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>> Mayor Reed: Good afternoon. Call this meeting to order. This is Rules and Open Government Committee meeting for February 29th, 2012. First question is, is there any changes to the agenda order? I have no requests. So let's just move through it. In order. March 6th, council meeting agenda. Anything on page 1?

>> Councilmember Constant: I assume our 9:00 --

>> Mayor Reed: 9:00 start time still seems to be in order. Okay. Anything on page 2 or 3? Page 4 or 5? Or page 6, I two have requests for season additions. Commendation of Moreland little league and request for excused absence for Councilmember Constant to go to Police and Fire retirement plan business. Any other requests for additions or changes?

>> Councilmember Oliverio: Motion to approve the agenda with the adds.

>> Mayor Reed: Motion is to approve with the additions and the modifications.

>> Councilmember Constant: One minor correction on the add sheet, 2.4, it shows Vice Mayor Nguyen, it should have my name there, I believe.

>> Mayor Reed: Oh, the request came from Councilmember Constant, not the Vice Mayor.

>> Councilmember Constant: It's interestingly how deceivingly short this agenda looks.

>> Mayor Reed: It's nice to have a short agenda.

>> Councilmember Constant: Deceivingly short.

>> Mayor Reed: I have some people that want to speak on this agenda item, I think that is the appropriate time. Brian Doyle, Vera Todorov.

>> Good afternoon, mayor and committee members. Vera Todorov, here for the association of legal professionals. We're here to speak on item 5 of the March the changes in the proposed ballot measure have not been agreed by our bargaining unit. ALP and the city are not at impasse. City negotiatorsnever declared impasse on the terms of the ballot measure with us. In fact city negotiators walked out of mediation without ever having numbers for us to discuss with respect to the concessions or the savings, that they were seeking. It now appears that updated more accurate forecast will not be available until at least next week. Our association stands ready to discuss with the city negotiating team the city's requested consessions once the numbers of available. Clear backup for those numbers is presented to us, and the City's position on requested concessions is clear. A further indication that we're not at impasse is that the city again amended the ballot measure following all of our mediation sessions. No last best and final offer has been delivered and there's no reason for anyone to think that the city has reached a final version of the ballot measure. The latest version of the ballot measure will not be effective until July of 2013. There is no pressing need for it to be placed on the June 2012 ballot, especially when there will be a November presidential election available should the city and the unions come to agreement on a potential ballot measure or even preferably another solution. Given the controversy over both the $650 million projection as well as the $430 million projection and the violations of the Meyers Milius Brown Act collective bargaining requirements by the city, a deferral would allow both parties to clear op off and clear backup of those numbers in a calmer and more informed manner. Thank you.

>> Mayor Reed: Sorry, your time is up. Brian Doyle and David Wall.

>> Good afternoon, honorable mayor, committee members, Brian Doyle, I'm one of the negotiators for ALP. I would just like to add to Vera's comments in terms of requesting the deferral that it's extremely ironic that now we're receiving a memo from yourself Mr. Mayor suggesting that we have a study session on what the numbers are, what the accurate numbers would be, after mediation is concluded, and after the ballot measure is passed. That's absolutely extraordinary from a collective bargaining standpoint. I can't possibly understand this. It seems entirely in bad faith to be proceeding that way. There is no good reason to rush this through in June. The people of San José deserve a lot more better information about what this process has been and what the true state of the city's affair is before they embark on this election. Thank you so much.

>> Mayor Reed: David Wall.

>> Item 3.2 is to excuse or write off uncollectible amounts in the amount of $983,800.63. Ask yourself a question why you got yourself in this position to begin with. Second, like I said before the attorneys could be going after this. If they collect it then they should be given a cash bonus on the amount they collect. Since you've already written it off let the attorneys go after them and whatever money they get will compensate them for how their wages and benefits have been unnecessarily and unjustly slashed. As to pension reform, as a retiree, I find this whole thing a mess, Mr. Mayor. You're far too educated, you're far too great a servant to the public with reference to your service to the nation. You don't make mistakes like this Mr. Mayor. Somebody made a mistake and you've got to look into it and find it. That's what people want. To rush forward with a ballot reform because the San José Mercury News has not done their job, they have not done their job insofar as reporting the whole truth around this mess. So the public just relies on you as being truthful and there's too many holes in the argument. And the damage to the public is already done, unless the Mercury News and the media come up and do their jobs and say how is the word estimate omitted from all public documents? No, that's not right. We'll be talking about this throughout today. Thank you.

>> Mayor Reed: That concludes the public testimony on the agenda. We have a motion to approve the agenda with the modifications and additions. On the motion, all in favor, opposed, none opposed, that's approved. Next item is the March 13th council agenda draft. Anything on page 1? Page 2 or 3? Page 4 or 5? Understand we may need a sunshine waiver on item 4.2, the process for determining public convenience and necessity for offsale of alcohol. Is that correct?

>> I believe we need a sunshine waiver for item 7.2.

>> Mayor Reed: 7.2 is the grant funding of prop 84.

>> Correct.

>> Mayor Reed: That one, that's the 14-day waiver.

>> Correct.

>> Mayor Reed: When will the report be out?

>> It should be out this afternoon.

>> Mayor Reed: It will be more than ten days.

>> Yes.

