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>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for December 7th, 2010. We will start the meeting with an invocation. I'd like to introduce our invocator, who is the Santa Clara County poet laureate. Nominated by the County Board of Supervisors in 2009 to advance poetry and literature. Please welcome Nils Peterson to the podium. He is co-founder of the poetry center of San José which works with the community to support writers and support literary expression his poetry collections include the comedy of desire, and here is no ordinary rejoicing. Mr. Peterson thank you for joining us.

>> Mayor Reed, councilmembers, ladies and gentlemen, I feel privileged to be here speaking on December 7th, the anniversary of the attack on Pearl Harbor. I was eight when it happened. I lived then in New Jersey where my father had found a job after difficult years early in the great depression but on that day we were visiting Mt. Vernon, New York, where my parents, both of them from Sweden, had met in an English as a second language class. They still had many friends there among the small colony of Swedes. We had a nice day, but I was looking forward to the ride home, because we were going to listen to Jack Benny. We drove through the Holland tunnel then turned on the radio but there was no Jack. Only news of the attack. The whole world began the change that still goes on. My father too old for the army left the job he loved for work in the factory to help with the war effort, half a continent away David King left his wife and two month old daughter who had become my wife to join the navy. Soon meat, sugar and gas were rationed, the speed limit was set at 45 if you could find the gas and soon all of the windows of all of the houses were covered with black shades to make sure light would not betray us to night attack. Wardens strolled the streets to make sure no glimmer shown through. Soon there were red and white flags in those windows, whose face were the blue stars announcing this was the house that had sent a soldier or soldiers off to war. When the first casualty list came back, some of those stars changed to gold. And soon, the whole world was changed. The great globe at the center of the reading room of the library which had seen so permanent, each country defined by its own color, became more and more irrelevant. At the war's end it was at outmoded as a Gatling gun. In those days in school assemblies we sang not only the first verse of the star spangled banner but the fourth, which begins, thus be it ever that free men shall stand, between their loved homes and the war's desolation. And goes on to say, praise the power that hath made and preserved us a nation. Our time, too, is difficult with its own wars. And desolations. But on this day, it is my hope, and I'm sure the hope of all your constituents, that you will be given the wisdom to make the choices that will preserve us, a city, a

state, a nation, and, yes, more than preserve. The choices that will help us grow in justice, goodwill, and freedom. Thank you, Mr. Mayor. [applause]

>> Mayor Reed: Thank you and now we will pledge allegiance as we do the beginning of every council meeting. It is just a little more special on December 7th. Please rise. [pledge of allegiance]

>> Mayor Reed: First item of business will be the orders of the day. Couple of changes from the printed agenda. The first is a request to defer the hearing and continue to next week RDA item 8.1 which are some amendments related to North San Pedro housing site. I'll just note that on this evening's agenda we'll take up 11.5 which is the third street project ahead of 11.4 which is the Cambrian 36 hearing on annexation and the first ceremonial item on this morning's agenda we'll continue often to this evening, we'll take up this evening. Any other changes to the agenda order? Motion is to approve, all in favor, opposed, none opposed, so that leaves one ceremonial item, which we will do as first. We'll take up the council needs to vote on item 11 -- sorry, 1.2, (a), which is the appointment of Xavier Campos to fill the expiring term of district 5 and then we'll have the swearing-in but first let's get him appointed. Is there a motion? Motion to approve Xavier Campos as the district 5 councilmember. I'd like to invite Xavier Campos as the District 5 councilmember for the swearing-in .

>> Supervisor Shirakawa: Would you raise your right hand. I, Xavier Campos.

>> I, Xavier Campos.

>> Supervisor Shirakawa: Do solemnly swear.

>>> do solemnly swear.

>> To support and defend.

>>> To support and defend.

>> The constitution of the United States.

>>> The constitution of the United States.

>> And the constitution of the State of California.

>>> And the constitution of the State of California.

>> Against all enemies.

>>> Against all enemies.

>> Foreign and domestic.

>>> Foreign and domestic.

>> That I will bear true faith.

>>> That I will bear true faith.

>> And allegiance to.

>>> And allegiance to.

>> The constitution of the United States.

>>> The constitution of the United States.

>> And the constitution of the state of California.

>>> And the constitution of the state of California.

>> Supervisor Shirakawa: That I take this obligation freely.

>> That I take this obligation freely.

>> Without any mental reservation.

>> Without any mental reservation.

>> Or purpose of evasion.

>>> Or purpose of evasion.

>> And I will well and Faithfully.

>>> And I will well and Faithfully.

>> Discharge the duties upon which I'm about to enter.

>> Discharge the duties upon which I'm about to enter.

>> Supervisor Shirakawa: Congratulations councilmember. [applause]

>> Mayor Reed: Well, congratulations, Xavier. For those who have studied the agenda, we have a little bit later the certification of the results and the term to which Councilmember Campos was elected to starts in January. So we're filling in the unexpired term of councilmember Nora Campos. So we will then move back into the agenda, that's the ceremonial items for this afternoon. And take up our first closed session report, City Attorney.

>> City Attorney Doyle: Mr. Mayor, the council met in closed session this morning pursuant to notice. There's no report.

>> Mayor Reed: Consent calendar, are there any matters people wish to speak on? Now is the time to speak on the consent calendar. I have two requests to speak.

>> Councilmember Constant: Mayor Reed, I'd like to pull 2.5.

>> Mayor Reed: Okay. All right, we have a motion to approve the consent calendar. We'll take the testimony at this time. Ella Feria Merina. If I didn't get that name right please correct me and Talin Foster.

>> Hello, my name is Ella Feria Merina and I'm here to argue in favor of article 2.7. I feel renewing this agreement will boost our economy. Although this agreement will cost the city another \$110,000, to a total amount of \$680,000 it's well worth the expense, to allow San José to have a major influence across the nation and the world. If San José were to renew this contract Silicon Valley could become the world's innovation center, more job development and job creations, and finally San José could become America's most diverse big city, that is as well as highly livable seems in my opinion simple. San José and its people need this ordinance to pass in the hopes of stabilizing our economy and moving us to the top of the nation. Thank you.

>> Mayor Reed: Thank you. Talin Foster.

>> Hi, my name is Talin Foster and I'm here to talk about article 2.8. I agree with the article and I believe that we should pay back the Department of Housing the \$110 because \$110 compared to the about 400,000 that we get

annually is not that much and we'd need this -- we need the \$400,000 because of the homeless problem in the city needs to be fixed, and this helps with the problem. So I agree.

>> Mayor Reed: Thank you, that concludes the public testimony on the consent calendar. There are any other items that the councilmembers would like to pull? We have a request for 2.5 and a motion on the balance. All in favor, opposed, none opposed, exception of 2.5 which is a travel report, Councilmember Constant.

>> Councilmember Constant: Thank you, mayor I just wanted to report out on my travel to the national league of cities event last week in Denver. I attended the event as the city council's voting delegate for the resolutions for next fiscal year. In addition, I attended LCI seminars and participated in the Public Safety and crime prevention subcommittee of which I'm a member and was appointed to the vice chair position for next year. Additionally, I attended general sessions on various topics and facilitated a presentation on technology advances in law enforcement in which our acting Chief of Police, chief Moore participated. Thank you.

>> Mayor Reed: Thank you. We don't need a motion to approve, forecast informational, the approval of the stuff has already happened. 3.1 report of the City Manager.

>> City Manager Figone: Thank you Mr. Mayor and members of the council. I have one update for today, it has to do with our budget shortfall projected for the year 2011-12. As you notice address next year's shortfall which now has grown to at least \$90 million. This is clearly unwelcome news. And it comes on the heels of our November study session where we talked about a \$70 million shortfall. And I know the change in numbers has caused some confusion. The revenue picture we described last month has not changed. The new \$90 million figure is based on preliminary information, related to retirement costs for 11-12. As you know, the retirement boards have an independent fiduciary responsibility to the two retirement funds. The boards operate on a schedule that does not always correspond to the City's budget process. As you'll recall from our November study session we noted that the assumed retirement rates were based on projections received a year ago, and that we would update those numbers when we received updated information from the retirement boards. Since then, both boards have been updating their assumptions and reviewing methodologies for payments which have resulted in

the new, higher number. The new information is still preliminary. We expect to have firmer 11-12 retirement costs early next year and they will be incorporated into the February update of the forecast. But prudent budget planning dictates that we must and just under 29% for all other departments. And I also want to make clear that we will not be doing across the board reductions. Rather these targets are designed to get options on the table for budget planning purposes. While we hope that we will be successful in achieving the city council's direction on concessions from all of the City's bargaining units and employees, even this would only address some \$50 million of the problem. And just as the retirement boards operate on a schedule that does not always align to the city's budget process, bargaining efforts also may not be concluded by the end of April when the City Manager's proposed operating budget must be released. So questionable as a result we will have no choice but put reduction options on the table which address the entire deficit. I had not set these targets lightly. I had hoped that last year \$118 million deficit would put us over the hump in terms of the difficult budget challenges. However it is very clear that the upcoming year will be even more difficult than what we experienced last year in many regards and this is because very simply put the remaining choices are fewer and more difficult. So in conclusion we will continue to need to work through the short term problem solving and the more permanent structural changes that we must achieve in order to ensure the City's fiscal stability. And that concludes my report.

>> Mayor Reed: Thank you. We'll now move to item 3.2 which is a series of actions related to Team San José. We'll have some staff members who need to come up and take their position. We have a half a dozen different things that are connected together. We'll take them in some kind of a series. Starting with the City Manager I believe.

>> City Manager Figone: Thank you, Mayor Reed. As you indicated given the number of actions under this report I would like to make some opening comments which will set our context today. Since 2004 the city has contracted with Team San José to manage and operate the convention center and cultural facilities for the City of San José. During that time frame there have been a number of occasions where the city council has engaged in contract oversight. Whether it's in the initial award of the contract, the extension of the contract, or developing how performance measures are established. Since 2004, this public-private partnership has provided some benefits to the city. However, all of the results that were anticipated have not been achieved. In 2007, the civil grand jury

released a report entitled city fails to hold Team San José accountable. The grand jury recommended that the city find another operator for the contract when it expired in 2009, by issuing a new request for proposal. That same year the city council was not ready to follow this recommendation, and directed me to negotiate a new agreement with Team San José. This new management agreement is now in place and started July 1st, 2009. The existing agreement with Team San José has established a unique opportunity for the city to partner with the hotel community and other stakeholders. Since 2004 the City's relationship with these stakeholders has proved to be very important as they are a very important part of our low economy and our local economic engine. However recent reviews have demonstrated that there are problems that exist with the existing management agreement including the level of city resources required to monitor Team San José performance. My recommendations today seek to, first of all, repair the problems in the existing management agreement with Team San José that have been recommended by the City Auditor, the City's external auditor and the civil grand jury and to develop a work plan for issuing a new RFP for management of the City's convention and cultural facilities. The goal of these recommendations is to take a fresh look at the options available to the city, and to put a structure in place for a city contractor relationship to operate convention center and cultural facilities for the City of San José. Again, the City's relationship with our hospitality industry is extremely important. And I am committed to working with them to address existing problems, and also to work with them as we look towards the future of managing these important city facilities. And with that I'll turn it over to staff.

>> I'll go ahead and kick this off if that's okay.

>> Sharon Erickson: Sharon Erickson City Auditor. The first item up here is the annual performance audit of the convention and cultural facilities. Under the terms of the management agreement between Team San José and the city, the City Auditor's office annually audits Team San José's performance metrics. This report is our first under the new management agreement that was signed in 2009. Because of concerns that Team San José has violated one of the terms of the management agreement in '09-10, that is not to incur expensed beyond the documented budget, we also reviewed significant variances to revenue and expense. We also reviewed changes to Team San José's business model, Team San José's board governance, and the time line of events leading to Team San José's overspending its budget. There were basically four issues or findings outlined in our report. First

in spite of cost cutting Team San José's operation of the City's facilities lost \$6.9 million in fiscal year 09-10. In 2008, the United States fell into a recession that impacted both the type and amount of business that convention centers could attract. Although Team San José achieved a weighted performance of more than 100%, Team San José also generated the largest net loss in its six years managing the City's convention and cultural facilities. As a result that fiscal health of the convention and cultural affairs fund, fondly known as fund 536 continued to deteriorate in fiscal year 09-10. Team San José's operating loss of \$6.9 million was \$1.5 million more than the prior year's loss largely due to the decline in convention activities and the introduction of the concerts line of business. '09-10 operating results included \$7.1 million in losses on convention center events, the number of events decreased by 16%, \$1 million in losses on a series of concerts that Team San José promoted with Niederlander concerts at the civic. Excuse me, 0.9 million in other losses on events at other cultural facilities. Those were offset by net income of \$1.6 million from in-house foods and beverage service and net income of \$500,000 conditions we believe Team San José should be prepared to reduce spending below budgeted levels in the current fiscal year and should renegotiate its contract with Niederlander as soon as possible. Team San José's losses on operations are primarily subsidized by transfers of transient occupancy tax. In 2009-10 the \$4.6 million in T.O.T. and other revenue transferred into fund 536 was not sufficient to cover the operating losses. As a result, the ending fund balance in the fund dropped from 10.3 million at the beginning of the year to \$6.8 million at the end of the year and the projections show for this year dropping to \$5.3 million by year ends. My office is concerned that further depletion of fund balance could general plan convention center expansion. To ensure the fiscal health of the city's fund and their facilities and to protect the facility's ability to generate economic impact we recommend that the city, A, review its estimates of how much funding will be needed to subsidize continued operation during construction, B, on an ongoing basis ensure that the funds budget is balanced without the use of fund balance to suction dies operating losses and C once the economy improves, create an economic reserve or reserve for economic uncertainty in fund 536. The second major issue that we addressed in our audit was that Team San José did meet its performance and incentive targets, but that some of those targets should be more rigorous. Team San José was successful in meeting targets for economic impact, gross revenue, hotel room nights, customer satisfaction, and theater utilization. It met its attendance goal by less than 1% and its gross operating profit target by less than 1%. If they met -- they missed their return on investment goal by 12 percentage points. Team San José corporation is paid an incentive fee based on how it

performance during the year. In '09-10 Team San José achieved an incentive fee of \$400,000 out of a possible of \$500,000 in incentive fees in spite of having generated its largest net loss in its six years of operating the convention and cultural facilities. It is a tough time to be in the convention business. But that is meant as a statement of fact. Not of expectation. The purpose in our interpretation of an incentive fee is to encourage the provider to beat the trends. In our opinion, a tougher incentive fee structure should be considered. One that doesn't penalize Team San José for a poor economy but does incentivize improved performance. To better incorporate those realities into the targets, we recommend that the city align financial targets to budget. For example, in the current fiscal year the budget projects a loss of \$5.5 million. The target for this year for Team San José is a loss of \$7.1 million. We further recommend that the management agreement be amended to explicitly specify that city moneys be excluded from the calculation of Team San José's performance measures, regarding gross operating revenue and return on investment. That we revise the -- that the city revise the incentive fee payment structure such that Team San José receives incentive fee payments only if it achieves a specified threshold. 3, that we renegotiate the annual fixed management fee. 4, that the city revisit the weighting and tightened financial performance and incentive target. The third major issue in our report was the changes to the Team San José business model were not always fully vetted through its board of directors, or with the city. Under the management agreement Team San José is responsible for operating the facilities, but the operation really is a joint effort between Team San José and the city. Not only does the city subsidize operations, but all of the operating revenues and expenditures run through city accounts quite literally as we said in the report when Team San José spends money operating the facilities they're spending city funds, city money out of city checking accounts. As a result, it's critically important that both the city and Team San José have a clear understanding of important events that have financial consequences for both parties. Team San José's board has adopted new practices to improve the board's governance of technology including setting a \$250,000 revenue threshold for business decisions that will go directly to their board. Likewise we recommend the city amend the agreement with Team San José to clarify that Team San José must also formally notify the city of such business decisions. The fourth issue in our report was yes, Team San José did overspend its budget in 2009-10 operating within the adopted budget for fund 536 is Team San José's responsibility. Although Team San José and city staff spoke regularly, and met each month to review financial and operational results, and despite repeated questions from city staff about expenditure -- about the expenditure rate during those meetings Team San José failed to notify

staff that it overspent its budget. I wanted to point out that efforts are underway to improve communication and reporting and we recommend further improvements in budget tracking and monthly monitoring. This is one of several reports and pieces of information that the city council will be reviewing this afternoon. Our report includes a total of 13 recommendations to help preserve fund balance, to tighten expectations, and to improve communications. And with that, we'll turn it over to the next presentation.

>> Mayor Reed: Probably Scott Johnson on the procedures audit.

