entitled to additional to Barry Swenson builders bid. I quote, it has become apparent that the C-51 license was in fact issued on September 26, 2006, thus failing to meet the requirements of the specifications. The failure of one listed subcontractor to meet the requirements of their specification section may disqualify that specific subcontractor, end of quote.

>> Mayor Reed: I'm sorry, your time is up but that letter did get circulated.

>> I know you have it.

>> Mayor Reed: (saying names).

>> Mayor, city councilmen, my name is Dennis meekan. I'm a representative for the ironworkers union. Been an ironworker for 35 years, my father was an ironworker, structural steel contractors of all types, some of very conscientious and remain diligent on the projects until they are complete. I've also worked with steel contractors that come on the project without any kind of vested interest in anything but making them a dollar. And they're willing to cut corners and do whatever it takes to accomplish this. Including the safety of the workers. And also, cheating the workers out of their money. This usually comes from a contractor with a low bid, with lack of experience, and willing to exploit their workers, wages, and the integrity of the work itself.

>> Mayor Reed: Sorry your time is up. Luke Vrotney, Bill Alexander, Bill Guthrie.

>> Honorable pair, councilmembers and mayor, my name is Luke Vrotney. If this was not Barry Swenson we would not have been here today. Any other contractor would have been found nonresponsive and it would have responsive. Politics and there should be an investigation into what happened and how things were manipulated and done retroactively done to this point. I think as councilmembers and mayors, you have the responsibility, and you should all be spending time on how to put local workers to work, and not trying to do a favor for Gary Swenson. Thank you. [applause]

>> Mayor Reed: Bill Alexander followed by Bill Guthrie and David Collins.

>> Honorable councilmembers, Mr. Mayor, I'm not a contractor, I'm not a lawyer, I'm just a layman, the work bee. The only dog I have in this hunt is I am a worker bee that votes. I pay particular attention to with city employee who apparently worked loopholes to gain low interest housing at taxpayers commute. While I question the 45 minute commute time to San Francisco is concerning the fairness for taxpayers is well received at my house. The rules I want to address the same rules should apply to everyone. Allowing this to be heard today stands proof that not everyone in the city is treated the same in this city. Barry Swenson has a lot of influence and it's obvious today that he has been given a do-over. This is not acceptable. A bad-faith bid should not be accepted. The same rules must apply to everyone. If money and influence trump the rules then we worker bees small sometime citizens get short changed every time.

>> Mayor Reed: (saying names).

>> My name is Bill Guthrie, elected representatives of plumbers and pipe fitters local 393, which represents some 2300 skilled craft speople locally and currently 30% of our membership are unemployed. I'm here to stand by the original decision, to reject the bids on the educational park library. The library will be used by the families and residents of San José hopefully for a long time to come. Yet when Elmer's bid were originally called into question and they were asked to supply Elmer's listed three structural steel. What they didn't list was the fact that they did not have a valid C-51 contractor's license performing that work that until halfway through their projects this not only brings into question the qualifications of Elmer's as a contractor but their honesty and their integrity. Thank you very much.

>> Mayor Reed: (saying names).

>> I've Dave Collins I'm an agent for carpenter's local 405. I wanted to bring to your attention a letter that you probably received from Gonsalves and Strunk. I did want to bring to you attention as a side note at the end, I would also like to remind you that as our bid by the Edenvale community center was found by the development and the redevelopment agency to be nonresponsive due to our plumbing subcontractor not having the specified amount of lead project experience, a qualification in the bid requirements. Similar to this. Let's be consistent. So here you have another case, where a contractor who has performed a lot of work for the City of San José, a number of several of your other libraries, as a matter of fact, was denied a bid or contract because of that.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Blayne Edson. (saying names).

>> Thank you for this opportunity to speak. My name is Blair Edson. I'm an employee of Barry Swenson builder. I was an estimator for this project so have a vested interest in seeing it colluded. We have more than 6% union subcontractors based on the dollar amount. There have been claims made against the steel subcontractor's experience, as your own City Attorney has found those claims to be without merit, there seems to be no reason to revisit that issue. Also the issue of safety has been raised against the same subcontractor. This year alone, the army corps of engineers and CalTrans, have seen fit to issue contracts to contractors that have that same subcontractor. I see no reason to not see this contracts through to completion. Thank you.

>> Mayor Reed: (saying names).

>> Good afternoon. I want to go back to the last council meeting and bring up the issue that was present in and the reason it went to the concern of many councilmen, was the wording in the specifications with regard to experience and licensure. Going through that afterwards, I found when you go through the specifications, it's very clear there is no confusion between licensure and experience. Never in the specifications does it list anything that ties the two together. In fact you don't even see anything about experience in the specifications, until you go to the city standards which merely require that all bidders and contractors be licensed in accordance with the laws of the state at the time of the bid. In the classification set forth in these contract documents. Obviously this was clearly

met by the subcontractors and is falsely said, our bid was never found to be without merit, and since there is no conflict here, the city should award the project.