>> Mayor Reed: Anything else on page 4 or 5 or page 6? I have some requests for some additions, a proclamation, national groundwater awareness week and show us your hope day. Any other requests for additions or changes?

>> Councilmember Oliverio: Motion to approve the agenda with the additions and the sunshine waiver of 7.2.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve with the additions and the waiver. Mr. Wall you want to speak.

>> I thoroughly recommend that fire station number 1 be candidate for a city landmark. Please allocate the necessary funding to repair the symbol that is damaged on the outside of the building. Item 7.1 and 7.2 should be deferred for another couple of weeks. This is a lot of money in a department that is so incredibly poorly managed that it defines the standard of incompetence within the organization. We are talking 1.1 million for the digesters,

there is an issue about a consultant involved by the project. And 2.485 million for this state proposition 84 business should be thoroughly reviewed. I have no confidence in this program at all. Thank you.

>> Mayor Reed: Thank you. That includes the public testimony on the motion. All in favor, opposed, none opposed, that's approved. Next item would be the legislative update. I'll have a report from Sacramento. Betsy Shotwell.

>> Betsy Shotwell: Thank you, Mr. Mayor, members of the Committee, Betsy Shotwell, Director of Intergovernmental Relations. Well, as I've been saying, last Friday was the deadline for bill introduction for the second year of the two-year session. Hundreds of bills of course were introduced last Thursday, Friday and we're going through them and internally with the department staff and the city attorney's office we'll be bringing forward as we always do legislation for the council to support or oppose as the case may be. One of the 2012 legislative priorities that you passed in December was that we introduce legislation, we have introduced in Sacramento, legislation that would allow for the operator of the civic auditorium and the convention center to receive payments for alcohol advertising and sponsorships, should they choose to have the option. And I'm pleased to report that assembly member Jim Beall did introduce last week AB 2047, with the principal co-author being Senator Elaine Alquist. What I'll be doing is inserting in the City Manager's weekly report status update on this legislation and of course any other legislation that the council is interested in or active in as well as reporting here of course. With that I'm obviously here to answer any questions, but it's the the new year and here we go.

>> Mayor Reed: Questions, Councilmember Oliverio.

>> Councilmember Oliverio: Hi Betsy am I understand the city attorney's office, is looking at this and for purposes of those in the audience who are listening, this bill would establish the medical marijuana control act for the purposes of regulating medical marijuana activities, a number of other issues. It is a lengthy bill, I haven't had an opportunity to read it ought but I understand the City Attorney is looking at it as well.

>> Councilmember Oliverio: Was your first impression though it was managing at the state level versus having every city do their own little thing?

>> Yes, there is some language that talks about limiting the authority of the local agencies to regulate medical marijuana. There is some concern we are looking at it and will be providing the council with an analysis of that bill.

>> Councilmember Oliverio: Another question is was there any legislation introduced on cleanup legislation for cities who made loans for the CRAF, and to be repaid?

>> Betsy Shotwell: I'll have to look into that. There are a number of bills introduced as recently as last Friday. I'll have to look into that.

>> Councilmember Oliverio: Imagine that one is a high priority. Yes thank you.

>> Betsy Shotwell: And thee bills, we will be looking with our lobbyist and the housing and the finance department and the successor agency and the city attorney's office on these.

>> Mayor Reed: Okay, I think that's it. No action to be taken on the report. Next item is meeting schedules, staff -- I think we have a block of time for the study session, next block of time is March 29th. .

>> City Manager Figone: Yes, mayor.

>> Mayor Reed: We're going to come back to that study session topic on agenda item G-2. Thought it was March 29th. Public record, anything the public report the committee would like to pull for discussion? Mr. Wall you want to speak on the public record.

>> First off is item T entitled $650 million or higher quote estimate close quote of pension cost not incorporated into public documents. Why? We get down there we talk about Adolph Hitler's big lie technique, thrives by, quote, telling a lie so colossal, that no one would believe that someone could have the impudence to distort the truth so infamously, period, close quote. Something to think about. Item E titled, "pretreatment program needs reorganization, new management, ESD should be organized. This speaks for itself. Item number F, week 8, citizen apologizes to venerable and honorable City Attorney at Rules but the City Manager is still yet to apologize to the public for the loss of $440,000 of free money from the Applegate Johnson scandal. Item G, are community centers new Gulags or worse, death camps for the aged and infirm? Making old people to set up tables and chairs, they are dilapidated, to get their only daily ration of bread, Mr. Mayor how cruel is that? It is in keeping with the other techniques around here. Item H, airport teetering on financial doom, high fuel prices and lower than expected air travel cited. What the Mercury News doesn't write about is how they're using bond proceeds for what, their operations, a certain portion of them? Things are real bad at the airport. And we need to talk about it. Thank you.

>> Mayor Reed: That concludes the public testimony on the public record. I'm sorry there was one on here, Martha O'Connell.