>> Scott Johnson: Thank you, mayor and members of council, Scott Johnson, director of finance. pursuant to default team San José's overexpenditures of approximately \$750,000 at the time, we issued the notice of default. Along with the notice of default we indicated to Team San José that we would cause two independent audits. One of the audits was conducted by Sharon Erickson and her office. In conjunction with the annual performance review that she just reviewed. In addition, we asked our external auditor, Macias, Gini & O'Connell, to conduct an agreed upon procedures review. It is not technically an audit. This is actually where we're providing a scope of work that we ask Macias, Gini & O'Connell to look at, and to make some determinations based on their testing. So the scope of the agreed upon procedures report first Macias, Gini & O'Connell tested the agreed upon number of operating revenues and expenditure transactions. They evaluated the legitimacy of the expenses in accordance with the management agreement and then they evaluated the control policies and procedures which included but were not limited to revenues expense and disbursements and budgetary this next slide there were a total of 12 major procedures that we asked Macias, Gini & O'Connell to look at. So this is just a summary of the findings. And of -- in regards to each of the procedures that they conducted. There is a more -- on the next slide. Let me do that. Sorry. There we go. Okay. This is listing the first six of the 12 agreed upon procedures. And I just wanted to highlight a few issues with you. First, as I mentioned, they looked at policies and procedures to the extent that they were available for Macias, Gini & O'Connell to review. And then they did certain transaction testing. On the first one policies and procedures on expenses and disbursements, their review indicated there were no written policies and procedures in this area and they did note that there was some exceptions that are outlined in their report. On the second item, the misallocation of Team San José ink expense to the convention center operations there were no exceptions noted. On the evaluation of incentive fees and pay increases received

by Team San José executive management team for consistency and proper authorization, they did not note any exceptions. However we have identified where we do have some issues that we need to work out with Team San José and when I attended their finance committee meeting I indicated to the Team San José finance committee that Team San José had charge -- what they're calling incentive compensation or bonus payments to the seven executive management staff that the fixed fee related to what we pay Team San José. However, any incentives or bonuses should be charged to the incentive fee. And offset against what the incentive fee Team San José receives overall based on the performs audit. So that is something that we will need to follow up with Team San José on. Next is the testing of revenues from events logs where properly recorded they did note some exceptions there, rather minor. It is mainly a rounding error. In regards to policies on cash receipts and deposits of events, they did not identify or they were not given any written policies and procedures in this area. But there were no exceptions. They did look at specific transactions in that area and they did not note any exceptions. In regards to differentiating Team San José expenses from the CVB expenses there were no exceptions noted in their testing. Moving on to the last set of six agreed upon procedures, the number 7 is allocating employee hours between Team San José and CVB activities. What they noted here, they didn't find -- the exception that they noted was that there's not proper allocation of hours that staff works between the CVB and Team San José so that's something that needs to be corrected. In regards to the approval of the final budgets by Team San José finance committee and the board of directors, there were none -- no exceptions noted. Reconciling the approved budget there was an exception noted here and this one is a little more troubling to me because what it -- the auditors identified is that the reports and the system that Team San José is maintaining in their finance accounting system, they actually were tracking a budget of about \$1 million lower than what the approved budget was that the city had. So given the fact that we had already identified that they have an overexpenditure of over \$750,000 they were actually tracking where there was an additional over \$1 million of expenditures that were lower in their system. So basically translating that it would tell me that when they're reporting to their board, it should have shown that they were overexpended by about \$1.9 million. Because their system and their reports are showing about \$1 million lower in approved expenditures than we had actually approved in the city's budget. trending higher than defined thresholds. As you see in the report. The auditors did indicate there were some exceptions where we did not get formal communications in regards to those overtrending expenditures. Number 11 in regards to validating revenues that are tracks in other accounting systems there were two service fees, it's

rather immaterial but it was about \$5700 that did not have supporting documents. And then finally number 12, applying proper account being and reporting of revenues tracked in other accounting systems team San José did not apply proper accounting cutoffs in recording their revenues. And so Macias, Gini & O'Connell just as a side note has recently completed the financial audit in regards to the convention center and cultural facilities. That audit will be presented to the finance committee on December 16th. Based on the final audited numbers we have determined that Team San José overexpended their nonpersonnel budget by approximately \$852,000 as opposed to the original indication of \$750,000. And we will be working with Team San José on a corrective action plan in regards to the findings as noted in the independent auditor's report. And with that I'll hand it over to Mr. Shikada.

>> Ed Shikada: Actually, Mr. Mayor, members of council, Ed with your indulges indulgence, open it up to Team San José for their comments again at your pleasure.

>> Thank you, Ed. Lee Wilcox, downtown manager for the office of economic development. Per council direction from your October meeting the administration has prepared a revised response to the civil grand jury based on of of the annual performance audit scott just mentioned. We'd like to walk you enthuse those really quickly. First, finding 1 losses and the city should use the termination for convenience cost to reestablish revenue and operating agrees with this finding. City Auditor's report reveals that last fiscal year San José State's operating losses were higher than anticipated. Should be noted that during the period of the previous agreement with Team San José, that the -- that fund 536 did grow its fund balance to eight -- or \$9.8 million which is partially attributed to Team San José's expansion downturn in the economy and increased Team San José spending levels, that the funding balance could be depleted in the near future. Unless Team San José and the city take action. Per the City Auditor's recommendation to renegotiate the gross operating profits performance measure, the city will be pursuing renegotiation of the managements agreement with Team San José in the near future. finding 2, recommendation 2, a significant portion of Team San José's operating losses is attributed to the salaries and benefits of shared employees and overhead paid to the city for use of those employees in Team San José's operation. The grand jury further recommends that the city should reassign those shared employees currently working for Team San José and allow Team San José to replace those employees with private sector existence

many factors attributed to the operating losses including the worsening of the economic conditions and the unsuccessful concert series at the civic auditorium. As part of the 2009-2010 budget the city did eliminate 29.75 positions and this past year eliminated another 42 positions. This leaves a total of 14 shared employees remaining at Team San José. These positions require full time staff and unlike the other positions aren't based off of business demand so there are no further proposals to current contract is based on revenues and contains no incentive for Team San José to rein in cost and Team San José continues to receive an incentive fee while the city pays for its mounting cost. The civil grand jury recommends the city use the based on of of Team San José's operating profit. The city agrees partially with this finding and the recommendation however under IRS revenue procedure 9713, a management fee can be based off of revenues but it can't be based off gross profits. Pursuant to the adopted budget and ensure that the budget for fund 536 is balanced without the use of fund balance to subsidize operating losses. In addition, the city and Team San José will be working together to renegotiate the management agreement and revise the incentive fee payment structure that Team San José receives in incentive payment only if it exceeds expectations. Finding 4 recommendation 4, has increased 65% in the first year of the new agreement. With additional funding for Team San José's executive team, the grand jury recommends that the city should ensure that increase Ed employee compensation is justified. The city disagrees partially with this findings first general Fund contribution, to the convention and visitors bureau. Partial funding for fund 536 in the last year which enabled a reduction from a General Fund transfer to the CVB. Second, Team San José brought in food and beverages responsibilities in house this year. While this action did trigger an increase in Team San José employees and personal excesses it also saw a decrease in contractual expenses from center plate leaving. Lastly according to Team San José, Team San José employees reduced their value by 5% and a valve benefits by 11%. With that said per the auditor's report, the monitor the new food and beverage endeavor to ensure that the food and beverage endeavor does not affect or continue to hit operating losses in the near future. Lastly, finding 5 recommendation 5 that the city is currently transferred too much T.O.T. revenues into fund 536 to ensure Team San José's losses are adequately covered and recommends transferring only 25%. The city respectfully disagrees from this finding. disproportionate percentage of T.O.T. funds in the past five years. As part of the City's budget process a thorough analysis is completed each year to ensure that transfers were made in accordance with the San José municipal code. And we ask that this be the response to the grand jury and that

the city council also forward the results of the annual performance audit and the agreed upon procedures audit to the.

>> Mayor Reed: All right Ed.

>> Ed Shikada: We do have a few members of Team San José present and at your pleasure we could invite them to make some comments.

>> Mayor Reed: Okay, that would be timely.

>> Good afternoon, thank you, Mr. Mayor, honorable councilmembers. We appreciate this opportunity to have a few minutes to convey what we think is a pretty simple message and we hope at the end of the day it is clear that the spirit and intent coming from our board of directors is. We have a number of members of our board, in attendance here but we also have some fellow board members. So my name is John Southwell. My day job is general manager of the Hilton and the Crowne Plaza downtown. I don't necessarily need to introduce the folks behind me at this stage but I'll have a couple of comments and then ask my colleagues to address you as well. So I kind of feel like I'm filming a section of entourage. This is and as a direct biproduct of that our community which obviously we all serve. We think it's important that we not hide from the fact that there have been some missteps over the course of time with regard to the Team San José and some of the things that have been going on there. We definitely want to make sure that that's acknowledged clearly but I also would like to make sure that what's obvious is that some changes, some tangible changes have come about in recent times with respect to governance regulations, Sharon you talked about some of the reporting improvements that are happening and more to come. The structure of the board has been streamlined. I think it emulates and corporate board, functioning corporate board. It is still made up of a broad constituent had to say that first because I'm a hotel guy, but general business community arts and labor partners. The one thing I can tell you that's come out loud and clear is this group and I think the makeup of who these people are is very, very important. They are some very, very smart people present company excluded there. But they also are very, very committed. I'll give you a quick anecdote which makes me have a quit awkward seat you're sitting in today. I said well in many ways it is but it's

the right thing to do referring to the chair but I think the good news is I believe you are all sitting in that chair with me. I believe that is true, you'll hear directly from those folks. There is a lot of work to be done. We want to keep a high level message from the group and we want to go forward as a group and we are committed completely to a complete cooperative relationship with the city with the staff obviously as I believe we have been with our customers going forwards. If you hear nothing else today I think that is really the key message. We have not at this point gone through a point by point rebuttal to anything there because I think everybody has the same mutual goal, with respect to what Team San José has over time for various reasons but the group is totally committed going forwards to get back to the mandate that we have when we first came together. It made sense then, we believe strongly it makes complete sense today. I would like to make a point. I'd be negligent if I didn't as a board member and as a hotel person in future dialogue we would be very anxious to have included in that the purposes of a convention center. Not excluding the theaters but they are different beasts. The purpose of a convention center is they are to drive economic impact broadly to the community, other purposes balance there into obviously its P and L responsibility. I put that out there there is something we need to talk about. The value of a hotel selfishly that is important to me but as you think about the economics of that the money spent in a hotel room are -- there is more money spent outside that hotel room by those visitors. We should be here growing visitation because they land at the airport, there's money involved with that they eat in our restaurants they generate T.O.T. direct sales tax they ride in our taxis, et cetera, et cetera. I know hopefully everybody is familiar with that piece too. We do have a specific and then I'll turn it over to my colleagues here but with respect to the RFP which is one of the points that's come out in the recent memo, one of the recent memos, we do have concerns and ask you to bear this in mind nature of the competitiveness and everything that we hear there. But I do want to make the point that there's a lot of work to be done. The board's committed to getting it done. Some tangible changes more will come, we've promised you heard loud and clear you can't stop there and we won't. Some of that is going to take a lot of work. We are retooling in many ways in organization. We would fear being distracted in all that goes into an RFP process. Secondly it is a public process as it should be. However as we're showing our facilities in the downtown our customers will be aware of that and so we fear that that uncertainty could lead to impacting sales in a negative way. Without further ado I'd just like to introduce Mr. Fernandez who I believe all of you know.

>> Thank you, John, Mr. Mayor, members of the council, I'd like to say amen for every word that John said earlier. But I like to touch on the partnership that labor and business have entered through Team San José. And we believe has worked well for the convention center. And position the center in a strong competitive advantage by increasing our flexibility when we take care of the customer needs while keeping those jobs in our community. The new business ventures that were somewhat touched in the audit report like the food and beverage ticketing, they were services, concerts and even the Teamsters deal helping San José achieve the performance measures approved by the city during the budget process. Most importantly help us achieve a customer satisfaction of 95% overall of 100%. Coming from the hospitality industry this is a great number to have on our record. Now, we had to agree that we took painful decisions and could handle things differently like the Teamsters deal. To say the least we could and should handle that deal better at the beginning but today, and for the future, that agreement means increased local jobs, increased client satisfaction and savings for the center. Also as painful for workers as it was, our transition to a variable workforce showed to be good for the model and has saved the city around \$2.6 million annually. This approach, the Team San José model, lends itself to be much more customer oriented. Leaving the center a competitive advantage. Thank you.

>> Mr. Mayor, and city council members, thank you for allowing me to address you. I'm the finance chair for Team San José, I started that position in July. And I've don't kind of a crash course in city expenditures and city budgets. And I can tell you that it wasn't easy, coming in and it's a whole different way of looking at things. But I can also tell you that the finance committee has really I think gained a greater understanding and working with Scott Johnson in the finance group here at the City of San José, it's been a good dialogue the last couple of months. We're meeting with them every month, and we discuss our concerns, and there seems to be a growing transparency there. I also want to acknowledge that we recognize that there is a great deal of anxiety over risk factors, and exposed risk, that many people perceive that Team San José may have brought about through some of our entrepreneurial activities. We also I want to bring about that we recognize that there's been missteps in the relationship, and those missteps are on us. We also want you to know that the board of directors, and the staff of Team San José, take their relationship with the City of San José very seriously. And as a result of that, we've taken a number of steps in the last couple of months. Some of the things that we've done is, new revised reporting. Board governance actions which have streamlined the board, created more frequent board meetings,

increased communication between the city council, the mayor's office, and the City of San José, regarding our results. We have seen significant improvement in the overall gross operating loss. That's mostly due to the changes from a fixed labor cost model to more of a variable cost labor. We have seen some profitable endeavors. The Broadway series, the ticketing, even the food and beverage and labor services have shown increased revenues and net gross profit for that. I think there was a slide on the GOP, I don't know if that -- or the fund 536, there it is. Just to show you that at least through fiscal year 2010, you can see that we are above what was the projected fund balance at the end of fiscal year 2010. And that does take into consideration there was going -- if we were going to do the expansion that was going to be in June of 2010. So that wouldn't be much of an effect. Now the question is, going into 2011 can we hit our projected balance above as we -- if we go into an expansion of the convention center. And I believe from the standpoint of Team San José, there are things that we can do on a short term basis and things we can do on a long term basis and some of the short term things we can do there are a number of things we can do to minimize the losses coming out of fund 536. Of course that will take a lot of cooperation through the city and Team San José but by running businesses over the years there's some entrepreneurial things we can do and I'm now going to introduce Chuck teniskette reservation. Chuck. .

>> Good afternoon, Mr. Mayor, councilmembers. It is a pleasure to be here. A little over a year ago I was asked by Team San José and the business representatives of Team San José to consider getting on board of directors of this organization. When I -- of course I read the papers like everybody else and all the things were going on even a year ago. I decided to approach, and I did, four of the city council members to talk about their perception of Team San José. I went through Pat Dando at the chamber of commerce to talk to her about the perception. I was invited over to the labor headquarters talked to Cindy Chavez, went to the arts groups, talked to Andrew Bales, to get an exact idea of what I was getting myself into. An interesting thought came out of those conversations, when you distill it all down, there were two things that came out of it. First was the overwhelming interest in seeing the Team San José model work for San José because it involves so many of the constituencies directly, that you could get to in the City of San José. I was very impressed with that. At the same time, often, the issue of improved business approach for Team San José, was mentioned as well. So I decided to get on the board to see if, because I'm a businessman here in San José, to see if I could really help. Shortly after I was on the board, probably within three or four months and learning how Team San José works from scratch is not

easy. It's complex, no question about it. But I was asked by Dan Fenton to create an audit committee because they had never had an audit committee before. We did that. We helped put together the charter, we got the membership, we started having regular meetings to begin an audit committee process to further review the financial statements of Team San José so that was put into effect. What we receive -- I just want to add a little note here. We were called together about two weeks ago or week and a half ago, to review the different audits that had taken place. And the interesting part of it and being on three public boards and the audits committees of two of those three boards now, and noted we had no material weaknesses in our financial audit gave me great comfort. When we reviewed the procedures audit the findings at that time were relatively straightforward and not significant, terribly significant. Since that time there have been additional things added to this issue that I couldn't even keep up with, we couldn't have meetings on and it's been a little surprising to be honest with you that we would have additional information coming out that surfaced since our big review of these audits. Now, with the board of directors, and I might mention one other thing. A new CFO is coming to Team San José and she's fabulous. She's just plain excellent. We're going to see improvements over the next year, dramatic improvements over how the financial aspects of this organization function. Now, on the board of directors one of the things that I noticed off the bat and talked to Team San José probably about three months ago that there was no way that the board of directors could be really active in overseeing and providing its fiduciary role when there were 28 members, many of which didn't come for every meeting and met once a quarter. Just as simple as that. Now coming from a backgrounds, a consulting background with McKenzie and company I went to top management and suggested to the board of directors that they reconsider this. The result of this was quite frankly in my remembrance in going and asking for things like this from companies that I worked with, I would get big push back. This group didn't do it at all. Quite the contrary. They accepted it, they embraced it and while I didn't get exactly what I thought was the right number, they came up very close. While I mention this it went from 28 members to 14 members, from 14 committees to five committees, important committees. There is no executive committee any longer so the board members are going to be privy to what's happening and involved in what's happening. Monthly versus quarterly meetings. There is no way with the speed with which this organization moves that the board of directors could keep up with it so monthly meetings are going to take place and the attendance at these meetings is going to be rather mandatory for all parties. We still have the diversity of labor, arts, business and the hotels and the proportions that were there before. But this board has now been

reconstituted and will take a much more active role in what's going to be taking place. We all know there's issues to be worked through and this board recognizes that and we are going to be tackling these things starting right off actually I think tomorrow. The city recommendations, I'd just like to add a few things. I first of all and I know the board absolutely welcomes additional city involvement in this process. We're partners. Just like I have partners in my real estate deals. I like to keep actively involved with them. And the suggestions of having the city staff more involved are taken very very favorably by this board of directors. Certainly the council involvement is important as well but I think the day-to-day activities that have been raised it's the city staff that I'm most interested in seeing involved with this even more. Over the next 12 months I think it's our job as a board of directors, as Team San José, to demonstrate that we are going to have better control over the organization, how we do things, how we report things, what our procedures are, and ultimately to show the kind of results that we need to show for the city to demonstrate that this model that everyone that I talked to in the beginning that interested me in getting on as board of directors, if we it is as good as we think it is we should be able to prove it within the next 12 months. Thank you very much.