>> Mayor Reed: I'm sorry your time is up. Lawrence de Santos, followed by Robert Hightower and Ron Rodriguez.

>> Mayor and councilmembers, thank you for letting me speak. I'm a resident here in San José. I've also served as the chair on the B PAC committee and also, foundation board member for my kids' school, I'm also Barry Swenson employee. Barry Swenson won the contract fair and square. He should be allowed to build this school. If he can build it for \$7.1 million then he should do it. I asked the council to reconsider this. And go with Barry Swenson. And furthermore, I cannot and will not support any councilmember that does not accept the fair, lowest bid process. Thank you.

>> Mayor Reed: Robert Hightower. Ron Rodriguez. David Gibbons.

>> Hello, my name is Robert Hightower. I'm a citizen of San José and it seems to me that both sides of this argument are asking for the same thing and that is equal treatment. I think the decision to rebid this project was wrong, if Barry Swenson's bid could be disqualified, then it should be disqualified and the second lowest bidder should be given the contract. If it can't be disqualified you should follow the rules and award the contract to Barry Swenson. It's pretty simple. The decision to ask for a rebid was a mistake and it should be overturned. Thanks.

>> Mayor Reed: Ron Rodriguez, followed by David Gibbons and Jack Wemberly.

>> Good afternoon Mayor Reed city council. I'm a long time resident in San José having lived here for 20 years and I have seen firsthand Barry Swenson's commitment to the city. I'm here to ask for the City of San José's own local businesses and you can show the support by awarding the San José library project to Barry Swenson builder a local company that has done work here over 30 years and helped San José grow with the city that has become. With the economy that has been as tough as it is, helping local business survive and keeping local residents employed is certainly the best. Thank you.

>> Mayor Reed: David Gibbons, (saying names).

>> I'm a Vice President with Barry Swenson builder. Mayor, members of the city council thank you for allowing me to speak here today. This company has submitted a bid and submitted their qualifications and were approved by Public Works and found to be qualified so our bid was responsive in that regard. Elmer's has graciously agreed that if the city council does not want them on this project, they will step aside voluntarily and allow us to use one of the other subcontractors. And also by the way, disqualification of a subcontractor under a bid does not necessarily render the general contractor's bid nonresponsive. Thank you.

>> Mayor Reed: Jack Wemberly followed by Jesse Thielen and John CAMPman.

>> Mr. Mayor, city council, I do like the fair. I'm a local resident and a downtown San José business other than but most important I'm the son of a Public Works employee and various municipalities here in San José. With the city staff reviewing all bids packages and protests, finding all the protests without merit and Swenson the lowest responsive bidder, in addition to city inspectors built inspect all aspects including steel work, responsible in performing duties under the public trust for the council to assert council and others to assert the project if awarded the lowest responsible bidder could result in an unsafe structure, it suggests one of two things. Either council has no faith in Public Works and inspectors or that there's another agenda at work here that nobody wants to discuss. So I would certainly appreciate the council approve a motion to reconsider --

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

>> Thank you.

>> Mayor Reed: Jessie Thielen, John campman and then Bill Baron.

>> Good afternoon Mayor Reed and councilmembers. I'm here to ask the council make a favorable motion to reaccept Barry Swenson builder as the lowest responsible builder for the educational park branch library. Not only would this be the most ethical decision today it would also save the San José residents money. It would ensure the greatest number of local jobs and a building of the highest quality. Rebidding this project is a waste of taxpayer money. Choosing Barry Swenson builder is a win for you, a win for our community and a win for Barry Swenson builder. Do the right thing.

>> Mayor Reed: John cantland followed by Bill Baron and Rick Solis.

>> Hello mayor and council, my name is John cantland, project manager for Barry Swenson, employed by him for 13 years. He has been a very equitable employer and given opportunities for us to stay here. I've worked with union and nonunion workforces on all my jobs, I respect all of the union employees and their efforts, but at the same time I do have two children at home that I'd like to support and feed every night. And my opportunity to take care of them should be looked at, also, in a fair and just process and if we're going to look at this we should look at every aspect of the ethics, the responsibility and the legality of this bid process for both parties. Thank you.

>> Mayor Reed: Bill baron. Rick Solis and Troy willheight.