>> I'm speaking on item C, consolidation. There is a back story to this letter which I'd like Pete and pier to listen to. Before the motion on consolidation was ever on the floor, commissioner Mace announced, "but we're not going to do that." It's on the tape. She's also the commissioner who, immediately following the vote, asked the city staffer of housing, Wayne Chen, to turn off the tape recorder so she could add further comments. Incredibly, Chen turned off the tape. The demeanor of these folks as the tape reveals was pathetically unprofessional. No meaningful consideration of consolidation was engaged in as commissioners expressed continual concern that they might be, quote, out offed or laid off. This commission which purports to be concerned with public input has had to cancel meeting after meeting after meeting because they don't have a quorum. It's gotten to the point where on your March 6th agenda they're asking you to approve a standing committee to do the job that they can't do because they can't get a quorum. So I encourage you to go forward with reasonable accommodation and maybe if they're consolidated they can do their job.

>> Councilmember Constant: Just a real quick question, that. This tape-turning-off, is this the same one we discussed before or is it another one?

>> It's the same one.

>> Councilmember Constant: Okay, thanks. Motion to note and file the public record.

>> Councilmember Oliverio: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's done. G 2, item from councilmembers asking us to direct the City Manager to provide some relevant information on pension cost estimates. City Attorney tells me that because we only have three people here we could have two councilmembers speak. We usually can only allow one because we can't get over five. So -- but I know that we have a couple of councilmembers here. So if you both want to speak that's possible. I have some comments before we start this item. I don't think that we should allow use and abuse of city processes for political purposes. It's happened in the past. There was a trumped up charges filed and investigation requested by councilmembers against councilmember David Cortese two weeks before the mayoral election in 2006. I thought that was wrong. There was an anonymous complaint filed against the McEnery family, was filed with the election commission, was immediately released to the public. I thought that was wrong. Now we have another political trick being carried out by lawyers, lobbyists, and political agents for our unions. Now, any time someone calls a press conference to release a confidential document in violation of our municipal code, you know it's a political trick. We should not allow ourselves to be used for those purposes. The residents and taxpayers of San José are entitled to know how much city employee retirement costs are costing the taxpayers and how much those costs might grow in the future years if things don't go well. Stanford institute for economic policy research recently released a report on the 24 largest independent pension plans in the state of California including San José's two plans. The report concludes, in part, that each of the systems, that's each of the 24 systems including our two, substantially understates liabilities and overstates funded ratios. And that systems may now arbitrarily change assumptions or methods involving investment rates of

return, amortization periods, asset smoothing, or other key factors. Not surprising, those changes typically exaggerate the financial well being of systems delaying awareness of potential problems and solutions. We should all be concerned about that. And I'm looking forward to discussing those issues in a study session. The Kellogg school of management at Northwestern university released a report in October of 2010 on local government pension obligations including San José's. That report concludes in part that even if investment returns of 8% are achieved, San José's plans assets are adequate to pay accrued benefits only until 2027. And that the cost of benefits in the following year would be $777 million, to be more precise, $777.4 million. We should be more precise and I'm looking forward to discussing that at a study session. Both of these studies analyzed only pension costs. Retiree health care benefits, also called OPEB, also have a significant annual cost to the city on top of the pension cost and are also rising rapidly. In addition if -- efforts are under way nationwide to push local governments and our pension plans to use risk-free discount rates and assumed rates of return. Some of those efforts include the government accounting standards board's proposed improvement to financial reporting of pensions for local government and the public employee pension transparency act introduced in the Congress. Those efforts could have a significant impact on San José. The association of local government auditors, this is the national organization, provided written comments to the government accounting standards board, saying the governmental accounting standards should be changed to address the challenges posed by the use methodology that permits the use of investment return assumptions tha thave generally proven to be excessive. To that end, we believe that utilizing a discount rate that represents a risk free rate of return as the investment return assumption would be more appropriately conservative, using a risk free rate of return assumption would increase the actuarial determined annual required contribution in the earlier plan years. I think that presents a potential problem for the City of San José and I look forward to having a discussion of those issues in a study session. A year ago in this room, in a study session, February 14th, in response to a question from a member of the council, I think it was Councilmember Rocha asked the question, Russell Crosby was asked for an estimate of potential increases in benefits, that is all online and there's a video so if you want to know exactly what the question was you can see that. His answer which has been provided to the public and the council in a memorandum from -- or City Manager Deb Figone dated February 9th, was, this is Russell Crosby and it's on tape. The benefits are going to be what the benefits are but in order to fund them and accurately project for them, to actually project forward how much it's going to cost, we need to fix all these things inside the

valuations that we already know about, and we're nowhere near fixing those. If you fixed all of that you're looking at probably another $250 million above your 400 million. So the 400 is really just a basic starting point that recognizes the losses that have occurred and doesn't really fix anything going forward. We did not get into a big discussion that day about that number. We could have. We didn't. And of course people are certainly welcome to ask where that number came from, and the details of it, as Councilmember Rocha, Pyle, Chu and Campos have asked in their memo. And I think at a study session staff should be prepared to answer their questions. And I'm sure staff will be able to do that. But I also have some additional questions for that study session. And those questions are, what would be the impact on our retirement cost, the City's retirement cost, if the discount and rate of return assumptions were reduced to so-called risk-free rates, pegged to a tax exempt 30 year AA or higher municipal bond index for both pension and OPEB obligations? What would happen to our is City's retirement costs if increases in medical costs continue at double digit rates for the next 30 years? What would happen to our City's retirement cost if there's another recession, where the plans lose 25% of their market value over two years and are followed by a so-called lost decade of relatively flat economic growth which happened in Japan and which the plan's investment return is half the assumed rate of return? What would happen to our cost for retirement benefits if employee wage increases occurred at twice the rate assumed by the retirement boards? And finally, what would happen if all that happens? What would be the impact on our retirement cost? In addition, prior to study session, I think the staff should provide all the councilmembers and the public, of course, with links to the pension plan disclosures that the city council approved on a couple of occasions that were filed with the issuance of airport and convention center bonds. Those disclosures were extensive and detailed and are available to anybody who wants to take a few minutes to look online. Those disclosures clearly identify the billions of dollars of unfunded liabilities, the hundreds of millions of dollars of annual costs incurred and the potential for significant increases if actuarial assumptions are changed. They have numerous references to fiscal emergency, the fiscal reform plan and the many public documents that describe the scope of the problems we're facing as pension costs esclate, including a specific reference to my June 3rd budget message in which I used the $650 million number as a potential cost if things don't go well. So anybody who wants to get the facts for themselves can do that. They're posted online. So with that I think we need to schedule a study session. I would say the 29th of March is apparently the next available date, it will give all councilmembers a chance to get their questions asked and get chance enough time to prepare for that. Councilmember Constant.