>> Mayor Reed: That's it for Team San José?

>> That's it.

>> Mayor Reed: Okay, thank you very much. Come back to Ed Shikada.

>> Ed Shikada: Thank you, mayor. Members of the council. Perhaps as a quick recap and closeup, we have registers to accept the reports that are before you and just in very summary manner to note that there are four major categories of actions recommended. First, related to the development of a spending reduction plan. Second, renegotiation of the current agreement. Third, a few specific elements of information that would be requested from the Team San José board. And finally, direction to the City Manager to prepare a work plan for a new request for proposal for the management of these facilities. With that thank you for your indulgence and.

>> Mayor Reed: This is important to everybody that's pretty clear and I as much as anybody here is responsible for the Team San José model as a councilmember and councilmember Cindy Chavez and I brought the Team San José model to the council, convinced the council that this is the best way to go and I have been a strong advocate for that model ever since. But when I look at the fund 536 balance which, to me, is the bottom line of the bottom line, you can see that in -- since '04 and '05 when the balance was negative, that Team San José brought it up to \$10 million in '08 and '09. And while there were some problems along the way, I thought that the overall performance of bringing that fund balance up was something that should go to the credit of Team San José. And but at the same time, when I look at 9-10 and 10-11 and see that funds balance shrinking from \$10 million down to \$5 million, Team San José has to take responsibility for that. That causes me great concern because we haven't started construction yet, we were planning on using that balance, we saw it shrink and doing that construction project and we don't have the \$10 million cushion and we are not in a position as a General Fund to backfill and spend money during the construction process to continue and maintain the operation of the center. And so that's kind of a problem. And I have reluctantly come to the conclusion that we ought to consider an RFP. I've signed on to that represents because I think by the time we get to the place where we can do something Team San José will have been managing the operation for about eight years. That's an awfully long time to not have a competitive process. I think we have to reconsider the model. There are elements of that that are excellent and clearly elements that don't work as well. I'm open to different models but I'm also open to considering the same model but I think we need to do a competitive process to do that. When I look at the results of the last couple of years we can't continue on that course. I think the governance changes are good. I think they're overdue. We've been going through these troubled times for a couple of years now. Happy to see them, hope they work, hope they're effective and I hope everything that everybody has said here today can be brought to pass but nevertheless I think we need to open it up for some competition to do that. And then finally is yes we are partners with Team San José. I don't think we've been given the respect that we deserve as a partner that provides probably 90% of the funding for the operations. And I think that's something that has to be fixed with the governance model. If we're going to be partners we've got to be partners. We're not the limited partner. We have to be in there because it's taxpayer dollars and funding that's going into the operation in one form or another. Plus the fact that it's our facility. That doesn't our position where the council has options. If these difficulties continue, and we have to do something sooner I want to be in a position where we can do that. If things don't

work out I want to be in a position where we can change. And I know it takes a long time to make a smooth transition at the convention center because I've been through it before and if we were to make a change I want to make sure we have the prompt transition time, appropriate time for the council to consider it and that's why I think we ought to get started on the RFP process sooner rather than later. As we get into discussion I do want to disclose that I've had a lot of meetings with Team San José staff members, downtown hotel everybody's got an interest in this as they should have. I appreciate everybody's engagement but I think there are serious problems that we need to address and I think the board is getting serious about it and I think that's a good sign. Councilmember Liccardo .

>> Councilmember Liccardo: Thank you, mayor. I agree with the comments that you made. I wanted to move at this time a memorandum dated December 3rd of this year co-signed by the mayor, Councilmember Constant, Councilmember Herrera and myself.

>> Councilmember Herrera: Second.

>> Mayor Reed: Let me just clarify Councilmember Liccardo. We have a series of recommendations on the agenda, A through F.

>> Councilmember Liccardo: Right.

>> Mayor Reed: I want to make sure your motion includes all those.

>> Councilmember Liccardo: The heading and representations that approves all the staff recommendations from the December 2nd supplemental memo I believe if I'm not mistaken that covers all of those areas, I might be mistaken.

>> Mayor Reed: I want to be sure we covered all motion A through F.

>> Councilmember Liccardo: Hopefully they'll tell me if I'm wrong.

>> Ed Shikada: I believe there are technical sunshine waiver relative to the timing of the specific recommendations and second is the simple transmission of the response to the civil grand jury.

>> Councilmember Liccardo: I'll incorporate in that as well.

>> Mayor Reed: Thank you, Councilmember Liccardo.

>> Councilmember Liccardo: I wanted to thank all the board members for coming to speak, for your service and your commitment to the city, particularly for the reforms we've seen enacted at that time board member, I think that's certainly propositioning. I don't doubt the sincerity and the commitment of each one of those volunteer board they're doing this because they care about the city. Obviously they have got day jobs and families and daily lives to take care of. They are doing this because they impair the same things that we all care about. I think that the audit was certainly very effective in bringing out a lot of issues, Sharon, and I appreciate that particularly around issues about the lack of vetting with the board of major decisions, I think certainly with concerns around the large operating losses, the depletion of fund 536, the challenge with the Niederlander deal. underwent in the last year or so. And I know that undoubtedly that Team San José executive staff made a strong case that they had been cutting costs. And I want to just focus on the cost cutting issue for a moment if we start from the beginning of the last fiscal year, which would have been I guess July of '09. My understanding is according to your audit, Sharon, the Team San José was informed by the city in October of that year, October of '09, that spending was running way ahead of budget, is that fair?

>> Sharon Erickson: Yes, that's correct.

>> Councilmember Liccardo: Okay and then again the following month they were reminded of that problem. As I understand it. And then I understand also that three months later in December of '09, Team San José paid bonuses to its employees.

>> Sharon Erickson: That's correct.

>> Councilmember Liccardo: And do you have a sense of how large those bonuses were? In aggregate?

>> Sharon Erickson: Yes, the Macias, Gini & O'Connell agreed upon procedures audit \$112,000 to Team San José executives. In addition, there were approximately \$104,000 in nonexecutive bonuses paid for a total of 216 for the first half of the fiscal year.

>> Councilmember Liccardo: And there were an additional set of bonuses that were also paid as well in that fiscal year?

>> Sharon Erickson: The bonuses were stopped in the second half of the fiscal year. So what we were able to document through looking at payroll registers was \$216,000 in those executives and nonexecutives at Team San José. I did want to point out that the registers also showed \$110,000 in CVB nonexecutive bonuses. But those were not part of the Team San José books that we reviewed.

>> Councilmember Liccardo: Okay. And for purposes of our understanding, CVB and Team San José essentially merged and I don't recall the exact date, sometime the early part of '09 if I'm not mistaken. Am I correct about that?

>> Sharon Erickson: Correct.

>> Councilmember Liccardo: Okay, so if you were to count all those bonuses together I any you come to something north of \$320,000 is that fair?

>> Sharon Erickson: Yes.

>> Councilmember Liccardo: Okay so those bonuses were paid out after the city first notified Team San José of overspending and the finance chair of Team San José's boards notified the city that the overspending was some something on the order of \$900 700,000 commitment to producers of Ghengis Khan, page 38 as well.

>> Sharon Erickson: Yes Ghengis was April of 2010. Yes.

>> Councilmember Liccardo: Without looking at details of lawsuits or whatever, I think it was \$700,000, the Team San José response said that the city had to augment the Team San José budget in the such \$250,000 to cover that.

>> Sharon Erickson: Yes, that's correct.

>> Councilmember Liccardo: Increased staff and executive salaries by 3%. And that was restoring some portion of the cuts from the prior year.

>> Sharon Erickson: That's correct.

>> Councilmember Liccardo: So in this same year in which significant amount of overspending was identified, we have seen over \$300,000 go out the door in bonuses, commitments fairly risky nature on shows and promotions, increasing staff and executive salaries, and in four occasions the city had increasing Team San José spending authority from 15.3 million up to various steps up to \$18.5 million, is that right?

>> Sharon Erickson: Yes.

>> Councilmember Liccardo: So it's fair to say to whatever extent there was cost cutting it wasn't terribly successful?

>> Sharon Erickson: Let me qualify that by no it wasn't successful to the extent that the operating losses grew. So the net effect yes was not good. But Team San José did lay off employees through that time period. They did eliminate things. And let me say that on many of those substances, they believed at the time they were going to make money, that they were adding to the bottom line. So when we reviewed board minutes we did see indications that the board was told that they would be adding to the bottom line. Clearly it didn't work out that way.

>> Councilmember Liccardo: Right. With regard to the revenue performance and incentive targets, my understanding is that those targets were really set on the assumption that the convention center would be under construction and I believe it would be under construction by June of 20 -- now I'm trying to remember the exact date, I'm not sure exactly when it was supposed to be under construction but those numbers were set under that assumption is that right?

>> Sharon Erickson: That's correct. And we did find that the record differed, in some memoranda, it's stated that the convention center construction was expected to be underway, and in others it was ambiguous. But it was certainly our impression from reviewing the records that people did think that, that's a technical term, that the construction would be underway at that time.

>> Councilmember Liccardo: Right. And so had that assumption not been made then obviously we'd expect to see higher revenue targets set?

>> Sharon Erickson: I would have expected to see that. Although you know hindsight is 20-20.

>> Councilmember Liccardo: And to hit the revenue targets that it did hit, fair to say based on the spending targets that were originally set, with these revenue targets that Team San José had to spend little over \$4 million more in order to make that revenue target, in other words, 18.5 million.

>> Correct. So in that case, the primary thing there was the food and beverage. Bringing the food and beverage in house increased both revenue and expense.

>> Councilmember Liccardo: According to -- if we just focus on that issue alone, and I know that the repeated mention in both Team San José response was profitable according to Team San José figures, I'm referring to page 19 of their response in the appendix, it assumes they brought in \$4.9 million in additional expenses to bring food and beverage in house and that resulted in \$4.6 million in new revenues, is that right?

>> Sharon Erickson: Is way looking for our -- yes.

>> Councilmember Liccardo: So if you look at the yellow page --

>> Sharon Erickson: And I'm looking at page 16 of our report as well. So 4.96 was the expenses, the revenues we had 6.54.

>> Councilmember Liccardo: Right, so although there is no question that food and beverage made money, fair to say that Team San José took on more expenses than it generated in revenues with that decision. Auditors are looking in hindsight. So with the center plate agreement Team San José recouped 24%. Bringing the operation in-house we calculate they recouped 24.2%. So marginally, very marginally more profitable on a percentage basis than center plate. But that's correct, that they -- it did involve some risk. Let me just say that at the time that the board -- the board minutes show that the board was told that it would add \$300,000 to the bottom line, which we estimate was about a 29% rate of return on that investment. And they actually hit about 24.2.

>> Councilmember Liccardo: Right, so it clearly didn't add \$300,000 to the bottom line. If you were to turn to the Team San José numbers on page 19 of their response in the appendix, going down to where it reads food and beverage it would suggest that in fact, rather than bringing 300,000 or adding it to the bottom line, there is in fact in revenues, is that fair?

>> Sharon Erickson: We need a short conference.

>> Councilmember Liccardo: Okay, if you like I'll move on.

>> Sharon Erickson: It was the volume decrease so if you look on page 16 of our report the previous year the total volume we estimated at \$8.38 million, the volume in 09-10 was \$6.54 million in revenue.

>> Councilmember Liccardo: Right. And in order to generate that revenue, let's just take the most optimistic view of this, that they've increased the margin by 2/10 of a percent, they had to take \$5 million more in expenses in-house.

>> Sharon Erickson: Correct. And that quite honestly is why we raised the issue of risk. So that's where the city needs to be an equal partner in those kind of endeavors. At the same time, we could not -- there's no guarantee that the city or Team San José could reenter into the same kind of agreement with center plate. So when we looked at it, the inference that we had heard was that Team San José lost money on food and beverage. In fact they made pretty good money. They made 24%. But was it a better deal than it was with center plate? It was marginal for the risk that they took on.

>> Councilmember Liccardo: Yeah, I mean I hesitate to -- I mean I encourage anyone to try an investor that's willing to go invest \$5 million of their own money in order to improve the margin of their investment return by .2%, is it fair to say that that's not exactly a great rate of return to invest relative to the rate of risk that's taken on?

>> Sharon Erickson: I might say you make a good case although I'm an auditor not a business person.

>> Councilmember Liccardo: Fair enough. I'm not either. Finally just on the issue of -- the issue of what was resulting from what appears to be an increase in cost in various ways and expenses, I know that the auditor's office reached out to four organizations that left the convention center, I think that was at the request of a memo that I authorized a few weeks ago and it's on page 11 I think of the auditor's report. And interviewed various

organizations about why they left. A couple of them mentioned costs. I think one of them said there was free parking at Santa Clara and not at convention center here. Fair to say that you didn't have an opportunity to interview or talk to other organizations that also left San José convention center?

>> Sharon Erickson: That's correct.

>> Councilmember Liccardo: Okay so basically your survey was limited to those four?

>> Sharon Erickson: Yes.

>> Councilmember Liccardo: Okay, thank you very much.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you mayor. Well, obviously I signed onto the memorandum. So I support the direction of the memo, and where I believe we need to go on this. I want to address a few things that have come up. First of all as a liaison to Team San José I've had the opportunity to watch San José over the last four years pretty closely and watch and observe at some of the board meetings although not all of them. And I can agree that Team San José has done a lot over the last several years to make changes. And a lot of those changes have been pretty significant, including the recent changes to the board governance which I think are critically important to the success of the organization going forward. But I can't ignore the fact that almost always, these changes have been reactionary or completely reactive instead of proactive. And I think what we need to do is have an opportunity for Team San José to really look proactively at all aspects of the organization and the service delivery and the model that is operated, to find every possibility to make the organization more efficient so that they can be competitive in the RFP when that comes forward. And I think that that is important. I don't want to pretend that I know how the RFP will come out in the end. Will it end up in a different model? Will it end up in a different operator? Will it end up -- we don't know. There's many different ways it can go. But I think that the process of going out through the RFP will give us an opportunity to examine everything a lot more critically. And I

think that we heard someone mention that it's a bad time for us to go out for an RFP. And I'm sure that we can always make an argument of when is a good or when is a bad time but I'll just give one perspective of why I think now is a good time to go out for an RFP. We know that we are asking visitors to San José to pay more taxes every time they check into a hotel. And that those taxes will be used for debt service for an expansion of the convention center which I think everyone here clearly agrees that we desperately need in our city. I think as we go forward, and we're asking people to pay more taxes, to use our facilities, and as we go forward and we're going to go out to raise the money that we need to raise to do the expansion, we need to be very clear and show that the City of San José is 100% committed to ensuring that our convention center is operating as efficiently as possible. We need to look our visitors and our taxpayers and our businesses including the people that are up here today speaking we need to look them in the eye to say that we have looked at every angle and the way we're going forward is the most efficient. As I said that could be the current model, it could be an adaptation of the current model or it could be a completely different way of doing business. I think that's important. We have heard a lot about the model over the past several years since I've been here, the topic of the model keeps coming up and we've heard quite often how well the model works. But I think we also have to look at the other end and say have some of the complicating factors that we've had arisen because of the model? And the only way we get to know that is if we critically look at the model. And I think that we need to make sure that we are using this service delivery model because it does work. And that we need to make sure that we're not simply working to justify a model. And sometimes I really fear that that's the road we tend to go down. And I know that, for me to sit up here in clear conscience and to continue to advocate on behalf of the convention center, and the model, I need to be confident that we do have the best model going forward. And the only way that I think that we'll be able to effectively do that, is to go through the process of an RFP, where we can encourage, not only Team San José to think more broadly, and creatively about how they can deliver services, but quite frankly, to -- in the spirit of competition having other people bringing some new ideas to the table and having a full analysis. I think that's that we have to do because that's what's in the best interests of the convention center. That's what's in the best interests of the residents, the taxpayers, of course our General Fund as the mayor mentioned we have significant challenges that we have been dealing with over the years, and the challenges just seem to get bigger and larger, as we heard just a -- seems like a few minutes ago. It's probably an hour or so ago. The budget deficit, projected deficits continue to rise, at an incredibly rapid pace. And unfortunately with all due respect to our City Manager I

think it's going to continue to rise quite a bit more. And we have to keep reminding ourselves of that \$22.2 million that's not in there that we have to add onto there. So we just have these big issues in front of us that we need to tackle head-on. And for me to continue to support our convention center and our model, I just have to be sure, and I have to be confident myself that what we're doing is the correct thing and that we have exhausted every potential option in make sure that we find the most efficient manner for us to move forward. Now, I'm not kidding myself. I don't think that we're going to come back with an RFP and all of a sudden we're going to see that we're not subsidizing our convention center any way and money is going to be flowing into our General Fund. I don't think that's going to happen. I think we as a city know that convention centers are a core area that large cities concentrate on and that in order to run a good convention center, and to reap the benefits of having a convention center, the business, the economic development, the visitors and everything that come from a convention center that it takes an investment on the part of the city. And I much prefer using the word investment than subsidy on some of these issues because we know that we aren't building a convention center simply to improve our bottom line. We're building convention centers and operating them to stimulate economic development and everything that comes with that. It is no doubt in my mind that we will be funding a convention center and all its operations, but I just need to be sure that we have explored everything and that we have gone forward leaving no stone unturned and we come up with what are method, whatever operator is going to fulfill all the objectives of the residents and the city council. I do -- that's a longwinded way of saying that I support this memo that I helped craft and that I hope my colleagues support us in this.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. Let me start off by thanking the auditor for her thorough audit, outstanding work as always. I really appreciate the recommendations being provided in the report. I also want to thank members of the board of directors of Team San José for coming down to speak and really for your courage to recognize that there have been missteps and perhaps mismanagement that occur for the past several months, a year or so with Team San José management team. I really appreciate you taking the time to come speak with us. Team San José is apples, every time they come down here it seems they take a great beating. I just wanted to start off by saying something positive. It is no doubt that Team San José has been a value partner