>> My name is Bill baron, I'm chair of Compaq and a fourth generation San Jose resident. The six-member back room politics at worst. The public is sick of this kind of politics. Our city is fortunate to have a responsible and upstanding resident, Barry Swenson presumably one that met the many city requirements and was the lowest of the 22 bids. Thank you, Councilmember Herrera, for having the wisdom and guts to bring this item back for reconsideration despite being the majority on June 23rd. Now it's your collective turn. Look inside yourself. It's time for your gut check. It's time for common sense to prevail and leadership to shine. Do the right thing and award the contract to the lowest responsible bidder Barry Swenson builder and get on with the critical issues facing the city. Thank you. [applause]

>> Mayor Reed: Rick Solis (saying names).

>> My name is Rick Solis, carpenters local 405 in San José. Bottom line why we're here is to finally put this matter to bed. Barry Swenson, yes, was found the low bidder. But wasn't really qualified. Had a subcontractor that wasn't qualified. That in itself should -- he should be rejected right there. In a letter from his own project manager, from his own project manager in a letter to you. I appreciate that he brings his whole white collar staff here to say what a great guy he is. I didn't realize this was going to be a cheer leading effort for Barry Swenson but he has his whole white collar staff here saying what a great guy he is. What about all these hard work blue collar members, brothers and sisters who would before from these jobs. So I just urge you guys to please reject his bid is anonresponsive as you originally did and not Sesed to the pressure of these .

>> My name is Troy willheight, we are the be electrical subcontractor, we are in support of the project going to Barry Swenson. We can all sympathize to the union guys that are out of work and hurting but my question is what makes their union interest any more important than our union interest? So Councilmember Pyle asked has anything changed? I say no, it hasn't changed that your own City Attorney and your own Public Works department have declared that the protests are absolutely without merit and nothing has changed that Barry Swenson builder is the responsible low bidder. So with that being said I ask that you award the job to Barry Swenson builder. [applause]

>> Mayor Reed: Jim heller and then Dan H everybodylwig.

>> Mr. Mayor, members of the council I ask you to please reconsider. Because on the face of the facts it appears you made a mistake in June. Swenson is qualified, and approved by staff. You should reconsider. The green badges in the room are correct, they are right. It says apply the same rules to everyone including the low bidder. I hope you'll do that. But I also want to say that you should not be intimidated by actions, and comments, by leaders of organizations in this room. I've never seen a labor leader stand before this group and specifically call out two members ever this council to vote the right way. The rest of you be forgotten. You two members you vote the right way, you should be the swing votes. I think that's appalling. You should not be intimidated by this kind of conduct. This council should stand up and say no to that kind of action going on. Thank you.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Dan Helwig followed by Cheryl Pollack.

>> Dan Helwig, I'm here as a voter and citizen of San José. Life long resident. I've heard many compelling arguments for rebidding this project. I think it should have been rebid several weeks ago, that was the right thing to do and I'm here to ask you to do the right thing by putting this project back out to bid. Thank you.

>> Mayor Reed: Cheryl Pollack is our last speaker.

>> Always like to be there one. I'm Cheryl Pollack and I'm a bidder out of local 393. This is what I know. If he erred in putting his paperwork together, he should be out, period, end of story. I know this. I know that Swenson used to be a good person. When the dad had the work but the money has not going to stay here. I've been here since 5th grade and I'm almost 60 now. I know that all my brothers and sisters here, we want to go to work. We don't want our work to be given to subcontractors that are not even here. They're from other -- other places in California. We want to go to work. And so if they erred, it's to their loss, you know, and it gives us local contractors, okay, and the people that work here every day, a chance to go back to work. And so I --

>> Mayor Reed: Your time is up.

>> Thank you. [applause]

>> Mayor Reed: That concludes the public testimony, on this matter. We'll bring it back for council consideration of the motion on the floor and discussion on that. Before we get started I had one question for the staff. Back on June 23rd the council voted to reject all bids and direct the staff to rebid. I think you gave us a time estimate for what it would take to you rebid. What was it?

>> Katy Allen: Mayor, it was 60 days and we are tracking on that schedule.

>> Mayor Reed: Okay, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you mayor. I know there have been a lot of accusations. What rules were followed, I just want to be clear, just so we're clear. The allegations that somehow or another, the subcontractor somehow didn't have the requisite number of years of experience, is that correct Katy?

>> Katy Allen: That is correct.

>> Councilmember Liccardo: Four years of experience before you can even get the license, is that correct?

>> Katy Allen: That's correct.

>> Councilmember Liccardo: In this case, the subcontractor we believe had those four years of experience, at least, that seems to be the assumption, I haven't heard anybody say he didn't have the four years before he got the license?

>> Katy Allen: That's correct. We do defer to the state licensing board to make that determination and --

>> Councilmember Liccardo: Right, it's not up to us to check it, but clearly the State believes that they had four years. Since they got the license, this contractor has had another two years and eight months of experience, is that right?