>> Councilmember Constant: Yes, thank you. I want to congratulate the councilmembers who put out this memo for your continued efforts to derail the pension reform ballot measure. I think that it's clear that there has been a significant political effort being mounted to do everything that can be done to delay and obstruct this pension reform ballot measure going forward. I think that I find it very interesting to see that a councilmember signed a request asking how a -- how and when a number was developed, when they asked the question at the study session in this very room that led to that. And there has been a very clear memorandum put out by the City Manager that highlights it word for word. There is a transcript of that meeting I believe. I know that there is a video of that meeting because I went back and watched it myself. And you can see exactly what transpired. So to ask and sign your name to a memo that says how was this developed? Who developed it? And when they developed it? When it was in direct response to your question, at a meeting where you were present, just over a year ago, in this room, I think really helps shed light on what the purpose of this memorandum is. I think that it is important that we take a study session to educate councilmembers. Because we've heard councilmembers in the past ask, well isn't it true that when the Dow hits 12,000 our pension problem will go away? That question was asked not only verbally a couple of times but it was actually written in a couple of memos from councilmembers. And we've seen the Dow do a number of things. And we've seen our pension problem not simply go away. We've asked why the boards pick wage inflation numbers in their actuarial assumptions when employees aren't given raises during one contract. But that's an easy question to ask if you're unaware of the fact that our payroll increases every year not only just because of direct pay raises but because we have employees on a step system, and payroll increases simply as a matter of time passing. I think those are all-important questions that we can take this opportunity to educate the council on why the board makes assumptions, why they spend so much time looking at all this information so that they can inform that are actuarial analysis. I think it would also be important for the council to see clearly that even in the face of very clear expert advice given to our boards as well as council direction to at least have a 50% likelihood that returns will happen that our boards particular our Police and Fire board recently went against not only that request and the advice of the experts in the room, and chose to go with a rate that we have less than a 50-50 chance of achieving, which means we will continue to create pension unfunded liabilities. And I think it's important that people start understanding why when you have union leaders like those in this room that are pleading with the board, pleading with the board to change their assumption rate so the

members' contribution rate won't go up which was clearly said at a meeting and shift those burdens to an unfunded liability that belongs to the taxpayers. That's the education we need to do because there is a lot of people that are misinformed and uneducated in how pension systems work. There are people that want to continue to bury their heads in the sapped and think, let's not do anything because, after all, the numbers are changing. The numbers have been changing for a long time. We knew that we needed to have pension reform way before the numbers escalated to the numbers that we now see. We knew we were on a path of unsustainability. The same unions that confirmed, in fact one of the unions, the Police Officers Association, told us that not only do they have the actuarial assumptions confirmed, but that they were worse off that be what they were seeing. Now they accuse us of lying. People must learn that we have a problem we need to fix that problem and not only do we need to fix it to maintained the sustainability of the city, we have to fix it because we have to restore services. Our residents have paid. They have paid dearly in the loss of services in the city where they continue to pay more taxes, they continue to have more demand put on them as residents, they continue to pay more for every service we get out of this city and we owe it to them to restore their services and the way we are going to do that is through pension reform and the only way we are going to continue forward without getting baseless memorandums like that is by educating our city council.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you. Didn't expect the meeting to start this way. I was expecting to hear some answers to questions that I had listed in this memorandum. But I probably have to clarify some few points just to start, begin what I heard. I am a city council member representing District 9. The residents in District 9. No one else. I heard a lot of discussion and statements about unions and such but I'm here representing District 9. I have a clear record on pension reform proposals. The ballot measure as we see it now looks more like what I proposed back in June than what it does that you proposed. I don't think you can sit here and criticize me for not getting the pension reform issue. Political tactics, using that to describe an information request is extremely troubling. I'm pretty disturbed sitting here just a little over a year in office now and I never expected this kind of response from an information request. My office wrote that memo, my self and chief of staff, no one else. Let me say this once again, we wrote that memo no one else. I did consult with another council office, and the other ones before they

signed it. Any insinuation otherwise is in my opinion disrespectful, and I'm sure you feel the same way if there's an insinuation made upon some of your work. The accusations in my mind are coming from that side of the table, not mine. I could go through this memo, and it is, again, an information request, clearly states information request, repeatedly probably. When a projection or estimate is used in documents that a councilmember deliberates on I feel it is my right and duty to know where that information came from and how it's arrived at. That's generally what the memo states. Nothing more, nothing less. Should any of my other colleagues ask for information I hope I would show them the same respect. Now that I got that off my chest, my questions to start when I showed up here was, was simply to ask when the study session was being set for.