for the city with the city for the past six years. I think they've done a great job enticing and marketing bringing more visitors to the city really happening to have a lot of noteworthy conventions and exhibits and workshops. And some of the things that all of us have visited in the past. And so when we go through something so drastic like this, we neglect to recognize the work and the mission that the team is able to provide for our city. So I just want to take the opportunity to recognize the good work that they're doing. Now obviously with the recent missteps we have to really reevaluate and review the management team and look at some, how the operation will move as we move forward. To me, the audit's findings are alarming and really have caused us to just take a step back and revalue everything in the last six years. But also, this is not really the time to point fingers, and pointing out the shortcomings of certain people or certain organizations I think that the mayor's right. We are a partner in this. And I think that you know, with the audit's findings we have an opportunity to work together. I completely in agreement with the -- with the memo that's put forward by the mayor and my council colleagues. I think this is the right direction. I thank them for their leadership on the issue. But having said that I also want to talk a little bit about the RFP process. Obviously this is going to come to the Public Safety committee. We have a chance to you know to look at this and really vet out the process. But I also want staff to understand that as we move forward, that what will we present with the RFP process, that we will present a set of fair criteria and expectations, and that we will also take into consideration the experience factor that whoever will be the next operator, whether it's Team San José or a new operator, that they are familiar with our convention center and our cultural facilities. I think more importantly, if they don't have that experience it is going to be tough to deal with. And I think we can anticipate more problems to happen in the future. So those are some of the things that I'd like staff to consider as we move forward crafting a new RFP process. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. The convention center project has been very important from my viewpoint since I took office a couple of years ago, I have had a chance to speak on this i've always said it's our number one issue it's very important that we get this project finished and I have to say -- and I don't have the history of the origination of Team San José in this agreement but I can say I'm very concerned about the convention center and I ultimately want the sequential center competitive and successful and getting back the

business that we lost. I'll start with the positive side, I like the plan that was coming forward to do the work on sequential center. I think we made a lot of progress with that and look forward to seeing that happen, scaling down the project and really getting ready to do it. So that's the positive side of the equation for me. I want to thank the board of directors that came today and for the changes that are in the governance structure. That does give me some -- a good feeling going forward. I think that's a very necessary part of this. I also signed onto this memo because I'm very concerned and I also want to thank the auditor for the report that you provided giving us some very sound data to look at to understand. I have to say that some of the experience I've had sitting up here for the last two years is several sometimes, and I can't cite the dates but I'm sure somebody up here probably could where we have asked for information from Team San José and it has not been forthcoming. Marketing information and other information where we need to make decisions and it seemed very difficult to get that information. And that's been a perception I've held since I've been on the council. The numbers we were looking in terms of losses if you were in the private sector I think we'd not just be asking for an RFP, we'd be asking for resignations. I think the idea of putting forth an RFP and looking at this in a competitive light is absolutely necessary, it's responsible, it's the responsible thing to do. And I think this is a great time to take a look at how other convention centers are being managed in other areas as we're looking at getting some responses to the RFP. Around I think it's really saying we have to make some fundamental changes here going forward we have to implement the things that have come forward with the auditor's report and the things we've discussed today. The other thing I was concerned about in this data and everything's pretty much been discussed but the idea of the leadership of this organization, looking at costs and giving bonus, you know, reducing costs and giving bonuses is another sign to me that we have to look at the management here very carefully in this organization. I was disappointed with that. And the idea that this glide path that we have been looking at here and I remember our previous economic development person talking about the glide path I've been worried that it looks like a crash landing if we don't get this straightened out, especially with fund 536 going down substantially. If we look at the past, before we had Team San José it has gone negative, where would the back stop be if it does go negative? The General Fund can't sustain it. We have to make sure this thing is set right and moving forward. In general I'm in support of the convention center, I'm in support of the hoteliers in the partnership with the city. We have to expect a lot from the management team of this organization and I think the RFP is the right thing to do and I will be supporting the motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to echo that sentiment exactly. I will be supporting the memo as well. I would like to begin by thanking the hoteliers and people who have been on board. I can't remember all your names but I do remember Mr. South Mr. Fernandez and Mike Fox, junior. Thank you giving you great praise for doing what you are doing, and Mr. Tennisketter as a recent joiner I think is doing a tremendous amount of service by shaping things up a little more than they have been. That makes a huge difference. But there are several factors here that have come into play that go along with your comments, Councilmember Herrera, in reference to, should we really take a good, hard look at this? First of all, the Teamster deal, that was a huge problem where we were trying to work things out with San Francisco and it didn't work and it took quite a long time for that to be sorted out. The second thing from my perspective and I'm looking at this as taxpayers are looking at this, is the loss of five large groups who usually come to the convention center for luncheons difference what have you. Five of them at this point I can only think of three, YWCA harker, the tech awards and a couple of others things having to do with Carl Guardino, the public image has been sullied. Because when you add grand jury reports to that, we've had to do an audit as well it does have a negative effect. Then along came the huge bonuses. Add to that Niederlander. And then if that isn't about how about Genghis Khan. That is making the news now that is something we as councilmembers need to find answers for. So it's not just the loss of money. That's bad enough. This will put us back in reference to getting that convention center up and running but it's the loss of image out in the community. All of this is out in the ether trails. It doesn't make any of us look good. So that is the reason I think the RFP is an excellent idea and I'm very confident that will be very carefully orchestrated and handled. And with that, I will be voting for it.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. As well I wanted to compliment the members of the board. You've taken on responsibilities and I do appreciate it. Whether it's true volunteer, you have a business interest in the convention center I wanted to ask we had met here prior around the council Scott Johnson and I

had asked and I had called actually Dan Fenton up and said hey you have an accounting system, it's called MAS, M-a-s, where they manage finance department access to that accounting system 24-7 via software license and I just wanted to understand if that had been implemented?

>> Scott Johnson: Councilmember that has not yet been implemented but we are working with our I.T. department to make that happen.

>> Councilmember Oliverio: Okay I think that was as beneficial as I brought up before, you can't wait for a report if we're a partner as the mayor speaks of then it's important to just share the numbers. I guess question for Scott and the auditor. So as Councilmember Constant brought up, you know all cities essentially invest or subsidize a convention center with the idea that you are going to promote business through hotel room nights and spending, et cetera. Do you believe that whether it's Team San José or any other provider of our facilities that the council needs to provide direction, i.e., to you want to operate and lose as little money as possible, but not generate the room nights, or the other revenues that come with spending? Or have a level of sales and sometimes it's at a lower margin so you might lose or invest more, but then the aggregate of returns of taxes to the city and the surrounding community jobs, et cetera, is better? I mean should we -- I'm basically looking for that. Do you feel we really need to guide a comfortable amount of money to invest a year and then subsidize and call it a day? I think it's hard if you're asking for someone to book more room night but you enter into a lower margin business, between the auditor and the finance director?

>> Sharon Erickson: I'll give it the first whirl with the caveat that I'm the auditor, not the business person here. But I do think clarifying the purpose of the relationship is really important. So many jurisdictions use T.O.T. moneys to subsidize a convention center. But different jurisdictions have different levels of what they expect for that. Do they expect that the convention center will generate enough to cover its own -- to cover its operating expenses? Do they expect that it will cover operating expenses with the addition of TOT? Do they expect it to cover debt service on the facility itself? Every convention center is different, and they vary markedly across different venues. Las Vegas is very different than the City of San José. One thing I wanted to mention was in the second year of the current agreement there was a provision to do a benchmarking study which would get more

into depth on this kind of issue but those are precisely the kind of questions that if the council does move forward with an RFP, need to be addressed very seriously, is what is the expectation.

>> Councilmember Oliverio: And then Scott did you want to offer anything else?

>> Scott Johnson: I would echo Sharon's sentiments. I guess I was reflecting just this last weekend, I went to an event, I have to admit in Santa Clara at the convention center there. And in my former life when I worked for the City of Santa Clara I worked very closely with the City Manager in regards to the budget for the Convention and Visitors Bureau which ran the convention center there in Santa Clara. And yeah I think there has to be a balance. We have to look at the fund. You have to look to see how much is subsidized for the operations and then you have to look at what the overall economic benefit is in regards to the business model.

>> Councilmember Oliverio: Yeah because if we you know decide for example to operate as a let's not lose any money or let's invest subsidize it less, and you decide to do a car show and so so-and-so drives from Sunnyvale, Campbell, Santa Clara and they come for the show and they pay to park and then they leave, it's a bigger difference between booking somebody from Minneapolis, booking for four nights lower margin so I think that's really important that we as a council make that decision in an RFP because whoever we select if we set them up for I don't know lack of better word failure, based on expectations of investment then I think it's a problem so I think we really need to do that. When it comes to the benchmarking study then to your point that would be part of the RFP or is that something that's a separate audit or what are you saying there?

>> Councilmember, the current management agreement with Team San José states that a second year of the contract the city and Team San José would jointly go forward with a benchmarking study. So that is started to take place. There's meetings next week to start that process.

>> Councilmember Oliverio: Okay. I mean the other option obviously is selling the convention center and then not being in this business and that's always an option a city can take. So I mean I think you also have to balance

that out when you look at benchmarking. I know benchmarking is looking at peers. Well let me ask you this. Has any city actually privatized their convention center do you know off hand? Then we'll get back to that topic.

>> We'll get back to you.

>> Councilmember Oliverio: Thanks. I'll be supporting the mayor's efforts. I will say this when we go forward and do the RFP we have to take those what type of business do we want to book and when we're going to come out of it but also I think I want to -- and I'm not sure how to guide staff in this regard but I'm hopeful that it won't take away from booking business in the short term or the interim period because obviously an organization is going to spend some of their efforts on an RFP and not as much on booking business. So that will be a concern of mine. I'm not sure how it can be done in such a way to manage that.

>> City Manager Figone: We'll certainly consider the level of effort for any responder to the RFP. The city staff will be the ones generating the work plan if the council decides to continue, we would generate the RFP. So it would be you know Team San José's effort in responding to the RFP.

>> Councilmember Oliverio: And I would say this to the board and the team members of the Team San José. Even if the city is entering into this RFP mode, in the end you choose your own destiny as an individual worker. I would recommend you do the best you can in booking the business and stay focused on bringing revenue to your own RFP is being done because their company goes out of business the next day or their company is bought by a larger company or whatever. You know keep morale up and do the best you can under the circumstances, thank you marry.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I think that the -- it's appropriate as we have been to continue the scrutiny of the operations that we have here with our convention center and other facilities downtown. I do appreciate the board members being here today, as Mr. Southwell indicated there is a lot of work to be done and I appreciate the

commitment to get that work done. I also appreciate that in facing the scrutiny, it seems like as I would hope would be the case, that the board seems to be approaching it as a challenge, approaching this challenge as an opportunity and I really do think that there's great opportunity here in this challenge. And it looks like some steps have already been taken. It's particularly in terms of board governance that seem to be at least heading in the right direction in terms of the operations of the current model that exists. I appreciate the comments. And the work done by Mr. Tennisketter, I think it is always helpful to bring in a fresh set of eyes, especially someone who has experience, and it doesn't necessarily reflect on the board as it previously had existed that they didn't care as much or didn't have as much scrutiny over the operations but whenever you bring in a fresh set of eyes it's appreciated. I really appreciate the response was so open to making some of those changes because as we know there can always be resistance, we can do things a different way and I agree in making the board smaller more nimble, less committees, those are all good steps. That being said we do know that there have been challenges both in the terms of the fiscal crisis, that our nation's going through as well as specific challenges to Team San José and some of the operations that have existed. And that had been highlighted by the audit. I do feel that going forward, now, we really should be focused on both some of the suggestions made through the audit, as well as some of the suggestions and some of the work that seems to be being made by the board. And as Councilmember Nguyen said, I think that we are not as productive when we do finger-pointing or make this personal. And as Councilmember Oliverio just said, that we should continue to focus on selling our convention center. That even going forwards we have to realize that we're all on the same team in that sense. That we all want to make sure we bring as much business to San José we need to make sure that people still know the convention center is open for business, our entertainment is open for business so I think the great caution is that we continue to appropriately apply scrutiny to the operations that are occurring, without undue hysteria which I think does definitely damage the impression that people may have that is not necessarily accurate. So I'm hopeful that we can show the same commitment to our current operator, as long as they're there, that the hotels have shown. I mean the hotels have shown a great commitment to our city and to the convention center, and their commitment in taxing their customers. And I'm hopeful that because of the audit and because of the great level of scrutiny that all of us I think are appropriately showing at this time, that -- and because of the governance changes we've seen, that Team San José will be able to meet those challenges. And as we go forward with looking at how an RFP will be set up I do agree that we need to define what it is we want out of our convention

center, what it is we want out of this relationship. Sit strictly the numbers that we see booked into the convention center itself or do we want to bring in as Councilmember Oliverio said, are we interested in bringing in people arounds the nation, businesses around the region so we actually do fill up our hotels and our restaurants. So those are conversations I think will be very important for us to have as we determine what the RFP will look like. In the meantime I think we should continue to have this scrutiny that our staff has not all of us have over the operations of Team San José but simultaneously show the support that is necessary so we can be cheerleaders for the convention centers many of them happen one or two years out and if we are not supportive of our entertainment facilities and our hotels and our convention center we definitely risk a downward spiral that doesn't benefit any of us regardless of whether we go forward with a new RFP or not.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you mayor. First of all I would like to thank auditor for a wonderful audit job. I want to congratulate the new board member. I do sense a strong commitment of the board member for working with the city as a partner for the best thing for the city, I do thank you very much I do have one question relating to the City Manager I think is F, F-1, direct the City Manager to negotiate a Team San José to amend the management agreement to achieve the following. The one thing that really jump out in this audit is the fact that the Team San José had exceeded their performance yet were experiencing a record loss, that give me a feeling that we, while I be the first one to admit that I don't know how to set the performance standard. So my question is, until we or I'm convinced that we know how to set the performance standard, is it upon that we can put a hold on this incentive payment? I guess this is a question for the -- for whoever the negotiated the agreement with Team San José or that the City Attorney has to chime in.

>> Ed Shikada: Perhaps I could take a first cut and whether it be the auditor or the attorney that would want to add comments. Our recommendation is largely based upon the City Auditor's work that acknowledged that when looking at base performance versus incentive, that base performance could be aligned to base budget. And so that the simple performance of the duties in fulfilling the expectations that are embodied in a base budget would be put within that basic category, and that the incentives would really only apply where performance exceeds the

baseline performance that were set with the budget. I think what we had in mind was more realigning the incentive component so that it really only would come into play, when base budgeted expectations were exceeded.

>> Councilmember Chu: So what I'm hearing is that the incentive program has to be there, the staying, we were -- we have to re-- we can only work on how we realign it. But the incentive program probably the one and only in the City of San José, has to be there, has to stay. In my --

>> Ed Shikada: Nonthat it's really required so much as again within the limited scope of the adjustments that we were attempting to accomplish in this short term, recognizing that over the course of the next several months we'll have the opportunity to take a broader look at the overall compensation structure.

>> Councilmember Chu: Okay. I guess I'd like to make a friendly amendment to put a hold on the incentive program to the author of the memo if this is acceptable. Unless we have a better understanding of how do we evaluate the performance.

>> Councilmember Liccardo: Forgive me Councilmember Chu I was distracted for a moment, could you offer the amendment again?

>> Councilmember Chu: To just put a hold, a halt on the incentive program until we have a better understanding of the measurement.

>> Councilmember Liccardo: I certainly appreciate the intention behind that motion. My understanding, I don't want to get into doing anything that might be portrayed as a breach of a contract that we currently have and is currently in operation. So --

>> City Attorney Doyle: I'd just like to remind the council, you have a contract already. What's being proposed is to try to seek through renegotiation a change to that incentive or a change to other parts of the contract. So long

as you have an existing contract that that program remain so long as the contract is in effect. But staff certainly can seek to try to modify that working with Team San José and that would be -- that's really the direction they're seeking.

>> Councilmember Chu: That's what I read on the F-2, you know the negotiation with Team San José to amend the management agreement, you know to achieve the following so I feel, we're negotiating now. And I was wondering if we can put an incentive payment as one of the items during the negotiation.

>> Councilmember Liccardo: I would expect and I'm going to look to Lee and Scott and Ed now. That the incentive will in fact be part of the negotiation, is that fair to assume? Okay, I'm seeing a nodding of heads. I think we're all on the same page.

>> Councilmember Chu: All right, great. The next question I guess is maybe for the Team San José or Scott, do we know how much funding that Team San José really needed during the construction of the convention center, that fund 536, what was the number? Do we know what level that we need to maintain in that bucket?

>> Scott Johnson: Councilmember, the --

>> Councilmember Chu: To be comfortable?

>> Scott Johnson: Sorry. Sure, the staff is working with the financing team in currently evaluating that.

>> Councilmember Chu: Okay.

>> Scott Johnson: So when they come forward with a plan of finance they will have that information included in the actions for the council to consider.

>> Councilmember Chu: I will be supporting the action, I mean supporting the memo .