>> Katy Allen: Um -- that is correct. I believe on September of this year, they will have three years.

>> Councilmember Liccardo: Okay. So at the time the bid was submitted, the city requirement was, you have to have three years experience. Is that correct?

>> Katy Allen: The City's requirement for the subcontractor was that they had to have a license.

>> Councilmember Liccardo: Okay.

>> Katy Allen: And they had to have three years of experience, that is correct.

>> Councilmember Liccardo: Three years. Nobody disputes they have a license. That's not really the issue. The issue is the experience, right? Okay. So a requirement was that they have three years of experience. This subcontractor had six years and eight months of experience under everything we seem to know today, is that right?

>> Katy Allen: That is correct.

>> Councilmember Liccardo: So, when you concluded and Rick Doyle concluded that the bid was responsive, you were fully satisfied that this contractor had the requisite experience under the city bid process, is that correct?

>> Katy Allen: That's correct.

>> Councilmember Liccardo: So I don't think there was any dispute as to whether or not this bid was responsive. And there was suggestions that it wasn't, certainly you look at that April 22nd letter and Barry Swenson employees suggest it was not. This was reviewed after additional review from staff and attorneys and so forth, everyone looked at the language, the language was incontrovertible, they qualified. So in my mind, the question isn't whether or not Barry Swenson builder followed the rules. That seems to be clear they did. The real question is whether or not the council is going to follow its own rules and I hope that we do, and I hope for that reason, we reconsider an ill advised decision that was made in June and follow the rules to award the bid.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. I agree with Sam. You know, we heard a lot of testimony from a lot of people here, demanding that we follow rules. Yet the reason that I think we should be reconsidering this is precisely what Sam said, so that we can follow the rules. You know, I resent the implications that there's some special influence that Barry has on me, and how I make my decisions. And that has been repeated over and over again. And I guess if you keep chanting the same misinformation, pretty soon you'll start to believe it. Keep saying that you -- that the rules have been broken, and you believe the rules have been broken. Keep saying that Barry has some influence on me and maybe you can believe it. But I tell you personally, I met the man once, had a sit-down talk with him. He's never written me a check, has no financial influence over me, and yet we don't examine all the influences. I wish everyone had the opportunity to see the Rules Committee meeting last week where it was heavily advocated that we dispense with the rules, that we follow the Robert's rules of orders, that rule 37, that allows reconsideration for any reason, and there was a huge fight that went on for quite a while that basically wanted to deny any of the councilmembers on the prevailing side their right under our rules to ask for a reconsideration. And if we're going to say let's follow the rules threats let's follow them across the board, everywhere. And I think that because of undue influence there has been many, many attempts to circumvent the rules. And I think that there's been a lot of baseless accusations, for people to come in here and assail the character of a community member of San José, that has done a lot not only in building but in philanthropy, and other areas of his life, over a bid for a library, to me, is disgusting and I just think it's a poor, poor way to do business. And I want to thank Rose for taking the opportunity to exercise her right under our rules, our council rules that follow Robert's rules, to ask for a reconsideration vote. And I think it's the right thing for this council to do. We have the opinion ever our City Attorney, of our Public Works director, that clearly say, all of the rules were followed, that we had a responsible, responsive bidder, and we should do the right thing for all the taxpayers of San José, and reconsider the vote, and award the bid to the appropriate person.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I have a couple of questions. Katy, Councilmember Liccardo asked about the number of years, four years, why would we put down that it would require three years of experience and a contractor's license?

>> Katy Allen: Councilmember Nguyen, that was an excellent question. That was basically a suggestion we had from our subconsultant who works for our architect to include that experience. As you can see our bid documents I just brought a copy of them. One of the reasons we deferred to award the contract is making sure we had addressed all of the outstanding issues, that being one ever them. There are places, these aren't perfect, we strive to be objective, clear and consistent. There is a part of our documents that identified the three years experience and another part of our document that required the licensing. In our very thorough review and we've used based on you all of our experience with the 16, 17 other libraries we've built we use the same objective and criteria to come to the conclusion that the bid we had received was responsive. There is flog in these documents that say the experience, the three years' experience is to be added on to the experience required for a contractor's license.

>> Councilmember Nguyen: So the issue for me personally, it's, you know, obviously I was confused. If I read something like this which I read, to me it means that the subcontractor has to have three years of license experience. Because if not for that, why would we put that kind of language in there not knowing the fact that this was recommended by a consultant? So it's really -- it's very confusing, it leads to different interpretations and that's why we have this issue today. And that's why in June, back in June I voted to reject all bids because I wanted to be completely clear, that the language we have in front of us is something that will be followed by other bidders who will be bidding for a contract in the future. So that's the confusion for me and to this day really hasn't change anything. My second question 23rd relates to the letter that was dated April 22nd, 2009, by Barry Swenson company, sent to Mr. Tao. And in this particular letter, it's very obvious that Barry Swenson's company declared that they did fail to meet the requirements of the specifications. I was wondering, did staff respond to this letter?