>> Mayor Reed: March 29th I think is the standing date.

>> Councilmember Rocha: We have that on hold. Now would the information we had requested be in writing or will that be in a PowerPoint or just a verbal?

>> Mayor Reed: My guess is probably both but I'm going to have to defer to the City Manager how she would respond to the information requests, what she best expects. Part of it I believe has been answered by the February 9th memorandum perhaps not in the detail of what you're hoping for.

>> Councilmember Rocha: No, that's why I wrote this.

>> City Manager Figone: Yes, and it would be my intent to put out a memo and Councilmember Rocha and I have talked about what I believe I'm prepared to put out and that is to discuss the basis and the administrative context for this number under the conditions we were operating at last year. It may not satisfy all the questions, I've been honest about that. But I will do my best to convey what was the basis and then the council can take it from there. It will be in writing. And if I can get it out sooner than the 29th, I will.

>> Councilmember Rocha: That was going to be my next question in terms of timing. This memo was written a week ago, and so we've had a week. And I'm looking at this in very simplistic terms, generally how I see it, the

estimate of the projects or whatever we want to call this was either provided by backup or not. And if it was provided by backup I would have thought we could have that today. If it wasn't provided by backup then we could answer that question today and there wouldn't be any information that we neat later on. I know that's very simplistic but that's kind of where I started as I wrote this memo and in this discussion I share that with you. I'm still a little bit confused and not to get into a debate with my council colleague over the complexity of the pension issue, which he is more well-versed than I am, having sat on that board, and having more time here on the council, I recognize that. But I still go back to if there is an actuarial analysis behind this I'm confused as to why we couldn't have had that today. If there isn't I'm confused as to why we couldn't have just said that today. Past that that's all the information I'm looking for. Again I'll go back to my earlier point, when the council deliberates with an issue with an estimate projection or a hard number I don't see any problem asking which one of those it is. And I'm not sure who I'm posing this question to but --

>> City Manager Figone: Well my response would be, through the chair, that it's not before you today because we haven't been asked, except in this memo. Appearing before rules today.

>> Councilmember Rocha: Okay, thank you.

>> City Manager Figone: It is my intent to get something out, maybe I'm get out an information memo before the 29th. And again if that isn't sufficient then the council can discuss what we've put out as you determine.

>> Councilmember Rocha: Okay. In looking at the letter that was submitted by the mayor to the elections commission, it says professional estimate. I thought we were halfway there in the answers. That's partly why I wrote this, that we could have seen material. I am pretty sure you didn't get direction. Aside from that I don't.

>> Mayor Reed: If I look at your questions here 1 and 2, how exactly was the worst Kay $650 million for FY 15-16 developed who developed it when was it developed and was the 650 million number calculated in acceptance of any methodology? When I read or see the trips or look at the video we had a year ago, I can answer those questions. Russell Crosby it was an estimate and it wasn't an actuarial methodology. He said it was an estimate

done internally. So kind of answered that question I think. I'm trying to think what beyond Russell saying it's an estimate you want?

>> Councilmember Rocha: Using any methodology or was it a professional estimate using what was in his head I guess is what I'm up for.

>> Mayor Reed: I can't answer what's in his head. Most knowledgeable person in the room and he said it's an estimate, okay it's an estimate from somebody who knows about something about this.

>> Councilmember Rocha: And the second question, I'm sorry?

>> Mayor Reed: Where they calculated in accordance with the accepted actuarial methodology.

>> Councilmember Rocha: That goes back to the point.

>> Mayor Reed: So the $400 million came from the actuarial report. I don't know which actuary prepared it, that was the official actuarial projection. So part of it, I guess accepted actuarial methodology, I don't know who the actuaries were, I don't think it was Cheiron at that time, and then the others, you know, the $250 million on top of that, I don't know. Because that was inside Russell's head at the time so -- so those are generally the questions I have too.

>> Mayor Reed: All right, I think those are reasonable question questions to get answers to.

>> Councilmember Constant: Is motion and second to approve your memorandum and set the date for March 29th.

>> Mayor Reed: Memorandum the way the manager has described it in writing and again for the study session on the 29th. What time of day on the 29th do we have being held?

>> Councilmember Kalra: Kalra I think it's 1:30 to and what they are not.

>> Mayor Reed: Okay, I think that's always important to do. I have a couple of requests to speak on this item. I'll take these now, Mr. Wall, Martha O'Connell.