>> Mayor Reed: We have a couple of people from the public who want to speak on this item. And so we'll take that testimony at this time. Pat Saucedo and Francis Boyd. Hold on to public speaking hold on Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all I did want to disclose I did speak to Team San José so they can bring me up to speed on this and one, I will be supporting the memo but I did want to make sure that as an RFP does go forward as I heard a lot of discussion about what do we want our convention center to be, do we want it to support local shows, or -- well, local shows or difference or what you have that would come or do we want it to attract national and international business? And I think one of the things that we need to make sure goes into the RFP is that there are some very definite benchmarks as -- where we can evaluate on whether or not the City's generating revenue from you know people that will spend their expendable income at our restaurants or shops. And hotel rooms that they are -- that they're occupying. I don't know -- well, it's not clear whether or not we take that -- or we're taking that into consideration now as we're evaluating Team San José and it seems like they do have a number of things they need to improve on. But I just want to make sure that that does go into the RFP so that we do have something that we can evaluate those outcomes. Thank you.

>> Mayor Reed: All right. Some public testimony. Pat Saucedo and then Frances Boyd. I'm going to have to limit to you one minute because we have a big crowd here and we have a huge agenda. No time to spare.

>> Understood. Mayor and council, Pat Saucedo, San José Silicon Valley Chamber of Commerce. On behalf of the business community we realize there are some serious shortcomings and missteps and we do agree the chains must be made to prevent further problems. In summary I think what I want to say is we also recognize that the hospitality industry will be directly affected by actions taken today and directions given regarding an RFP, and the Team San José. We believe that there needs to be caution and concern, to ensure that our hospitality industry is as protected as possible during this change and this direction, because the economy is difficult, and they are in a process of looking to seek and secure future contracts for the convention center, and obviously the hotels and restaurants will be affected by that. We think you and the city administration are also aware of that we wanted to

comment on it. We also agree if we go to a RFP process it needs to be baby out with the bath water public and private partnerships are definitely positive for this city. Thank you.

>> Mayor Reed: Your time is up. Frances Boyd.

>> Yes, I'm Frances Boyd and I'm here to speak on behalf Don Lessom and the Gengis Khan exhibition. I had a letter he wanted me to read but I can't do it in one minute. The Team San José has not met their contractual agreement and money. They should pay their bills before you give them any more money. Further, I am currently researched in scientific and archaeological exploration and studies in Mongolia and China and there's more to come. If San José wants more of what's going to come from Don and his people like me, you better get your business straight.

>> Mayor Reed: That concludes the public testimony on this item. I had a question to ask the staff, when I was talking earlier about the partnership between the city and Team San José. City Auditor page 18 exhibit 9 budgeted sources and use for fudged 536 I see often that about a \$21 million worth of use of funds. s however, that number does not include debt service, I believe, which is about \$14 million a year, that the Redevelopment Agency is paying unless it runs out of money and then the General Fund will have to pay. And I don't think those numbers where we have a transient occupancy tax of \$5 million. I don't think that includes the Convention and Visitors Bureau funding as well.

>> Sharon Erickson: That's right, it does not.

>> Mayor Reed: All right I wanted to get that straight. That's a fairly sewer partnership I think, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, Mr. Mayor. Sharon, I think there was reference made in your report and elsewhere in the future we are going to be seeing an audit and analysis by an auditor doing competitive analysis between cities in terms of how our convention center is doing. When do we anticipate that?

>> The planning for that between the city and Team San José is going to start next week. Anticipated that it is going to be released before the budget next year.

>> Councilmember Liccardo: Okay, so at the time we consider the RFP will we have some that information available to us?

>> That is the goal.

>> Councilmember Liccardo: Thanks Lee. Two issues of concern as we look forward to that analysis one is as we look at the subject operating loss and profit different convention centers count different numbers in their P&L, and from audits fixed management fee or the cost of city repair and maintenance I think it's about \$2 million in expenses that we kept out of the \$6.9 million net loss this year, is that right?

>> Sharon Erickson: That's correct.

>> Councilmember Liccardo: And then we don't include debt service which runs about \$15 million a year in this city, is that fair?

>> Sharon Erickson: That's correct. Assembly managers there are plenty of convention percent that consider those numbers in their profit and loss statement. I guess what's imperative for me is we make sure we're comparing apples to apples. And when we're looking at our operating loss we're comparing the same numbers they are. Is it -- the assumption going to be that we're going to make sure we're able when we're working with the consultant to be able to do that? Okay, thanks Lee. And then the second question I had is we're looking comparative analysis. I know the hotels receive what's called the tap report, and in that tap report, I think it's trends analysis projections that refers to our bookings in subsequent years and within that there's a paste index that compares us to last out of the six cities. That's within our peer group. I think it would be really important for

those tap analysis, those projections to be part of whatever the consultant looks at and so I just want to determine whether or not staff will ensure that those analyses will also be included.

>> We will.

>> Councilmember Liccardo: Okay, thank you very much.

>> Mayor Reed: Ed.

>> Ed Shikada: Thank you, Mr. Mayor members of the council I had one actually two technical notes that I want to make sure are covered in the action. First City Attorney reminded me just to be very clear in terms of the city's grand jury response, that in the council's action we would be accepting the staff's report and directing us to transmit our responses to the grand jury. Second, one note related to recommendation number 1 on the memo signed by the mayor and city council members, it relates to the returning with the spending reduction plan prior to the execution of the expansion we do want to note that staff is currently evaluating the possibility of coming back to the council in January for some early work and would like to confirm that this action would not preclude that recommendation come coming back to the council in January.

>> Mayor Reed: That was certainly my intention, we want to keep this project moving but I don't want to commit to expending \$120 million until we have some of the financials worked out.

>> Ed Shikada: That is my intention.

>> Mayor Reed: We have a motion on the floor dealing with items A through F, all of those in one omnibus motion here with the memorandum from Councilmember Liccardo and others as the basis for the motion. Any further discussion on the motion? All in favor? Opposed? None post, that's approved. Concluding our work on that item. We now will move to agenda item 3.3. That's proposed revisions to San José municipal code relating to the City's campaign finance regulations.

>> Lee Price: Mr. Mayor, members of the council, Lee Price City Clerk. We don't have a presentation for you although the city attorney's office is here as well as the vice chair of the elections commission should the mayor and council have any questions about this item.

>> Mayor Reed: I don't think I have any questions from the council, we have no cards from the public to speak on this item. Is there a motion?

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: We do have a motion, I think the Vice Mayor got it. Motion and second is to approve, by Councilmember Liccardo.

>> Councilmember Liccardo: I'm registering a no vote relating to paragraph B and C of the analysis.

>> Mayor Reed: .

>> Mayor Reed: Anybody else? Motion to approve, all in favor? Opposed, one opposed, Councilmember Liccardo, that motion passes. We needed eight votes, we got eight votes, so that's approved. Item 3.4, revisions to the conflict of interest code for the City of San José. We have a motion to approve. All in favor? Opposed, none opposed, that's approved. Item 3.5 is our comprehensive annual financial report. And then we'll take up item 3.6, comprehensive annual debt report. Does staff want to present them separately?

>> Scott Johnson: Mr. Mayor, Scott Johnson director of finance. We'll present both of the reports together if you don't mind. And then at the end we'll ask for acceptance of the report.

>> Mayor Reed: We'll take up both items 3.5 and 3.6.

>> Scott Johnson: Actually a little bit out of order, 3.6, the comprehensive annual debt report. We do have that electronically online but if you do have a hard copy this is what the document looks like. And obviously, you know there's a lot of work that goes into these reports and I want to thank the council for allowing us to make this presentation. We'll try to make it as brief as possible. Given the timing to produce both of these documents it was necessary for us not to make the presentation to the Public Safety, Finance and Strategic Support . So I want to thank the committee for allowing us to go directly to council. But in the interest of having these reports produced for purposes of disclosure, and related to S.E.C. and accounting standards we will make this presentation to you as briefly as possible. Given the timing. So first, on the comprehensive annual debt report, first of all I want to say I have Julia Cooper here, our assistant director of finance and also Cindy pond, the partner with Macias, Gini & O'Connell and she will be discussing a little bit on our comprehensive annual financial report which is the next report. So first, just want to talk a little bit about the city debt management program. The program consists of issuing debt, administering the debt and then providing various financial advisory services. You can see here that there's seven main policy objectives that the council has approved due to the council adopted debt management policy. The next chart is showing what the total outstanding debt issued by all debt issuance and the balances outstanding over the past ten years which we commonly refer to as the decade of investment. The toll issuance over this decade of investment was approximately \$7.6 billion. So the bar chart represents the balance outstanding at the end of each fiscal year. And for fiscal year June 30, 2010 for example the total portfolio under management of the city and the Redevelopment Agency is approximately \$5.8 billion. That represents 120s series of bonds. Our airport commercial paper program of \$600 and the City of San José financing commercial program of \$116 million and then the line graph on this chart represents the annual debt issuances per year for fiscal year 9-10 the total debt issued was \$310 million which represented eight series of bonds and issuance of commercial paper notes. This next chart, this is a pie chart. It just gives you the breakdown of total outstanding debt as of June 30th, 2010. Which was \$5,275,632,925. This was as of the end of this last fiscal year. This does not include the conduit debt that we issue on behalf of affordable housing developers. So on the last slide I mentioned \$5.8 billion and this one here it is roughly \$5.275 billion. That is the difference in that here. This gives you the example of the types of debt that are issued in that portfolio and it also includes our Redevelopment

Agency debt. The next slide is our variable rate debt program. We've had a number of items coming forward to the council in regards to our available rate debt program. Specifically related to commercial paper, as well as our letters of credit with banks. So this chart here shows the total variable rate program that we have, \$1,140,450,000. That includes the city's variable rate program i'm going to skip over this next chart of 3 ten. The planned debt issues that we're anticipatorying is approximately \$358 million. and then finally the financial advisory services. Thees are some major projects that we embarked upon this last fiscal year. For example we evaluated the opportunity of pension obligation bonds. We looked at that and an info memo was produced from the City Manager. We did some financial analysis on the prepayment of our annual employee retirement contributions and as a matter of fact we continue to prefund those contributions. This current fiscal year is the third fiscal year in a row that we've done that. And then you can see the other projects specifically related to energy related programs, development and implementation of the CRAF payment to the state anticipated for that we're working on or anticipated for the current year, include here again repayment of the annual employer contribution, the airport West property, TEFRA hearings for housing development projects, we've worked on a partnership with AMR in regards to the 911 emergency medical response RFP, and then new market tax credit program for the construction of the San José environmental innovative center, some examples. On the next slide this is showing you what debt administration activities we participated in the last fiscal year on the compliance and monitoring. We had \$525 million in proceeds that we directed to trustees to invest, by three trustees for 184 funds that we are administering. We disburse bond proceeds, we processed 126 reimbursement requests, that totaled close to \$250 million. We are required to calculate arbitrage rebate on 69 funds. That totaled \$486 million. We have continuing disclosure as I mentioned earlier, pursuant to the Securities & Exchange Commission requirements, on debt issues related to the city and the Redevelopment Agency. And we filed 42 material event notices as a result of the continuing disclosure requirements. Refunding opportunities, we are constantly actively looking at opportunities to refund our existing portfolio to achieve debt service savings. So in summary, the debt management program continues to be very highly active as can you see from -- as demonstrated on the previous slides. We maintain a strong and dedicated program that protects the City's financial interest, our credit ratings and our long term management of our debt compliance to minimize our financial penalties. And also there's been various failure in debt management that can result in significant penalties as has previously been demonstrated to, for example, the city of San Diego and the City Attorney has previously presented some issues in regards to

the San Diego outcome. And then finally I just want to close with our credit ratings. Our general credit ratings. We are still currently in an enviable position. We are still a pure AAA credit. We have the highest credit rating that's possible. So we -- our ratings demonstrate the city's continued strong credit worthiness and the council's commitment for sound fiscal policies. We continue to be rated higher than the state of California, as well as the county of Santa Clara. And Mr. Mayor, members of the council, if I may, I'd like to just jump right in to the other report, the comprehensive annual financial report. And this is the audited financial report and I will say that it's, again, a tremendous effort to coordinate this, put it together, work with the auditors, make sure that we're complying with accounting standards and disclosure requirements. So this first -- this first slide is just to demonstrate the table of contents. What's in this comprehensive annual financial report? First we have an -- there are three main sections. An introductory section, which is the letter of transmittal and that's basically talking about some of the general issues in regards to the financial structure of the city. We have a statement oath, the City Manager and myself the director of finance. We continue to give the statement of oath, that to the best of our knowledge the financial statements are presented accurately. We continue to receive awards at the national and state level, and then we have the -- some pages showing the mayor and the council offices as well as the City's organization chart. The financial section is where we start off with the independent auditor's opinion. And basically, I think the most important thing that we have in this financial document is getting a clean opinion from our independent auditors. In addition to that I do want to point out that in regards to the auditor's opinion, the auditors give their opinion based on a limited section of the entire document. That's that includes the section that's the management's discussion and analysis and this is where we've highlighted where there's been changes in financial condition, reasons why -- looking at trend analysis and those type of things. So it's a really nice document that I encourage folks to read if they want to learn you know how things have changed from year to year. Then we have the basic financial statements and those basic financial statements are the government-wide financials, our governmental funds, the proprietary funds which in essence are the airport, the water pollution control plant, Muni water, the businesses that we're in in other words. The fiduciary funds which are trust and agency funds for example, the largest agency funds that we have are related to our pension -- to pension plans. And then finally the notes to the statements. In addition, this report also includes required supplemental information and supplemental information in regards to nonmajor funds and our trust and agency funds and then we have an entire third section that relates to the statistical data trend analysis over the past ten years. Now I'd

like to turn the mic over to Cindy Pon and she'd like to talk to you about the results of the audit and the auditor's opinion.

>> Good afternoon honorable mayor and councilmembers. Our audit report is found on page 1 of the financial section. As the previous slide showed the scope of our city's audit includes the City's governmental activities, business type activities, major governmental and enterprise funds and the remaining financial rests with City's management and our responsibility is to express an opinion on these financial statements based on our audit. We perform our audit in accordance with generally accepted auditing standard and we financial statements presented are free from material misstatement and are without qualifications or exceptions and that these financial statements represent fairly in accordance with generally accepted accounting principles or GAAP. It is the best type of report afternoon paragraphs one paragraph is to highlight new accounting pronouncements implemented, one change was the accounting and reporting of intangible assets such as the city's habitual rights and easements and the other is the accounting and reporting of the retirement systems investment and derivative instruments. The other additional paragraph we added this year is to emphasize to the reader of the financial statements that the unfunded actual accrued responsibilities pension benefit plans are of the last actual valuation date of June 30th, 2009 or one year in arrears. And that the unfunded actual accrued liabilities disclosed did not reflect the impact of approximately \$1 billion of deferred investment losses. The city has slides coming up that would further illustrate the City's funded status of its defined benefit plans and thank you and would I like to turn the presentation back to Scott to discuss highlights of the City's June 30th, 2010 financial statements.