>> Katy Allen: The April 22nd letter was to our project manager and responding to some of the bid protests that had come up. They do acknowledge in this letter that they failed to meet the requirements in the specification. I will say that when we look at contractors, we're looking at the general contractor's requirement, and they have to post a bond to ensure that the bid that they have is going to be appropriate for us to award. The fact that they may believe that they were nonresponsive or not, is really not an issue. What we are really looking at is, does the subcontractor at the time that they're performing, do they have the appropriate license at that time, and in this case, the answer was yes.

>> Councilmember Nguyen: And that's probably why you did not issue a written response to this letter.

>> Katy Allen: Yeah, what we did, when we received this, it was a response to a protest that we had received from Zolman who was the second low bidder. This was their response to that.

>> Councilmember Nguyen: Thank you. Those are all my questions right now.

>> Mayor Reed: Thank you. I want to disclose that in preparation for this meeting I did have -- my staff or I had discussions with Barry Swenson, David Gibbons from Barry Swenson builders, path Dando, and Pat Saucedo. In my view, does he have experience? Does he have a license? Yes or no? Whether some people are confused about the language, doesn't change the process we use. There were opportunities to ask for clarifications, a formal part of our process. If something thinks it's ambiguous, for 16 libraries, this is the first time we've had the confusion doesn't change the fact that does very the experience, yes or no, does he have a license, yes or no, those were simple questions. I thought last time that we should have awarded the bid so we could move ahead. The council thought otherwise but I'm going to support the motion to reconsider because I think we made a mistake last time. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I'd like to begin by asking for clarification on the motion itself. Rose, could you mind saying, I couldn't write down quickly enough, what it is you proposed.

>> Councilmember Herrera: Basically, just to reconsider.

>> Councilmember Pyle: Just that period?

>> Councilmember Herrera: Right.

>> Mayor Reed: If that motion carries, we'll reconsider. If that motion fails, we'll be done.

>> Councilmember Pyle: I'm having difficulty with the amount of material that did come through, regarding falsification, regarding activities that were listed having been accomplished but yet the bid was just watered practically the same, well, that month later. Katy could you address that please?

>> Katy Allen: Yes, Councilmember Pyle, we have a lot of projects out in the community, a lot of contractors which is a very good thing. When we are working with the general our contract is with the general contractor. And their environment they manage their subcontractors and ensure their compliance and make sure they have the appropriate licensing. If there's projects out there that aren't going well in some other community, you know in the Bay Area, we really are not tracking those. What we want to ensure is our project is built well, it's built safe and that the responsibility that the general contractor has to our city and our community is appropriate. So we don't necessarily track down all of the issues that subcontractors may be having in other communities. What we do defer to the State to ensure that they have a license in good standing. So I don't know that I'm answering your question, but certainly some of the issues that were raised, if there is a performance issue on this subcontractor our specification provides a mean and a methodology to substitute that subcontractor out is there's performance issues. We also take very seriously, all the structural requirements also as well as the other aspects of the contract. We do have a system in order to sub-out a subcontractor if they're not performing.

>> Councilmember Pyle: Generally if you discover in one way or another that the person involved has falsified their requirements, what would you do?

>> Katy Allen: If they had falsified their requirements, the general contractor -- if they had --

>> Councilmember Pyle: Not the general, the sub. CT the subcontractor, generally we address it through the contractor. We generally do not consider it grounds to be non responsive. It does not factor into the criteria used to determine if a general contractor is nonresponsive.

>> Councilmember Pyle: So you're saying as councilmembers, we have to ignore that as well? I mean, that's pretty tough to ignore.

>> Katy Allen: Councilmembers can direct us to rebid, which has happened, and we're well into that process.