>> As you recall I was there at that meeting, February 14th, 2011. I was an estimate, it was talked about. The issue here that nobody seems to pay attention to except for myself is, why was the word estimate omitted from all public documents that was used by you, Mr. Mayor, in your variety of memos, Councilmember Liccardo used it a few times. And it bothers me because you, Mr. Mayor and the City Manager both have communication directors, dedicated staff for communication. Consulting budgets for communication and for legal services used to construct wordsmithing of all sorts especially on this ballot measure. But I asked the question how can the word estimate be omitted from public documents? And this is what's caused a big brouhaha. Even the Mercury News editorial board has failed miserably to discuss the issue of this omission. Now it turns is the omission intentional, because it's hard to argue that it's not intentional because of the vast resources that you Mr. Mayor and you Madam City Manager, have with reference to communication groups. Or you could just download it to say it's an act of negligence, pure stupidity, that you omitted the word estimate from all documents in which people relied to their detriment, as a matter of fact, the biggest people that got punished with this is the citizens. Because the only thing they heard is the $650 million figure as being truthful when in all actuality, at the meeting, it could go higher than $650 million, as I recall. But let us focus on how the word estimate was omitted from public documents. I contend it was intentional. And I think this is the crux and basis for Councilmember Rocha's and the other righteous councilmembers reasonable attempts.

>> Mayor Reed: Sore your time is it.

>> Martha O'Connell.

>> Mr. Mayor, I'm amazed at your courage and your articulate facing-down of this obvious political grandstanding. I have no ax to grind. I'm not a lobbyist, I'm not a union member and I'm never going to run for city council. I'm just a citizen who is observing this unseemly behavior on the part of those who vote over and over again to delay or oppose pension reform. If this memo was signed by more than the usual gang of five, I as a citizen would have more faith in its validity. This is clearly intended to hurt the mayor and those councilmembers who have consensual supported pension reform. These are not innocuous questions as the presence of the media today attests. It is sad that so much time and effort has been taken up by this political infighting.

>> Mayor Reed: Steve Kline.

>> Good afternoon. Mayor and councilmembers. I'm astonished at the tone in this room. I'm astonished of how civilized questions can be turned into such rhetoric and outrageous demands and political speech. The major question is, how was this estimate achieved? As an attorney who has worked for insurance company defense firms at times. They always ask, how much is at a going to cost us to defend this case? I have to prepare a very extensive brief, telling them exactly how much their attorney's fees are going to be. We call that an estimate. Some depositions last longer some are shorter. And they rely on that to make their decision as to how they defend the lawsuit. The same thing is true here. When we are asking as the councilmembers and the people are asking for how was this estimate based, they want to know, the details. And ladies and gentlemen, that has not happened in this city for five years. And that needs to change. Thank you.

>> Mayor Reed: Nancy Ostrowsky.

>> Good afternoon. I was not intending on speaking today. But I, too, am shocked and appalled at how you talk about the people that really serve you and are employed by the City of San José. You know, and many of you know that local 21's AEA, AMSP and CAMP have very diligently worked at pension reform. We know because you've even said it to us, and your staff certainly has, if anyone could get a deal on pension reform, it was us. And we worked that hard to get that. And a short time ago we found out that there was not truth to some numbers. But you know, and we're insulted here today that you would say we're blowing up pension reform. Because you know

we're not. We were the group that wants to support, when there's a problem, and handle it. My question, though, Mr. Mayor, and those that sit on this rules is this: When you talk about the 650, did you use that 650 in your bond disclosures? No, you did not. There's legal documents that you have to follow. We ask and we support that you're honest with us because we have worked hours to be honest with you and work at a table to come with pension reform.

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

>> Councilmember Constant: Let me make one final statement. I sat in every single meeting related to pension reform, both open and closed session, and every budget session we've had, and the budget projections have always been made by using the actuarial assumptions. Nothing was made on estimates. And all that information, not only has been available to the public but it has been available to every one of the councilmembers who say they don't have any item where these numbers came from.

>> Mayor Reed: All right I think we need a motion, we have a motion to set the study session on the 29th. Further discussion on the motion? All in favor, opposed, none opposed, that's what we will do. Study session on the 29th. We have a couple more items on the agenda. We have a report regarding our joint advocacy, federal projects from City Manager, environmental services, joint advocacy with Santa Clara Valley Water District.

>> Betsy Shotwell: Thank you mayor, I have no comments but staff is here from the Water District turn around of one week is requested.

>> Councilmember Constant: Motion to approve with one week turn around.

>> Councilmember Oliverio: Second.

>> Mayor Reed: I wanted to pass on a bit of information. I had a meeting with senator Feinstein last week. Linda LeZotte was there from the Water District talking about how we're going to get the money together to do the study to figure out what we have to do in the event the sea level rises, how we protect our property and the wetlands. And I know that I think the Water District's going to do a letter to senator Feinstein explaining where the funding gaps are because the Army corps of engineers is in the middle of this and funding is an issue and I want to make sure you know that and that the Water District is aware of that and that we're working together at that level as well.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: We have a request to speak. Mr. Wall.

>> On page 2, we have a continuous perpetration of a lie. Quote, this deals with the reclaimed water project reuse. Quote, the program also decreases the amount of effluent discharged into the San Francisco Bay. That part is true. Preserving and protecting the salt marsh habitat of two federally listed endangered species, period close quote, was never true. It was found out in the early days of the reclaimed water project that those habitats were never threatened to begin with with. I keep saying you should omit that because it keeps something going on that is not truthful. Now on page 5 we see the most egregious crap, the south San Francisco Bay emergency port access project. The hover craft project. You're going to ask the Feds for $100,000, under general investigations, to keep pursuing this ridiculous notion, that if everything breaks down in the city due to a cataclysmic event, that they're going to be rescued by hover craft coming up through the Alviso slough. What this really is, is an office of economic development ploy to develop the waterfront in the Alviso. That's what was put forth, that's who promulgated that along with the chamber of commerce, and I'm going to have to write the Feds again about this. They shouldn't be wasting any money on this stuff. If you want to create a deep water port, a straight line deep water port, that's a different issue. But going through the Alviso slough, Mr. Mayor, that's plain bunk.