>> Scott Johnson: Thank you. Mr. Mayor, members of the council as I mentioned this is a pretty comprehensive report but I do want to highlight a couple of areas that I think would be of interest to the council. First, this next slide is the statement of net assets. And it's listed on page 54. It shows the total assets by governmental activities. What I mean by that, the governmental activities are all of our -- it's our General Fund, our capital project funds our debt service funds and our special revenue funds. And then we also summarize our business type activities including the airport, the treatment plant, medicine water and so on. And then the fiduciary funds which are primarily our two retirement plans. So for the year ended June 30th, 2010 we had total assets of between these three types of about \$16.7 billion, our liabilities totaled about \$6.7 billion. So our net assets were

close to \$10 billion. There's about \$9,966,000,000. Compared to last year, there's an increase in net assets of approximately \$64 million. The other thing that this slide demonstrates is that of those net assets, what do they comprise of? First, you know, it's important to note that of the total net assets, over \$5 billion are net assets that are invested in capital infrastructure of the city. We have unrestricted net assets of about \$254 billion and we have restricted assets of about \$4.6 billion. One of the things that I do point out and you can see, looking at the governmental activities net assets, you will see we have a negative unrestricted net assets. And in the management discussion and analysis section of this report, we describe some of the major reasons why we have a negative unrestricted net assets for all of our governmental activities. But mainly the deficit is due to a number of factors. First, it's the accrual of certain long term liabilities that are included in recognition of other postemployment benefits, otherwise known as GASB 43 and 45, we've talked a lot about that. The city has worked very closely with the bargaining groups to eventually fully fund to ramp up over a five year period. But over this period of time we are not fully funding the annual contributions that are required per the actuary. Therefore, we're required then to book that differential between what we actually funds for our OPEB obligation and what we're supposed to fund based on the actual reports. In addition, the nature of the tax increment financing for debt issued by the Redevelopment Agency, Mr. Baum, I think later on today, will present the agency's CAFR and you'll see they have a net assets of close to \$2 billion and that's really the nature of tax increment financing where you're financing based on future revenue streams. And then once those assets that they finance are constructed those are then transferred over to the city at book value. On the next slide, I think it's important to look at the General Fund, to look at the current year versus the prior year. This is showing our beginning fund balance. I'm just going to focus on 9-10, the year subject to the audit. We had a beginning fund balance of 9-10 of about \$211 million. Our total revenues for 9-10 were close to 650 million. Our total expenditures however were close to \$690 million. Therefore we had a net deficit change in fund balance of about \$40 million. The ending fund balance therefore is about \$171 million. Now it's important to note that there is a difference between GAAP budgetary basis and fund balance when we look at how we calculate our revenues and expenditures on a year to year basis and therefore have that translate into our ending fund balance. And there is a schedule in the comprehensive annual report that outlines the differences between budgetary base and GaAP base funding council has taken various actions in regard to the adoption of the current year budget for 10-11. The original adopted budget anticipated that we would have an ending fund balance from last fiscal year, prior to the

audit being completed of close to \$135 million and this is the breakdown of that \$135 million per the adopted budget. We have a contingency reserve of close to 29 million. There's earmark reserve that are unexpended and rebudgeted of up to 45 million we liquidated prior year encumbrances close to 30 million and we had some expenditure rebudgets of approximately \$31 million. Then as we completed in the process of completing the audits the City Manager issued the annual report and it showed that we had an additional \$6.6 million of funding balance. And that was allocated for cleanup actions as well as budget adjustments. So therefore, that's how we get to our final budgeted budgetary ending fund balance of \$141 million. Now, Ms. PON referenced especially given that this is the first year that the auditors have included in our opinion an emphasis of a matter in regards to our pension funding and our OPEB liability. So I think it's important and I know the council is paying very direct attention as well as the two pension plan boards in regards to our unfunded liabilities. And this chart here shows, compares 2010 year-end, 29 year-end for both of our plans we have unfunded accrued liability of almost \$394 million for Police and Fire plan, and an additional \$730 million for our Federated plan unfunded. We went from 100% funded in 2009, to about 87% funded for Police and Fire. And we went from 83% to 71 per for our Federated plan. if we look at the market value of our assets as opposed to the actuarial value for our Police and Fire plan we're down to 66% funded while looking at Federated we're at 54%. This chart also shows the employer contributions for both Police and Fire as well as for our Federated plan. And it shows the employee contributions that we've made and these are only for our pension funds. This does not include our OPEB for other post-employment benefits for retiree medical and dental. So the next slide outlines what our unfunded actuarial accrued liabilities are in regards to our pension plan, excuse me, in regards to OPEB, for those other post-employment benefits for medical and dental for retirees. For the Police and Fire plan, we have an unfunded liability of almost \$706 million, and for our Federated plan it reaches close to \$711 million. And this shows that we're only at a 7% funding level for Police and Fire, and 11% for Federated based on the current assets that we have within both of these plans. So as I mentioned you know, the city has worked very closely with the bargaining groups with the exception of the fire union. We do have a plan to eventually get to our full funding status over a five-year period, as it relates to the actuarially computed contributions for our OPEB. A couple other issues that I think are important that we need to mention. There is a lot of footnotes and disclosures in this document. However, there are some subsequent events, and these subsequent events are events that occurred after the end of our fiscal year. After June 30th. So just to highlight, there are three major subsequent events. One

of them is that the auditors have recognized and we have a footnote to the reader to the folks that are interested in our financial statements that the city issued a tax and revenue anticipation notes totaling \$75 million and that was for the purpose of General Fund cash flow borrowing in part to allow us to prefund our retirement contributions so we could generate a budgetary benefit of savings. In addition, there are certain credit facility renewals and extensions that the council has approved for the City's lease revenue bonds. The comprehensive annual report also includes redevelopment activities. The redevelopment agency board redevelopment agency program and we also have credit facility renewals related to the airport commercial paper program. The final bullet is a discussion of AMBEK bankruptcy filing. It came to our attention that on November 9th, ambak group of filed for bankruptcy protection. This is a subsequent event because it was@at the end of ourings fiscal year. We have surety bonds in regard to our debt programs that rely on ambek's guarantee to fund those surety bonds in the event that the city would default on those bonds, and this is very important to the investors. And so we have not -- we are uncertain at this time whether the city or the Redevelopment Agency is required to take any actions associated with this bankruptcy and this is an issue that we will be definitely monitoring and updating the City Manager as well as the council with the status. Finally I'd like to close with a registers that the council accept our comprehensive annual debt report for fiscal year 9-10 as well as our comprehensive annual debt report for our fiscal year 9-10 and of course we are available if you have any questions.

>> Mayor Reed: The City Manager has a comment.

>> City Manager Figone: Scott if you would go back to the slide I would like to add something to the ramp up of the OPEB. I'd like to remind the council that we are in a five-year ramp up period to get to the right rate. But it will be -- until we actually pay it down.

>> Scott Johnson: Pay it down, that's correct.

>> City Manager Figone: I wanted to clarify that.

>> Mayor Reed: The comprehensive annual report, you explained management report discussion analysis, page 3 where there's a line about the \$143 million and you went through I think you explained that in your slide, but just above that there's another line that says unreserve fund balance comprises 460 million of the combined governmental fund balances and is available to meet the City's current and future spending needs at its discretion. And I don't think at its discretion is the best description of what we can do with those funds.

>> Scott Johnson: Mr. Mayor I think it's important that I distinguish for accounting purposes how we look at the fund basis for Gaap basis legal requirement therefore there's that distinction with the fund balances as far as what's restricted and what's not restricted.

>> Mayor Reed: Well, if there's an ending fund balance in the water pollution control plant fund, I don't think we have the discretion to spend that on Police and Fire.

>> Scott Johnson: Oh, I'm sorry, you're absolutely correct, Mr. Mayor. That's why you know these are fund accounting that's why we have separate funds to distinguish the purpose and the restrictions in regards to those particular funds and operations. So for the treatment plant for example we can only use that revenue for treatment plant purposes.

>> Mayor Reed: Well I guess I'm taking issue with the at its discretion language because it's not totally at our discretion. At our discretion within the legal limits of whatever the fund is.

>> Scott Johnson: Absolutely, Mr. Mayor.

>> Mayor Reed: Because when I saw that I thought we were rich and I know we're not.

>> Scott Johnson: Mr. Mayor we'll make that clarification.

>> Mayor Reed: Thank you. I was really disappointed but I know there's all kinds of restriction on all the funds we have. Very few of them are at our discretion. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Just a couple of questions Scott. On page 2 of the report and I think it's page 22 of the CAFR we have a -- the net assets figure of \$6 billion. It appears that does not include our UAAL is that right, and it does not include our OPEB obligations?

>> Scott Johnson: Yes, that's correct. Councilmember Liccardo I'm glad you brought that up because I wanted to make that point. When we're looking at the net assets, Gaap currently does not rare us to actually book the unfunded liability for our pension and OPEB plans and that's why it's so fortunate have those disclosures and to -- that's why the auditors have highlighted it in their opinion. I will say that the governmental accounting standards board is looking at that, and we believe that there will be some changes in regards to how we account for purposes of our CAFR related to our pension plans and our in the future.

>> Councilmember Liccardo: Thank you Scott. And if that change is made and I've heard it's coming does that affect our credit rating or does a declining sea level sink all boats evenly so the credit markets are going to look at us all the same?

>> Scott Johnson: Councilmember, you know the credit rating agencies take a really strong look close look at our funding status in regards to our two plans. So they factor in what our unfunded liabilities are and what the trend is but what they also equally factor in is what the city's plan is in regards in the future to get our funding status at a better level. And so to that point, you know we had a lot of discussion with the rating agencies in regards to OPEB you know for that unfunded liability when we had GASB 43 and 45 requirements and they were very pleased with the City Manager's very working with our bargain groups eventually get to the proper funding method to eventually you know pay the proper amount on an annual basis. So those type of things they are considering.

>> Councilmember Liccardo: That's encouraging thanks Scott and then finally, when we look at the total assets and total liabilities, lest that we believe we're rich a lot of those fixed assets you're referring to I think are I'm assuming streets and libraries that we are not about to go put out on the market is that fair?

>> Scott Johnson: That's correct, yes.

>> Councilmember Liccardo: So we'd love to be able to sell a few assets but I'm guessing those aren't easily liquidated. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. There were a couple of terms you used and I don't know what that mean. One much them is amBAC, what does that stand for?

>> Scott Johnson: Councilmember, it is the name of the company, the insurance guarantee company.

>> Councilmember Pyle: And what about a cadlac, Cadlaq?

>> Scott Johnson: I'm sorry, where was that?

>> Mayor Reed: CIDLAC.

>> Councilmember Pyle: CIDLAC.

>> CIDLAC, California debt allegation committee.

>> Councilmember Pyle: I should have gotten that .

>> Mayor Reed: I have no cards on this. Motion to approve both. Councilmember Herrera.

>> Councilmember Herrera: I just had one question back on the slide that talked about the actuarial liability in the pension fund it was before the OPEB slide. So I'm wondering Scott can you just explain the difference? We have the unfunded actuarial accrued liability showing the funding at 87% and our market value at 66% so the actual, if we were to look at this at a market value that's where we get to a billion in market liability. Can you explain the difference between the actuarial value and the market value?

>> Scott Johnson: Yes, the actuaries recognize our assets in a different way than what the actual market value is in any given time. So we actually have some losses from prior years in our investment portfolio within both plans that have not yet been recognized at an actuarial basis level. We have five year smoothing of those losses and gains so there's roughly close to a billion dollars of unrecognized losses for purposes of the actuarial liability. That's why it was -- we thought it was important to include the funding level looking strictly at the market value of our assets that we currently have as of these dates.

>> Councilmember Herrera: So we'd really be looking at 393 should really be a billion if we were really looking at the actual --

>> Scott Johnson: That have not been recognized yes .

>> Councilmember Herrera: On police officer and then what would Federated be?

>> Scott Johnson: And additional 400 million.

>> Councilmember Herrera: Thank you for the report.

>> Mayor Reed: I think we have a motion to approve on the floor. Any further discussions, for both items? All in favor, opposed none opposed, those are both approved. That's the end of a lot of hard work by the

staff. Congratulations on getting them done. I know a lot of other cities won't do their comprehensive annual financial reports for months so I know it takes a lot of work to do them early. Thank you very much. We'll now move to item 6.2, regarding the airport living wage revisions which we had noticed not to be heard before 3:00, well past 3:00 and as we're talking about the schedule, we are scheduled for the evening session to start at 6:00 p.m, anticipating that we're going to get out of here before then so that council has a chance to take a dinner break so I have limited testimony today to one minute for public testimonies because we have such a long agendas and not enough time. So at this time I'm going to turn it over to our staff Bill shear e-to present this item.

>> Bill Sherry: Thank you mayor, members of the city council, Bill Sherry aviation director for City of San José, joining me today is Katy Allen director of Public Works and the office of equality assurance. To her left is Kim Aguirre, assistant airport director. Kim hasness office of equality assurance, so I thought it would be wize for her to be here at the podium. And then finally to her left Jim Webb director of governmental affairs who was the staff person that directly work on the parity study. We got a very short presentation today. And then we're going to turn it back over to the mayor. This item is an outcome from our March presentation to the city council. To keep the airport competitive. It is an outcome from our airport competitiveness strategic plan. The council instructed us at that time to review other airport living wage ordinances within the state of California. And to make and bring back to the council recommendations to bring our ordinance into parity. So that our airport can operate, and not at a competitive disadvantage. I think the council's well aware of the importance of maintaining a competitive airport. Not only within the Bay Area but also within the state, the nation and internationally. I will point out that if you are an airline, serving the western United States, you have to be at L.A.X, you have to be at San Francisco. You do not need to be at San José. And so it is imperative, in order for us to attract airline service to San José, that we maintain a competitive environment, which then, in turn, brings services to our residents, as well as jobs to our community. It is also important to note that, while the work effort of this endeavor was to review other airport living wage ordinances, that the vast majority of the 400 plus commercial service airports in the country do not operate with living wage ordinances. And the last bullet on this slide, I think what I'm trying to point out with this is that airlines have choices. If you are an airline CEO and you have a new plane coming out of either Airbus or Boeing, you have choices where you can place that asset. You can place it between Boston and Miami, between Cleveland and Atlanta, between Seattle and L.A. or between San José and Boston. You're going to

place that asset where it yields the greatest profit. And when determining that profit, airlines look at the maximum fares that they can charge in a community. But they also look at operating costs. Not only airport charges but also, labor cost as well. As I noted before, our charge was to look at other airport living wage ordinances in the state of California. We have done so, and concluded that there are four airports that operate under a living wage ordinance. They include San Francisco, Oakland, and L.A.X, which also operates Ontario. We reviewed key provisions of each of those ordinances and have made recommendations for parity. As a summary of our ordinance, some of the key provisions and components within our particular ordinance, our ordinance has a proactive enforcement. It has no cure period. So if a company is found in violation, the penalties amount, day 1, and does not give the business an opportunity to cure without incurring those fines. Our ordinance has higher hourly wage rates. But it also has no minimum health care cost requirements for covered businesses. It has no mandated compensation or uncompensated days off for covered employees and of course we do have a two year exemption for the airlines that allow the airlines to calculate their living wage rate at a different rate. Looking at other ordinances, some of the major components that we found, while reviewing the other three airports, were that all or most of the living wage ordinances benchmark do not have a proactive enforcement but rather a complaint-based enforcement. They provide cure periods for levying fines. They have lower hourly wages requirements. They require minimum health care cost for covered businesses. They require compensated or uncompensated days off for the employees and they have no covered airlines such as we have . Staff has made recommendations to align our ordinance with those of the other four airports in the State of California, including Ontario. Our recommendations are contained in our memo that was distributed, in anticipation of this meeting. I will point out that we have -- we are aware that the mayor and three other councilmembers have signed a memo recommending a number of other changes. Staff would just simply recommend that, if it is the will of the council to approve those representations, that the City Manager be authorized and have the designated authority to amend contracts we have with businesses so that all airport businesses are treated equally between the policy and the ordinance. And with that, Mr. Mayor, we stand ready to answer questions.

>> Mayor Reed: Thank you, Bill. I want to thank Bill Sherry and all the staff that have worked on this parity study. We got started on this back in March when it was made very obvious to the council how important it was to remain cost competitive at our airport in order to not lose service in hopes of gaining service. Because a lot of

jobs depend upon these airlines continuing to serve our airport and we'd like to add a lot more jobs with increased service plus we want to be sure we can pay our debt service and those things are very much related. One of the items that was identified in an area that we were not necessarily competitive was the living wage parity study and bring back some recommendations which they have and that's taken a lot of work and they've done a good job of trying to sort out what is really a complicated comparison with these other airports because every airport's a little bit different. But during this time period as we have tried figure out what we can do to ensure that our airport stays competitive and we continue to maintain our flights and add flights, I've undertaken an effort to try to talk directly to the CEOs of the airlines. And I've been doing that and it was very clear in my conversations with southwest airlines who have more than 50% of the capacity at our airport that the way our living wage ordinance was being applied, was causing difficulty for them compared to other airports. It was not the fact of the living wage. It was the way it's managed, handled, applied, however you want to characterize it here in San José that was different and difficult. I wanted to make sure to the extent we could we could help Southwest Airlines without eliminating our living ordinance so the recommendation of that is before do that. To solve the problem that is viewed by Southwest airlines and some of the other airlines as well, but maintaining our living wage ordinance in place changing the way we administer it to make it more like San Francisco and Oakland, San Francisco has been growing air service and we have lost it over the last several years. Good news, we are seeing it start to come back. Alaska has added flights recently and southwest has added flights recently we have a long way to go to continue to pay our debt service and have a very successful airport. I have met with Gary Kelly, José Luis Sanchez and talk to them about what we can do at our airport. They love our airport. It is a \$1.3 billion airport. Newest airport in the world, convenience, comfort, safety they really do like to operate there, and we have many advantages so our task is to enhance our advantages and to minimize our detriments. In the eyes of the airlines so that they'll continue to be successful and they'll continue to add flights. The recommendations that are in front of us today deal with one area, and there's much more work that the staff is doing to do that. But I think if we move it ahead as outlined in the memorandum that we'll be able to solve the problems. And also, maintain our living wage policy at the airport in good condition. I do agree with Bill Sherry's additional recommendation about being able to negotiate with the other contracts that are out there so we can get everybody on the same page. I think that would be helpful. But by and large I think I want to thank Southwest airlines and all the other airlines who make an investment in the City of San José. They have to take a risk in order to put a flight here, southwest

and Alaska Airlines have been doing that we want to control the cost and have a great airlines. City Attorney had a comment.

>> City Attorney Doyle: Mr. Mayor, one clarification and then one potential and first to address the airport director's comments and your comments. I think we would propose giving specific authority to the City Manager and the airport director to authorize to enter into an amendment with a contractor to delete the terms and conditions of the remaining terms of a contract and file within the ordinance. So just to make it clear that they will have that authority to do that, again, it would require renegotiation. And then separately, the living wage and I'm going to be looking at either Katy or Nina, but my understanding is the currently living wage is \$12.94 if benefits are provided.

>> Katy Allen: That's correct, yes.

>> City Attorney Doyle: Mayor, 12.83, that was the prior amount prior to the adjustments so the dollar amount should be 12.94.

>> Mayor Reed: Okay, it's in the memo that way because it's not a change from what was before because that's where we started and we've adjusted it over time.

>> City Attorney Doyle: That's where we started but we're going with the current number where the number is.

>> Mayor Reed: That makes more sense but since it is not a change it's not shown as a change. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. Let me just start by proposing that we approve your memo along with Vice Mayor Chirco and councilmembers Pyle and Mayor Reed, the memo dated December 2nd, 2010.

>> Councilmember Pyle: Second.

>> Mayor Reed: All right weeds have a motion on the floor.