>> Councilmember Pyle: Yes, yes. Well, I'd like to talk about some of the issues that come about with reconsideration. Moving forward would bring up many issues. First of all the issue of sunshine. Expired bid deadlines, because the bid did expire. Contractual wording and the truthfulness regarding the experience level and also, the places where work had been completed. I don't know what else. But that's the due diligence that I have at this point. And while there would be most likely a long and complicated explanations for these concerns, it's difficult to just accept them when they're presented as a group. I'm also concerned about the precedent that we set when we open the door to reconsider council votes regarding any council policy, whether the chamber, neighborhoods? Andalties after a difficult decision in which somebody is unhappy with the result. We know that the state budget has created a crisis in our city budget and we'll need to make some extremely difficult and painful cuts in the coming months and we cannot set the expectation with enough lobbying, a councilmember can be lobbied to reconsider the vote and come up with a discussion the following week that we convene without new and relevant information. What about the message that we send to the other bidders, this is a huge concern to me and what if the message that we sends to all qualified workers? What with the Edenvale library that differed from the requirements in this particular case? And why aren't we opening or are we not, I should say, opening the doors to all those other bidders to say, well, look, if you give a new -- a change to the person who was out of contract, it had not been extended, another shot at this, what about us? I think we are putting ourselves in a position for legal action and I'd like to refer to Ed Moran for that particular question.

>> Councilmember Pyle, the rules you are operating are the rules that the council had adopted for motions of reconsiderations. Under rules of conduct for the city council under rule 4 section E reconsideration, it is clear that the council can take action, if a motion is made to reconsider by a councilmember on the prevailing side which is what happened by Councilmember Herrera.

>> Councilmember Pyle: But that was not the question. In other words if you avoid legal action on the part of the bidders.

>> As far as we're concerned, the other bidders do not have standing in this particular case. The only thing that could have happened at the other case, is rejection of all bid or award to Mr. Swenson. At that time the City Attorney and the director had determined there was a responsive low bidder and that's what the charter says you have to award unless the council decides to reject all bids. Those are the two options you had at this point. You also have those two options here today should the motion for reconsideration be approved.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Like dEjɹ vɹ all over again. Mayor, as you indicated earlier on, that we're here to, first nor the issue of the reconsideration. And that new information, is one factor that any of us can take into account or if you just choose that you want to consider just because you want to consider it, we also have -- that's our prerogative. I wasn't afraid on June 23rd, I wasn't afraid when I decided not to ask for its reconsideration. I'm certainly not afraid today in considering it. However there was information of there was new information why you chose to have this put up for reconsideration. The simple question as to what destiny information exists, the only answer was new information from the building trades, certainly not the group that's supporting reconsideration. That's not why I made a decision on June 23rd it is not any part of my consideration today. I don't know Mr. Swenson very well. My impression is that he's a good person and we've heard from a lot of people that he's a qualified, reputable business person that's done a lot for the City of San José. I have no reason or question to doubt any of that. None of that played a role on why, on June 23rd, I voted the way I did. I do agree with Councilmember Constant, and can understand his resentment that there's any indication that he made a vote based upon any outside influence or pressure from Mr. Swenson just as I resent any indication or any suggestion that I made a vote based upon pressure that was given, whether that impression is given through -- you know, through a threat of litigation or whether it's done through other comments received either here today or through letters or e-mails. That is not the case. That is not why I made the vote on June 23rd. There's also a suggestion today from Barry Swenson builder's counsel that the 11th hour council decided not to disqualify Barry Swenson but rather decided to rebid. That was not the case for me. I stated on June 23rd that I did not find Barry Swenson nonresponsive, that's why I did not bid to find him nonresponsive, the building trades council wanted to have us find him nonresponsive. The issue as stated on June 23rd and Councilmember Chu and I questioned Ms. Allen quite in a lot of detail and actually we took quite a few minutes doing it was this issue of experience and how -- what the verbiage was in the contract language. It's not so simple to say oh, four years, we asked for three years, there were six years, eight months experience, that does not speak to the experience that was asked for. There's four years that's assumed by being a permanent licensed contractor, but there's three years of specialized experience in structural steel. That's where Councilmember Chu and I found -- and that's where the questions were targeted on June 23rd, that's where we found the confusion. And apparently, the letter from Barry Swenson builders maybe even indicated that they saw that potential of confusion as well. The reality is that that is why, and that is very clearly why I stated and Councilmember Chu and I can't specifically recall but there are certainly others that voted in a like manner, for a rebid. Because there was no indication that Barry Swenson builder put forward a bid in bad faith or that they did so-d the interpretation could have gone either way and that's where the confusion was, the fact that they were the only one that did not have that same interpretation although the other bidders did, could speak to the fact that that was the first library project that Barry Swenson had bid on and there may have been confusion with it. That's why the with for a rebid was the way that we found to not prejudice any one party, and not to find someone nonresponsive, but rather rebid it and let's make sure that everything is done as clearly as possible. That is why, because there's been no new information on that issue and we're basically going over the same issue that we did again on June 23rd, and some of my colleagues that held the same position back then, whether they were for or against how the majority voted are just restating their