>> Mayor Reed: That completes the public testimony on this, we have a motion to approve. All in favor, opposed, none opposed, that's done taking us to item G-4 discussion and further action regarding protocol for reports from the council liaison to retirement boards as appropriate. This was a referral from a discussion at the city council meeting. We have a memorandum from Councilmember Rocha as well. Just to set the context, for those of you who don't know what we're talking about, on every council agenda we have a couple of standing items, one is for the City Manager to report item 3.1 and another one 2.6 I think from which we get a report from our liaison to the retirement boards. Which happens at this time to be Councilmember Constant. When we put that standing item on the agenda, the purpose was to make sure that items of interest were brought to the attention of the city council, so that we would find out earlier, things were happening at the retirement boards, since they're making decisions that cost us hundreds of millions if not billions of dollars, we wanted to be alerted to what was going on there. And Councilmember Constant has done that. The intention was not to have Councilmember Constant or anybody else do a full written report, because all of the things that the retirement boards are doing are posted online or they have videos. The whole point was to tell the councilmembers, something has happened or they're doing something and if you want further information you can ask the staff, or you can visit the meeting or you can watch that. So I don't think we want to make it more complicated for the council liaison. But I do think it could be helpful to the councilmembers if we provided them some more information around these retirement board meetings, considering the magnitude of the problems that they're dealing with, or creating. Depending upon your point of view. And so I have a couple of suggestions. One is that after the retirement boards have their meetings, I think there's one maybe tomorrow, that we agendize with item 2.6 when we post the agenda, that the staff puts links to the most recent board stuff. Whether it's a meeting or video or things, just gets linked with the agenda when you prepare the agenda, it's just a standing link. That way councilmembers can very easily just go to the agenda, click on it and see whatever they want to see. And then the other question I had about on the written part of it was whether or not there are any minutes that are prepared. And if those could be provided to the council. And if so, how long does it take to get the minutes? Will they really be timely so that we don't have to create another written document of some kind. City Clerk.

>> Dennis Hawkins: Mr. Mayor, I was actually going to offer that suggestion of linking on the agenda for the video or the agenda packets. I think there's a timing issue, if the retirement boards meet on the first and third

Thursday of each month. And generally minutes take a little bit longer than that three or four days between the time of the meeting and when Councilmember Constant would make his report. But I think that we could put a link on the council agenda for those meetings, and then when the minutes do come out, that would just be a normal activity that we would just include those on the agenda, as well.

>> Mayor Reed: Well, Councilmember Rocha's request for written materials summarizing meetings of the City's two retirement boards I think the minutes are a pretty good summary of actions taken. The one area that I have a little bit of concern about, and I think that's perhaps where Councilmember Constant's report comes in, is if the actuaries for the independent retirement boards make a recommendation to the boards, or if they talk about projections, and the boards don't take any action or they don't follow the recommendations, I think what the actuaries are saying is important for us to know, looking to the future. So we know the retirement boards have adopted a return rate of 7.5%, I know because I heard it from one than one place that the actuaries recommended a 7.25% rate of return. The independent boards they make their decisions. We don't tell them what to do. They make their decisions. But if the actuaries are recommending something, I'm figuring that eventually the boards might go there. Well, if the boards decide to go to a 7.25 assumed rate of return instead of the 7.5% assumed rate of return I think that will add about $20 million per year to our retirement cost. I think that's important to know. The minutes aren't going to show that, because I assume the minutes are going to say, the board took action, here's what they did, they are not going to talk about what the actuaries recommended. So I would like to have some way for the staff to bring that to the council's attention in a little more formal way than we have in the past. And I think the minutes are a fine starting place, but I'd like for the staff to start of think about how can we point out those areas that are conversation, maybe, at the retirement boards but tell us something about what they're thinking or where they're going. I think I saw part of a presentation that they're working on this week that shows potential range of fluctuations in investment returns, depending upon which element of the investments you're talking about. They probably won't take any action on that but I think it's relevant information that the council ought to get so I'd like the staff to think about the important stuff that should be brought to the council's attention. Another way to do that in addition to the minutes, I think you can take that up after you've had a chance to think about it. Councilmember Constant.

>> Councilmember Constant: So I just want to say you know, I appreciate a sudden thirst for information in the 11th hour as we continue to work on our pension issues in the city. My concern is that, to ask a councilmember to do the work of professional staff that's already being done I think is inappropriate. And that's why we're fortunate in this city that we have so much information readily availability online. And if it makes it easier for us to provide a link, I'm all for that. But that's why we have these things online. You know as we all know, we're on dozens of boards, committees, and commissions. What I hope we don't start a precedent of expecting every single person to write a memo about a meeting that they went on. Because I think that's wholly inappropriate and I think all of us have a lot better things to do with our time than re-write information that is already readily available. I think that it's important to keep in context that before we started this practice, the council got absolutely zero information about what was occurring at the retirement boards. And it's been my intent and my practice to give a very high-level summary of those items being discussed that had a direct impact on our decision-making that could help us in our decision-making or have a direct impact on the budget or the delivery of services. And I see that councilmember didn't stick around to defend his memorandum but I think it's important that we keep that context. It's about information flow, all the information is available, I'm not opposed to giving the clerk a little more work, to provide links. But SJretirement.com has all the information and it's very clearly and redly accessible.