>> Councilmember Nguyen: Thank you, I'd like to speak briefly to the motion. First of all I would like to thank Mayor Reed and my colleagues for the leadership on this issue. This is indeed a compromise that benefits all parties. The intent of the recommendations is to make sure that we keep our airport competitive and that we continue to bring in more activities that will help support the City's revenue base. We do value the commitment and business that many other airlines and companies bring to San José. The city best air service continue to -- that our airport continue to become a place where travelers as well as business alike will come to appreciate and in spite of the current economic environment we are seeing slight increase in activities at the airport thanks Bill Sherry and his team. But even with these hard economic times we need to recognize the wonderful work of the people who worker every day to keep things runting smoothly. And I'm referring to the men and women who work at the airport. During the budget deliberations earlier this year we heard from airport employees about the concerns regarding the possibility of lowering the City's living wage. I don't think that this is the time to reduce the City's living wage which will primary affect workers at the Airport businesses including the concessions again, we are facing a really hard economic time. We need to ensure that our employees have the means to support their families and themselves. Even the recent study conducted by the center for American progress action fund show that the livings wage policies actually improved the standard of living for our lowest wage workers and more importantly do not hurt job growth in our communities. So it's important that our employees at the airport, regardless of whether they work for the airlines or other areas of service that they are provided a wage that contributed to their ability to live in our city. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm oon the memo and of course I support this. I think it's a really good compromise. I appreciate Bill Sherry's comments and all the hard work to make our airport more competitive. Certainly am very glad that we are standing by our living wage. I think it's very important, very important standard it is something that San José can indeed be proud of and certainly support that for our workers

at the airport. At the same time I think it's monitor that we remain competitive so this is a very good compromise and met with Ben Fields disclosed that on my calendar. I think this compromise is very good and is going to help our airport maintain the living wage. If I could I'd like to make a friendly amendment, looking at the other vendors at the airport to renegotiate those if that's an appropriate amendment to this motion.

>> Mayor Reed: It certainly would be. Councilmember Nguyen.

>> Councilmember Nguyen: I would assume that would be fine, yes.

>> Mayor Reed: So we have that addition to the motion by friendly amendment. Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor, thank you Vice Mayor Chirco, Bill Sherry, southwest labor, for coming up with the changes to the airport living wage ordinance. These proposed changes get to the heart of the concerns of the businesses working at the airport. Businesses have never said they want to pay less than a living wage but the changes of reporting and the introduction of a cure are the changes that will most positively and direct reply affect the businesses at the airport and to your point Councilmember Herrera, I would like to say perhaps we could use this as language. Allow companies doing work prevailing wage policy whose contracts will come under the ordinance when they expire, the opportunity if they so choose to immediately amend their contracts to operate under the parent living wage approved today. Councilmember Nguyen that the language that would work?

>> Councilmember Nguyen: Since this is the mayor's promote and his compromise I actually would like to refer to him.

>> Mayor Reed: I think that language tracks what the City Attorney has suggested we have in order to fix that issue.

>> Councilmember Herrera: I'm good with allowing that to be the amendment.

>> Councilmember Pyle: To demonstrate that we are serious about looking at how to address business concerns at the airport . Additionally, appealing fines retroactively, they will be able to do that, to appeal their fines retroactively? That is a question and a comment.

>> City Attorney Doyle: Yes, right now we don't have a cure period for -- and there's also a process, I'd like Katy to talk about the administrative process and we did clear that up.

>> Councilmember Pyle: I don't expect the answer today but if you could just get back to me that would be great.

>> Katy Allen: I can, I would like the council to clarify the retroactivity, that would be helpful, if we work through our process.

>> Mayor Reed: We'll take public testimony at this time. As I said earlier, we'll have to limit everybody to one minute. So that hopefully will get us out. José Luis Sanchez, Pat Saucedo, BenField and.

>> Governmental affairs for southwest airlines. 87% of our workforce some 35,000 people across the country in our company are unionized and covered by a national bargained agreement. The highest such percentage in the airline industry. We support the goals and objectives of a living wage policy that the city has adopted and believe that the modifications offered by the mayor, the vice mayor, councilmembers Pyle and Herrera help facilitate that arriving at this proposal that recognizes that medical, health and retirement benefits that we offer to our employees. We also want to thank the South Bay labor council for its work and collaboration in this arena. We are produced our partnership with the city the airport and its leadership. We are the largest carrier as the mayor mentioned with 67 daily nonstop flights, 240 employees who live, work, pay taxes and participate in civic and charitable activities in this region. We urge adoption of the ordinance and the modifications that have been proposed. Thank you.

>> Mayor Reed: Pat Saucedo, Ben field, Jessica zinc.

>> Pat Saucedo: Pat Saucedo San José Silicon Valley chamber of commerce. We are here to support the memo that Mayor Reed, Chirco, Pyle and Herrera and the recommendations made in that memo as augmented this afternoon by Councilmember Pyle and Herrera. We feel this will be a significant step towards contributing greater competitiveness of our airport which ultimately will create greater stability for the airport. We would like to thank Bill Sherry and all the airlines that have offered to work cooperatively and greater use of our airport thank you.

>> Mayor Reed: (saying names).

>> Mr. Mayor, my name is Ben field, I work for the South Bay labor council. Just two years ago, on a 9-1 vote the city council enacted the airport living wage fundamentally changing the lives of workers hundreds of workers for the better. It was a moral victory. Earlier this year when you again discussed living wage I was struck by the fact that there was such strong support for that statute on moral grounds. The airport staff's memo argue that cutting the living wage is necessary to bring the airport into parity with other airports in the area is factually incorrect. Lower than the other benchmark airports. There is no good policy reason to cut the living wage and the moral concerns about cutting the living wage are stronger now than ever. Today's vote in support of the memo from the mayor, Vice Mayor Chirco and councilmembers Pyle and Herrera hopefully will finalize a benefit airport. Thank you.

>> Mayor Reed: Jessica zinc, Michael Fox Jr, leadership group. We at the leadership group wanted to come and express our support for the proposed amendments to the City's airport living wage ordinance. We believe that increasing the competitiveness of our airport with others throughout the region and the state is important for our businesses and our residents. The city and council have carefully examined this issue clearly and arrived at sound registers that will help us to attract greater air service and ridership and our businesses, our businesses clearly value the opportunity to fly in and out of Silicon Valley directly. These amendments will help us meet that objective. We support the City's long time commitment to living wages as that ultimately boosts our economy with employees who can afford to live and work here. We would like to thank compromise proposal forward and

we applaud the mayor's leadership on this and other airport issues and look forward to partnering with both in the future, thanks.

>> Mayor Reed: Mike Fox Sr, Kevin fish, Robert Lind Li.

>> My name is Mike Fox. I was chairman of the chamber when the airport expansion was initialed. The men and women who work there are so important to so many travelers. They are important to me because they are entitled to human rights. Jefferson said we were entitled to life liberty and the pursuit of happiness lowest income working men and women I also appear here in the spirit of Jim Mcatee and Father Paul Locatelli, great icons of social and economic justice. I stand for you in the name of Mohammed, Yaweh, Allah, Jehova, and Jesus Christ. As we enter this holy season we must remember the prophet Isiah who said the lion shall lay down with the lamb, the leopard shall lie down with the goat. Hanukkah marks the triumph of light over darkness. These holy days remind us of the justice and peace that will words of the fox enter your minds and hearts and leave living wage intact as it stands. As far as our competitiveness goes akin the deity controls that, with our wonderful weather in San José. We can beat Oakland, San Francisco, anyone. Thank you.

>> Mayor Reed: (saying names).

>> Kevin fish. I object to a cut in living wage. Prices at the same time. Rising of prices, and falling income, is exactly what farmers face in the 19th century. Let's not do it again. Now those of you who think it's going to be easy to attract workers to this city for the police, the airport, fire, libraries et cetera, if you think it's going to be easy especially with measures V and W I'm not going to be one of them.

>> Mayor Reed: Come on forward, Robert Lund Li, Chuck Rawlings, Michael Francois.

>> Good evening, mayor, councilmembers. I'm Robert Lindley, president of federation of amendments to the ordinance. However, I'm speaking now in favor of the motion that's on the floor. This is not solely a fiscal matter

but a moral matter. Anyone who works for a living is entitled to earn a living. Meaning a living wage. Thank you very much.

>> Mayor Reed: Chuck Raulings, Michael Francois, Charles Taylor.

>> I'm we are enormously pleased to discover that a compromise has been reached that the living wage is going to be protected. And we look forward to continuing to support that standard established in San José. It's very important we think at the council of churches to understand that these discussions are really about triage, about triaging the workforce. As the workforce grows but few jobs are added downward pressure on the wages and benefits in the county is going to be upon us constantly. And if we let the lion's nose in the tent of the living wage to reduce it, that lion will be back next year and if we listen to Ben Bernanke's testimony over the weekend on 60 minutes, it's going to take at least five years, and I think he was being optimistic, to replace the workforce or rather, to establish jobs for the new workforce.

>> Mayor Reed: Sorry your time is up.

>> That's coming in.

>> Mayor Reed: Sorry.

>> Give me two minutes.

>> Mayor Reed: Next time we won't be so busy come back please.

>> Mickael.

>> My name is Mickae Francois and I'm an organizer with SEIU year ago stands as a shining example of the values much San José. Values to honor a parent's ability to provide food and shelter, obtain health care and

provide the best possible educational opportunities for their children. We applaud the council for its initial impact the ordinance has made in the lives of workers. Literally moving some from homelessness to shelter and from the cusp of conviction to secures wages for already strained family budgets is simply not the solution. We certainly support the mayor and councilmembers memo and accept the council approve it with such revisions. Several of our workers had to leave early but if you work at the airport could you please stand up at this time? Thanks so much. [applause]

>> Mayor Reed: Stan Taylor, [applause]

>> Mayor Reed: Stan Taylor. Followed by Jim Dahlquist and Alicia Coff Ginsberg.

>> I economic justice an immigrant rights. And as a citizen of San José, from district 2 Ash Kalra's district. As a Catholic I hold that remuneration for work should enable people to live completely meet all of their needs an have time off to do other things that are important to their lives. So I applaud any attempt to maintain a living wage but I call attention to the fact that the insight center for Community and Economic Development says that in this valley, in Santa Clara Valley a self sufficiency wage would be \$33 per hour. So we're still falling far short of what I consider would be a morale just wage. In this case it is very important to preserve that make sure there is no cuts to living wage because if it does the workers are going to have to make difficult choices to make ends meet and they won't being able to participate in society and achieve the results that they deserve from their work. Thank you.

>> Mayor Reed: Jim Balquist, Alicia Coff Ginsberg, sunny.

>> I'm Jim Balquist from St. Lawrence am the martyr and Sunnyvale. How well the poor are able to live. And this legislation speaks directly to that, speaks directly to the component of a living wage and a concern over a reduction in livability based on trends and wages and benefits. I appreciate that life seems to be a continuum of choices between the poor on the edge on one side and businesses with necessary jobs but earning millions and often billions of dollars, and yet still, I appreciate that this is necessary, and I appreciate the role of your

discussions and that they're not simple. But I do want to say I quite strongly urge you to support those struggling to make it on today's wages and to make your vote ensure that there is a truly living wage and living benefits. And then we can all go home --

>> Mayor Reed: Sorry your time is up.

>> -- and sleep well tonight. Thank you Mr. Mayor.

>> Mayor Reed: Alicia Coff Ginsburg, (saying names).

>> I'm Alicia Coff Ginsburg with work partnerships. I hope etched in your memories for a long time. Every week you make decisions, take votes, they impact our cities, they impact real people too often you must choose from less than optimal choices. Those votes you don't have to remember, I'm sure plenty of people remind you. Today you have the opportunity to see those whose lives you are affirming when they all just said up. You tell them the city cares about maintaining minimum standards. Today you have the ability to fulfill your moral obligation as a leader. I'd like to quote a leader who spoke on the living wage vote on October 28th, 2008. And I quote. It is an issue of fairness and social justice and that's what this whole community and country is about. Those are the words of Vice Mayor Judy Chirco. Thank you for your continued leadership and your commitment to this community.

>> Mayor Reed: Sunny Walters, John Conway, Kirk Weiss.

>> Mr. Mayor, councilmembers, my name is sunny Walters. has invested \$10 million and plans to invest another \$2 million with our partners. We employ 194 employees at the airport. Our operations include national brands and local brands. Local brands such as La Boulangerie, pizza my heart and the Britt. And councilmembers Herrera and Pyle. We specifically are supportive of their recommendation letter B related to violations, cure periods and fine levels. As a partner at the airport we appreciate your efforts to make the airport more competitive. We were told by city staff that we had an error and violated wage requirements. We immediately paid the full amount to the

city restitution with no questions asked. As a partner who has had to deal with the existing contract requirements I can tell you this is very cumbersome and complex to follow. Simplified means of reporting is greatly appreciated. We ask for your recommendation from the mayor and his colleagues thank you very much.

>> Mayor Reed: (saying names) Bill Leninger.

>> My name is John Conway, I'm an owner of the Britannia arms please adopt the revisions to the ordinance proposed by the mayor Vice Mayor and councilmembers Herrera and Pyle. Local businesses like myself look forward to expanding and also a location in the airport as an excellent way for us to do it. I urge you to help make the cumbersome process less cumbersome and give your partners an opportunity to correct reasonable mistakes without excessive penalties absent and male or cure period. In the interest of fairness I would also ask you to consider applying these changes retroactively. And if you didn't apply them retroactively at least allow your partners an appeal process. Thank you for your time.

>> Mayor Reed: Kirk Weis, Bill Leninger, Duane Green.

>> I'm the general counsel for Aries USA and I'm delighted to be here. Airport wages when we first started operating at the airport we mistakenly paid incorrect wages. Once we were notified we paid restitution immediately well within 30 days. Two months later we received a \$103,000 fine beautiful airport. And deserves a fighting chance to at least try to recoup its investment. Thank you for your time and consideration in making this amendment apply retroactively. Thank you very much.

>> Mayor Reed: Bill Leninger Duane green and Greg Miller.

>> I'm Bill Leninger and I'm representing the diocese and the interfaith council. The -- that ordinance that you have that recommendation is going to uphold the living wage, I'm totally in favor of it. I'd like to speak for the living wage what it's going to mean if it doesn't stand. There will be a lot more people below the poverty line. They'll have them down at the sacred heart community services and the shelters and everything else if we don't do

that. Just a reminder what this is. In 1998, and 99 we had the same identical thing back at the old City Hall back with the living wage when it went through and when it did we took the national poverty level and did it by 90% above but the trouble was that the national poverty level was so skewed and low that the living wage we have even now is below, below the poverty level is not a living wage at all. I'd like to remind you what we're doing today is holding up the fort of what we should have done before to have a higher living wage so I thank you.

>> Mayor Reed: (saying names) .

>> Good afternoon everyone. Some of you already know me already my name is Duane Green and I'm a wheelchair escort for Southwest airlines at San José airport. I've been there now for four years. God bless you all what did you for us two years ago. You allowed us to get the living wage. I now have my own apartment. I am working full time and my co-workers are happy I'm happy and God bless you all. Now we meeting again this come up and I strongly urge you to please let us continue to make the living wage that keeps the morale up our dignity our respect, and we definitely need it. I do not want to go back to where I was three years ago so please understand that. Thank you very much. God bless you.

>> Mayor Reed: Greg Miller, and then Jasmine Escobido, Michael Elliot.

>> Yes I'm from California nurses association. I'm speaking in support of the living wage, maintaining that. In this county, the class of living for a family of four in a couple of years ago was \$77,000 a year. The current wage that we're talking about here with the airport workers is about \$27,000. So it's a lot less. In 2003, U.C. Berkeley released a report that analyzed the impacts of living wage at the San Francisco airport. They interviewed workers negatively impacted business and airport operations. They found that no negative impact on airport activity was found, improvements to security and employee productivity, were achieved, and dramatic decreases in job turnover, 80% among some occupations was also achieved. Prior to living wage these were low paying positions that offered no training or prospect of advancement they were dead end jobs.

>> Mayor Reed: Sorry your time is up.

>> the give reason to.

>> Mayor Reed: Your time is up. The time goes quickly but we have a lot of people still wanting to eat. Jasmine Escobido, (saying names).

>> My name is Michael Elliot I'm a resident of district 3 and I'm a frequent user of the San José airport I love our airport and I love it a little more when this council passed a strong living wage ordinance and I urge the council to keep it a strong living wage ordinance thank you very much.

>> Mayor Reed: (saying names).

>> Mayor and councilmembers Dale witherspoon. I'm glad to say that Alaska and Southwest have increased the nights it had nothing to do with the wage minimum wage of \$six.75 must work 126 hours to affords a minimum two bedroom apartment or \$13.50 working 63 hours. And so we're not really paying a living wage. Think about what happens if we don't keep this living wage. How is the city ready to respond to those that are paying a mortgage that will not be able to pay the mortgage. How will the city respond to those in need of medical care? And so this isn't about one issue but it's about the big picture and having a plan. Martin Luther King says, there is nothing but a lack of social vision to prevent us from paying an adequate wage for every American citizen. There is nothing except short sightedness to prevent us from guaranteeing an annual minimum and livable income for every American family. I ask that you would continue to move forward with developing strategies.

>> Mayor Reed: Sorry your time is up.

>> To improve the airport without changing the living wage for these employees.

>> Mayor Reed: Deejanis Arobica (saying names).

>> Dear councilmembers and mayor Chuck Reed. Today I'm representing San José State university in a Muslim student organization. I want to say I want you to improve past living wage for the airport because the impact of not having a living wage goes right down to the family. When I was 19 I worked for one of the biggest architects in the world in London. My wage afforded my housing transportation food utilities and I still had profit left over. I never worried about counting my money. The difference between minimum wage and a living wage is just that. Will you have a life or will you be worried about paying for your livelihood? I want Silicon Valley to be remembered for the decent standard of living that it gives to citizens, and not to be known as the homeless capital of Northern California. Thank you.