position. But I just wanted to make clear that here we are asking for a reconsideration, yet the facts haven't changed. So as Councilmember Nguyen said, there's nothing new that's been brought forward that changes the interpretation of the -- the interpretation of the confusion of the language that existed back on June 23rd for me at least. I don't know how others feel but that's the reason I don't consider it appropriate for reconsideration because we've already considered it and the only new information was actually leaning towards rejecting the bid anyway. I don't think that information is relevant did we don't reconsider it and allow the bid and allow Mr. Swenson and everyone else to make sure all the subcontractors are very clearly within the rules and guidelines and allow the courts to determine the language is as clear as possible.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all I'd like to disclose I've talked to Pat Saucedo, Pat Dando, Barry Swenson and David from his office, and also had a phone conversation with Neil Struthers. And the question for you, Katy, is that three years experience language. Is this in all the previous library contract or is this new, or for Educational Park, because of the requirements on Anderson Brule?

>> Katy Allen: Educational park.

>> Councilmember Chu: And they are because of their architect?

>> Katy Allen: What I would like to emphasize is the approach we've taken on our bidding also to Councilmember Pyle's comment about falsification, over the course of eight or so years it has never become a problem. And that doesn't mean it won't be in the few. But what we have now and the approach we take have gotten the number of projects well, has done well for us. With that I'm going to turn it over to Dave with regard to your specific questions regarding the specifications. I do want to make sure the council knows that what we have has worked for us time and time again.

>> Councilmember Chu: Again just to clarify, three out of the 17 previous library projects, has the three years experience plus the licensing requirement?

>> Katy Allen: Actually, Berryessa had three years and educational park had three years. Are.

>> Councilmember Chu: Three other libraries had licensing requirement plus X number of years experience?

>> Katy Allen: I'm not going to say plus. I'm going to say they had a five-year experience requirement.

>> Councilmember Chu: So let me rephrase it. Today the bid document does not have X number of years of requirements, is that correct?

>> Katy Allen: That's correct.

>> Councilmember Chu: Thank you.

>> Mayor Reed: Councilmember Chu, Mr. Sykes was going do respond to that. But I think you got the question answered, right? Anything to add Dave?

>> Was there anything else you needed to know?

>> Councilmember Chu: No.

>> Mayor Reed: Wanted to make sure you got the answer. Councilmember Oliverio.

>> Councilmember Oliverio: I did want to give my anxious to Councilmember Herrera for reconsideration, the fact is we can consider anythingfully time we darn want, because that is our right. Flat out, thank you. We almost didn't get the chance to have this conversation, it almost got killed on orders of the day. I'm glad that at least six of us decided to have thisk, because we are in the spotlight for the general public of San José residents. I voted no

on June 23rd, and it wasn't because the low bidder is generous to the Guadalupe river park or History San Jose or the Boy Scouts, it is responsible the low bidder that was the responsibility I felt towards the residents. I know there's arguments we've been discussing on levels of details and nuances that the citizenry don't get and frankly we can agree or disagree on what that is but in the end I think those arguments are vapor. I don't think they stands to what's really right and that's the lowest bid. Ed Moran, how do we go about getting this to never happen again? [Laughter]

>> Councilmember Oliverio: And what I mean is, not allowing elected officials who come to office in different ways to actually vote on these types of things? How can we do a process where we say it's a low bid and we give it to Public Works and then they decide it's low bid versus injecting a political persona in it?

>> Well, the way it currently works is, the city council has the prerogative of making decisions on contracts of over a certain amount of money. I mean, I suspect that you could delegate to the director the authority to approve contracts that she finds responsive up to a certain amount of money. That hasn't been the desire of the council. They've wanted to control over decision making on particular types of contracts. She does have authority to make decisions under a certain amount. So to the extent that this council does not want to consider those types of contracts, they could decide to delegate to the director the decision to approve those types of contracts. You have on other occasions delegated to department heads and the City Manager to make decisions on contracts of a certain amount.

>> Councilmember Oliverio: Thank you. So long story short I'll be supporting the motion to reconsider. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I wanted to highlight a few of the issues. The bid wouldn't have expired if we hadn't gone on legislative break and went our separate ways. That's no fault of the bidder. There has really been no lack of sunshine. In fact I think this bid has gotten more eyeballs on it and sunlight on it than virtually any I can remember recently. There's been a lot of talk about this precedent setting of reconsidering. There's nothing precedent setting. Againsts been our standing rules for a long time that the council has followed Robert's Rules of order. And it was brought up that the state budget crisis is putting our budget in crisis, and that's all the more reason to award this bid to the low responsible bidder that will save money. And I think we talked about what message this sends out and I want to emphasize, what message does this send out with anybody who wants to do business with San José? Follow the rules and you won't get the bid. And I think that's something that we really have to consider. What we're doing to the greater picture of doing business with the City of San José. So again, I think we should -- I'm going to support the reconsideration because I think it's the right thing to do, and if you're confident in your vote and your reasons then you should have no lack of confidence in going for a reconsideration.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Thank you. I know at Rules we had a rather lengthy and prolonged discussion. And the motion was that a member of the prevailing vote had to request a reconsideration. And that has occurred. And I will be supporting the motion to reconsider.