>> Mayor Reed: Never hurts to make it easy for people to find the right spot. I think the clerk can do that as you do on many other things.

>> Dennis Hawkins: And that was the point, that all the reports are linked on the agenda. By attaching one link any councilmember or any member of the public could access that information very readily.

>> Councilmember Oliverio: Does this require a motion?

>> Councilmember Constant: I think just direction.

>> Mayor Reed: Well, you know this is just a Rules Committee thing but let's do a motion.

>> Councilmember Oliverio: Motion per the mayor's suggestion of simply linking public information to the council agenda.

>> Councilmember Constant: Second.

>> Mayor Reed: Okay we have a motion to do just what we talked about doing. All in favor, opposed, I have one request before we finish the voting. Mr. Wall.

>> I think Councilmember Rocha's request is reasonable. I think as long as you have a summary or a paper trail of what happened, people sometimes are -- are computer illiterate, like my aboutself, I can barely use Microsoft word. Barely do I use that. When you think of two groups that cost the most money in the city, the pension group and the water pollution control plant, neither one of those minutes in my opinion are satisfactory. TPAC minutes treatment plant advisory committee, are so horrific I don't know how many times I have asked those meetings be held here under the auspices of the City Clerk. But even so, the only cogent minutes are from the airport competitiveness committee. Those are really the only standard of accurate minutes. The rest of them are a sentence here sentence there, and most of what's done moneywise gets lost in the noise of the Internet or what have you. I appreciate Councilmember Constant's diligence. Sir you have done an outstanding job at retirement boards as well as a few other things. But I think Councilmember Rocha's memo could serve as kind of a warning because council should know what's going on with TPAC and the pension boards and I think a little synopsis is reasonable.

>> Mayor Reed: On the motion, Dennis.

>> Dennis Hawkins: Just to clarify, rather than write something and agendize something for the council meeting we'll cover this in the Rules Committee report when this comes before the council. So I won't be producing another report.

>> Mayor Reed: Yeah, we don't need a report. Let's just implement it. So the question is, I think your next report to the council on ordinary would be next week, right?

>> Councilmember Constant: Remember the intent is not to create reports so we're okay with that.

>> Dennis Hawkins: Just want to make sure set the expectations.

>> Mayor Reed: On the motion, all in favor, opposed, none opposed, that's approved. Next item is to request to problem of the thousand hearts for thousand minds as a city sponsored initiative.

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: Mr. Wall you wanted to speak on this one.

>> It's no -- it's not news, that I have no respect whatsoever for the Silicon Valley leadership group. I think they're just a bunch of group of people out for their own particular interests. If they want to pursue this matter, fine, good for them. But they should pay for it. And here it was, and I quote, originally it was anticipated that no city funds or resources would be expended to support the initiative, period close quote. And now you got to kick out some of your office funds for this. No, you can't start institutionalizing new government programs, and that's what this funding would initiate. Until you get your budget squared away, until you talk about it publicly. In addition, who's going to do the background checks on these people? You going to round up, you going to put out open the thing, hey, we want these people to come tutor our kids, hey, great, don't get me wrong. But who's going to do the background check to make sure these kids are protected? Hey, pedophiles show up on all sorts of different methods. And this right here, authorized expenditure of city funds to support the initiative, no. I don't support that. Let those fat cats at the Silicon Valley leadership group cough up about change. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. All in favor? Opposed, none opposed, that's approved. Think we're down to open forum. Can't read the handwriting here.

>> Councilmember Constant: Kind of a surprise. --

>> Mayor Reed: Could be David Wall.

>> Now let's see if we can continue the laughter. All right? I mean this is the biggest laugh you're going to get today.

>> Mayor Reed: You always give us laughter David.

>> I'm just here to give love. I don't understand the convention center, really, I don't. Mr. Mayor, nobody but me asked the question about solar panels on the roofs. I mean, that's something that should have happened. But all these other, quote, estimates, for heating, ventilation, air conditioning, the plaza, the kitchen, the furniture, fixtures and estimates, listen, a sewage treatment plant is just like a convention center, in a way. You can't allow it to fail. One bad convention kills it. And if people don't have good food, if they don't even -- your old kitchen is not going to support the new addition. It's just not going to do it. So where are you going to get the funding? And above all, there's no thank you for additional, unfunded, unexpected work for the attorneys with reference to this encroachment on the Marriott's property. How could that be done? I mean how could you do that? You're a real estate expert. How can you encroach upon another's property and say hey let's negotiate it. You could do eminent domain, and flat out say we're going to take it. But look at the preplanning scoff laws on the convention center, not to mention the downtown business association isn't happy with it. I'm sorry I didn't leave you laughing. But I'll try next time. You're all good folks. God bless you all.

>> Mayor Reed: We're laughing inside. That concludes the open forum, that's the last request, right? Okay, we're adjourned.