>> Mayor Reed: All right, we have a motion on the floor that is Councilmember Herrera's motion. More comments? Councilmember Campos.

>> Councilmember Campos: No comments, mayor. But the City Attorney said that we need to disclose if we had any conversation with anyone. And I just wanted to make sure that my colleagues didn't forget that. I want to disclose that I had a discussion with the building trades regarding the fact sheet that they send to the councilmembers. I believe it was yesterday. So that I could make sure that I understood the facts and findings from their perspective. And that was the only new facts that I encountered from the last vote that I voted no, and asked the Public Works director to actually go out and rebid the project. So I will be consistent and I am not going to be supporting the motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I spoke with Neil Struthers back in June, I've spoken with Pat Saucedo and I believe I've spoken with Barry Swenson sometime this summer about this. And I'm sure that I've spoken with somebody else with Barry Swenson builders. And that's it.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Yeah, I forgot my disclosures. Since our last meeting I met with two people from Barry Swenson's office. I met with four people from the chamber of commerce, and had probably a half a dozen or more conversations with other not-so-intimately related people and the one point I missed mayor, I said I was done but I'm going to sneak it in since you gave me the mic. We keep talking about these facts that have come up. They're accusations, they're not facts. They're one side of a story and it's not our job to be judge, jury and executioner. We have a set of allegations, to treat them as facts is completely improper.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I did speak with Barry Swenson and Neil Struthers and my chief of staff did speak with I think is it Drew Gibbons? Mr. Gibbons I'm sorry if I didn't get your first name right.

>> Dave.

>> Councilmember Pyle: Dave Gibbons, thank you.

>> Mayor Reed: Councilmember Nguyen.

>> I had phone conversations with Barry Swenson Pat Dando and Neil Struthers.

>> Mayor Reed: Councilmember Herrera HP.

>> Councilmember Herrera: I had a meeting with Barry Swenson.

>> Mayor Reed: Vice Mayor Chirco?

>> Councilmember Chirco: I didn't meet with anyone and I didn't have a conversation with anyone.

>> Mayor Reed: You had a good reason.

>> Councilmember Chirco: But my chief of staff might have.

>> Mayor Reed: Councilmember Pyle hypothesis.

>> Councilmember Herrera: I spoke with Pat Dando and Barry Swenson.

>> Mayor Reed: Thank you okay, I think that's it on the disclosure, the do bait, we have a motion to reconsider the council's decision taxicab on June 23rd. All in favor. Okay, let's do this the traditional way. In favor Oliverio, constant, Reed, Chirco, Mr. Liccardo, and Ms. Herrera. So that's six in favor. All opposed? Everybody else opposed, so we have five opposed, 6 and 5 is 11, everybody voted. So the motion to reconsider is approved, now we need a motion to do something else.

>> Councilmember Constant: Motion to award the bid to Barry Swenson.

>> Mayor Reed: The motion to award the build to Barry Swenson builders. Is that a sufficient motion? I want to make sure we have all of our -- we have to agendaize awarding the bid and doing something, here. Actually there are two items on the agenda, to water the construction contract, and to approve the First Amendment to the agreement for consulting services with Anderson Brule architects. Do we have to take those separate or --

>> My understanding there is correction necessary for the first part.

>> Mayor Reed: Should we take the first part separately?

>> Katy Allen: Please.

>> Mayor Reed: The award of the contract for the educational park branch library, low bidder Barry Swenson builder. Discussion on the motion? Beat this horse some more? I think we're debated out. All in favor, yes, would be Oliverio, constant, Reed, Chirco, Liccardo, Herrera. Six votes yes, opposed, everybody else, one two three for five, that's 11 votes, the award of the construction contract to Barry Swenson builders approved. [applause]

>> Mayor Reed: Staff, you wanted to make some corrections often the amendment to the agreement for consulting services with Anderson Brule?

>> Katy Allen: I was just notified we have a signed contract for construction date, it would be 5.3B 2.

>> Mayor Reed: Is there a motion to amend the first agreement?

>> Councilmember Constant: So moved.

>> Mayor Reed: Motion by Councilmember Constant. Is there a second? Second to approve the Anderson Brule contract. All in favor? Opposed? One opposed, Campos opposed so that is also approved. The last item on our agenda is open forum. I have no cards so we are adjourned. Have a National Night Out. In your neighborhood. Enjoy yourselves.