>> Mayor Reed: Sandy Perry, Lucilda Salhiga followed by Carl balm hinkle.

>> Continuing the living wage at the airport the same way as I testified in favor it when it first came up here a couple of years ago. The very idea that the solution to any problem is to put more families in poverty is not only bad economics and bad policy, it's a danger to our community and to our moral integrity. We live in a valley of extraordinary abundance. Even at the darkest hour of our recession the Silicon Valley 150 reported profits of \$47 billion. \$47 billion. We clearly have the means to end poverty in our area. And we can start by preserving the living wage and then we need to get busy taking other measures. Thank you.

>> Mayor Reed: Dasilta saltiga Carl balmhinkle and (saying names).

>> Good afternoon, mayor and city council members. My name is (saying names) even some days I start at 4:00 in the morning I like working at the airport because of all the people I met. My daughter also work at the airport doing retail and goes to San José State university. The San José living wage is a decent standard for all airport workers, cutting wages could affect my income and also my daughter's income, we for my daughter's education and car payments. Right now, thanks to standards at the airport we are just making ends meet. If our wages were reduced I would have to choose between my daughter's education and her future and paying the rent. I know the

airport is going through a tough time. My hours there have already been reduced because of the slow business. But changing the standards for me a worker is not the answer. Thank you.

>> Mayor Reed: Carl balmhickle.

>> My name is I'm a member of plumbers and fitters local 393 and a resident of San José. And I also, me and my family we frequently use the airport. A lot of my work, I've worked on building the airport along with other members of my construction trades. And I think it's very important that we consider the workers that are working there now. And keeping the living wage. Thank you.

>> Mayor Reed: Maureen de Niiva, Diane fisher, Joshua Baruse.

>> Hello good afternoon my name is Maureen de Niica, I'm vice president of silicon Valley young Democrats and a member of councilman Ash Kalra's district. core values of the party and in fact living wage is a democratic core value. Why? Democrats are pro-business and we want to grow the economy and build the middle class. It takes good jobs to built the middle class. Not poverty wages with no benefits. Citizens should be treated even though child labor laws and health and safety regulations may mean less for businesses bottom line they're good things and we're better for it. The other reason is we believe in upholding the morals of the constitution that all really means having a good job that provides for your family, invests for your children's future and live in the community where you work. That's what living wage has done for these airport workers. We applaud the council today for the proposal to propose the airport living wage ordinance and ask that you continue this type of leadership into the future. Thank you.

>> Mayor Reed: Diane fisher, Washington baruse red Hirsh.

>> i'm here today to appeal to you to do the right thing and maintain the living rage ordinance for airport workers without any cuts. The highest level of justice or DAKA in the Jewis tradition is being sensitive to someone before he's in trouble. In Leviticus it says it takes one person to support something before it falls even five people mate

90 the an to lift it up. The current living wage provides an annual salary of \$27,000. Cutting salaries will not save taxpayers money or make the airport more competitive, rather it will make families fall. And then we will all be struggling to lift them back up. I stood before you previously to ensure that all workers earned a livable wage and I'm confident today that you can preserve the dignity of our workers and create long term and short term strategies that will strengthen our community. Thank you.

>> Mayor Reed: (saying names).

>> Good afternoon mayor Reed and esteemed council. My name Joshua Bruce and im civil rights commission. Now I understand how essential it is to remain competitive with other Bay Area airports although to do so on the backs of working people is not the way to do it. Many of these folks rely on their earnings to support a family and as you all know the cost of living in our valley is significant and b altering their wages so I earning you of drive a business for our City's airport and please take into consideration the quality of life of our City's working families. Thank you for your time and happy holidays.

>> Mayor Reed: Fred Hirsh, Omar Torrez.

>> Good afternoon, I entered the plumbing trade over half a century ago. As a plumber I learned all about sewers and the effluent they contain. The very notion to cut wages or the enforcement of the living wage for some of San José's most vulnerable workers is immoral, odious, and odorrive russ, it stinks . Those who would support any lessening of the living wage or its enforcement are simply going with the flow of effluent from the Silicon Valley chamber pot of commerce. In the chamber pot never ending war on workers, we should be discussing not cutting, not maintaining, but doubling the living wage. Thank you. [applause]

>> Mayor Reed: Omar Torrez is our last speaker.

>> Good evening, or good afternoon. This is not a strategic plan for the airport. But a business plan. Because it throws working class workers under the bus. How dare we say our airport is not competitive because of the living

wage? This is another way of blaming working class people for our past mistakes. The living wage was established in 2009. I was here speaking in favor of it. Back in 2009, and we have been losing business to San Francisco and Oakland way before that, way before that. So to say that workers who deserve a living wage are to blame is not about making us more competitive. This is attack being working class workers at the airport. Thank you very much. Keep the living wage at the airport. Thank you.

>> Mayor Reed: I have one last speaker. George netto. George netto is our last speaker. Anybody else wants to speak please get the card in now because we got to go get ready for the evening meeting before it gets to be evening.

>> Mayor Reed, city council, George netto with Teamsters union San José, California. I'm kind of appalled to sit here and listen to these airlines talk about making a mistake on paying somebody \$12.94 an hour. I wonder if my office, when I made flight reservations, made a mistake on my travel plans, and they say go ahead and fly and we'll bill you later? It doesn't work that way. This is for our community. I strongly urge you to continue to support living wages. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony. Lets bring this back for some council discussion. I want to deal with a question that several people have asked about the retroactivity of this. Seems to me with the motion that's in front of us, part of what was proposed to authorize the staff is to renegotiate the existing contracts for some of these folks. Who may or may not have an outstanding claim or an issue. And that could be part of what the lawyers who work out as part of that negotiations. Would that be correct, City Attorney?

>> City Attorney Doyle: Yes to the extent that there's a contract issue, that negotiation can take place. Otherwise, the ordinance the prospective and so it would operate prospectively and there wouldn't be any retroactivity in the ordinance.

>> Mayor Reed: Okay. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor, first of all I want to thank Bill Sherry and your staff for a very thorough report. And also, those people that came in and spoke on this issue. When the airport living wage ordinance came before the council in 2008, I supported it because I felt it was the right thing to do. And when the city council discussed the airport competitiveness, earlier this year I continued to support a living wage ordinance, and I was very proud that there was a solid consensus that it should be protected. And this council and mayors. And really it's my sincere hope that we have exhausted all efforts in lowering the airport living wage policy and that we can move on and focus on other ways, so we can meet our overarching goal of increasing the airport competitiveness. And with that I will be supporting the motion. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Also for purpose of disclosure I did speak to a representative from southwest as well as Ben field. I completely agree with Councilmember Chu. I think that -- I find it hard to believe that living wage is the cause for flight-or for airlines not to want to increase flights here or even have new airlines establish here. We live in the most expensive region to live in, in the nation. And the living wage ordinance helps to ensure that the employees will earn enough money to pay for their basic necessity. And I think lowering that again is not only disrespectful it puts people in a situation that's -- that's going to put them out on the streets. And you know with that, I -- I will support the motion. But I really hope we don't have to come back and have this discussion again about eliminating living wage. Thank you. [applause]

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I have some questions about the memo that's on the floor right now, the motion on the floor regarding the memo from the mayor and other colleagues. One has to do with the item B which I actually -- I agree with the cure allowing the opportunity for the vendors to have a cure period. Because I think in fairness I think that that's the right thing to do. Under B-2 it indicates that subsequent violation will be assessed a fine by the city equal to any underpayment. I assume once they make up the difference the fine could be up to that amount. If they shorted \$1,000, the final is up to \$1,000.

>> Katy Allen: Councilmember Kalra you're correct, restitution is the configuration requirement.

>> Councilmember Kalra: I think that's fair. I think the prior penalty seems to be a little bit on the excessive side. However, the only concern I have is that by moving to a -- by discontinuing proactive enforcement my only worry is it will be more challenging to identify situations in which there have been invitations but, that being said, I think a cure period is appropriate. In regards to item -- the item that discusses the -- what the minimum compensation should be, now it indicates on the memo that \$12.83 per hour is the minimum compensation. Now, according to the way that I'm reading it that would be conclusive of health care benefits and other benefits as well, so as long as it hits that minimum, 12.83?

>> Katy Allen: Councilmember Kalra for purposes of clarification, 12.83 is now 12.94. If you receive no benefits the minimum living wage salary is 14.19.

>> Councilmember Kalra: That's a little confusing at least the way I read it, it mentions wages but also mentions benefits and when have you, now 12.94. But that is very helpful in clarifying it. I want to thank Southwest airlines, I had a chance meeting with Southwest Airlines and I understand the challenges and the benefits for them as well as fairness to the employees and the employer in being able to bargain at the national level and so from what I gather the compensation Southwest gives is in excess of the minimum wage anyway than would in any case require it to be. So -- and the 13% by -- what I understood in meeting with them the 13% or so that are not covered are more at a supervisory level so they are likely to be -- they are already above the minimum wage so it doesn't really affect them. You know I agree with the sentiments expressed from many of the speakers here today. And we see right now that there's in these very difficult times there's a continual assault on working people. Millions are going without unemployment insurance. And even in we find a way to extend that, really, hundreds of billions of dollars in money millionaires and billion aires and we see this continuing trend that's dividing our country and creating a huge lower class, under class really of workers, this living wage policy basically keeps people with their head barely above water. With that A money it's barely above poverty wages certainly qualifies them for very low income for affordable housing what have you. So I'm hopeful that and I appreciate this memo

coming forward in the way that it did and the airlines and other tenants having buy-in and some of the bargaining units or the labor having buy-in because I think what it does is keeps us on principle and on moral grounds gives us a bottom line that we're not going to go below and certainly we need to be competitive and I also agree with much of what Mr. Sherry has put forward in how we can continue to be competitive as an airport. We just invested a whole bunch in the airport and we need to be competitive. But we also need to be concerned about those that work in our airport what conditions they live under the minute they leave the airport to go back home. And so I really do hope, as has been indicated by Councilmember Chu and others that spoke, that this is the last time we visit this issue, that this allows the flexibility to the airlines, it gives some fairness to the vendors so if there are some discrepancies in can actually live in this valley and maybe even afford to take a plane now and then, thank you. [applause]

>> Mayor Reed: And when you do take those airplane rides they're going to be out of San José, right? Okay. That's the one deal here you got to use San José. It's a great airport and we hope to grow it rapidly over the next few years to solve a lot of approximate. I think my council colleagues have worked on this to help come up with this solution to the problem. And I want to thank Southwest airlines for their engagement on this. All the airlines aren't so forthcoming as to what their interests are. They just vote with their feet and leave sometimes. So I appreciate the fact that some of the airlines have been willing to talk with us to try to talk out any issues that they have and I thank the community for coming out and this is a solution that will help us preserve the living wage at the airport but yet allow companies like Southwest view it as a positive as they expand their flights. We hope to get as many of those as possible and I want to thank everyone for their assistance on that. I want to thank Bill and his staff for the recent gains in air service, it is helpful but just the beginning. With that we have a motion on the floor. All in favor, opposed, none opposed, that is approved. [applause]

>> Mayor Reed: Now we're not done with the afternoon agenda, we haven't started the evening agenda. Let's just take a minute to look at that. We have a few items on the Redevelopment Agency board agenda that we should do. I don't know if we'll have the time to do the comprehensive annual financial report before the evening agenda but I think we can go till -- it's quarter after 5:00. We can probably get everything else done and then we'll have to assess and see, we can start the evening agenda if we go to 5:30, we can start the evening agenda at

6:30 instead of 6:00. Let's try to get as much of this agency work done as we can. We have one joint item, city council and Redevelopment Agency committee appointments we'll take up first as we're making the shift on staff. I have one correction to my memorandum with recommendations. I made a mistake on the Santa Clara VTA policy advisory board, Silicon Valley rapid transit corridor just because the name was so long. Councilmember Liccardo should be the member, and Councilmember Nguyen should be the alternate on that. So this is item 9.1. Is there a motion? Motion is to approve the committee appointments, all in favor, opposed, none opposed, that's approved. Item 8.1 we decided under orders of the day to defer that for a week. We won't take that up now. Do we have any cards for open forum? I don't think so. We already had a pretty long forum. On the Redevelopment Agency agenda, first is orders of the day. Any changes, additional changes? I don't think so, we've already dealt with those. Closed session report. Nothing to report. Consent calendar. Consent calendar. Okay, this is the time for the consent calendar. We have a motion to approve. Ton consent calendar, all in favor, opposed, none opposed, that's approved. Report of the executive director, item 3.1.

>> Harry Mavrogenes: Mr. Mayor, members of the board a very quick item. I wanted to note that on September at one time the Silicon Valley San José business journal recognized the agency with its community impact award for the Edenvale community center and this project which was on the top 10 priority list of Edenvale Great Oaks community in the SNI received that award and its significant accomplishments. So I want to let the board know that we did receive that and we're very proud of it. The center has been a great success and meets the needs of the community.

>> Mayor Reed: Okay, congratulations, thank you for that. Staff how long do you think it will take for the CAFR presentation?

>> Harry Mavrogenes: I believe it will be very quick. We have three quick slides. You have the CAFR for the city earlier today and I think Scott kind of led into some of the issues there. I'd like to have David do a very quick three-slide presentation. We also have our auditor here as well if you have any questions.

>> David Baum: Thank you Harry, thank you --

>> Mayor Reed: I have one card for the open forum if that person wants to stay we'll take it up before we adjourn for dinner. Go ahead I'm sorry.

>> David Baum: Mr. Mayor, members of the board, David Baum chief financial officer for the Redevelopment Agency. Earlier you heard the city report on its CAFR and annual debt report. And we would like to also give a brief three slide presentation of our comprehensive annual financial report. We are required by state law and by bond covenants to prepare an annual report. And it's really the audited financial statements that are required but we have taken the extra step for the last ten years to also do an entire comprehensive annual financial report. We are one of just six Redevelopment Agencies in the state that produces this report beyond the audited financial statements. A number of agencies rely on this information and give us high marks for it, particularly the holders of more than \$2 billion of debt that the agency has outstanding that the agency issues and monitors and provides annual disclosure on. Bond rating agencies, we have three that rate our debt. Standard and poor's, moody's and Fitch as well as the SEC requires its annual disclosure state controller requires it and so it's a very important report and it's important that we do it right. And so I'm proud to say that it's again a successful report this year. And next slide, please again we have our Macias, Gini that has provided an opinion on this report and once again it's an unqualified clean opinion. With no management letter comments. And that Macias, Gini has found us to be in total compliance with California law. Macias, Gini representative Craig Boyer who is the manager on our audit today is sitting to my right. And so we really do appreciate that. The -- the successful audit also reflects the agency management's adherence to the highest standards of financial reporting in a comprehensive internal control framework that is designed to protect the agency's from loss or financial misuse. And it's because of the great efforts of our staff, despite layoff that work nights and weekends that we got this report done. And able to meet disclosure time lines which began on December 1st and continued until February 1st to get this report out. And like to also give credit to the mayor and council for requiring us to open in a very -- work in a very open and transparent way. And then finally the next slide is, we've received the reward or award from the GFOA for the last nine years and again this 2010 CAFR is set so that we can receive this award again. And it really wouldn't do justice to try to do the highlights of this CAFR but it's a 100 page report, it's on our Website, this is what it looks

like. And if you do have any questions I'd be happy to answer that today or -- and that concludes my presentation and we're happy to answer any questions. And we have our audit staff here as well. Thank you.

>> Mayor Reed: All right, thank you very much. Any questions on this or comments on the agency effort? Councilmember Pyle.

>> Councilmember Pyle: I'm sorry my ears aren't working well tonight. I heard \$2 billion, what is that in reference to?

>> Board member pile, the \$2 billion is in reference to tax allocation bonds that the agency has outstanding.

>> Councilmember Pyle: Okay, uh-huh.

>> David Baum: And reference was made earlier today to the city administering 5.8 billion. But I'd like to tell that you the 2 billion of that \$5.8 is administered by the agency and we provide bond for that debt.

>> Councilmember Pyle: And that note would come to fruition in what year?

>> David Baum: The current year out to about 2034 .

>> Councilmember Pyle: Thank you.

>> Mayor Reed: I think that's it on questions or comments on this. Is there a motion?

>> Move to approve.

>> Mayor Reed: We have a motion to approve the comprehensive annual financial report. Including that motions, congratulations on the wards for the financial reporting. All in favor, opposed, none opposed, that's

approved we have -- want to go back to the open forum because I skipped over that and see if anybody was here, Ann brownell warranted to speak and then we have 6.2. And also wanted to find out that if there's anyone here to speak on 8.1. I'm told by the City Attorney that I need to open that hearing and continue it. Let's take the open forum item at this point.

>> Good evening, thank you. My name is Ann brownell, my daughter Amanda brownell on December 11th, 2008, tried to take her life at Del Mar high school because she was being bullied, cyberbullied by myspace Facebook, and received 3500 text messages the month before her suicide attempt. this year we will be honoring the first responders and asking all attendees to pledge to stands up to not allowing bullying in their presence. I would like to invite each and every one of you to come, we have Vice Mayor Chirco and Carla there and we appreciated their support. So I have fliers and wrist bands and information to give out to all of you. So thank you.

>> Mayor Reed: That concludes the open forum. We have item 8.1. Anybody here to speak on 8.1? That is the amendments to North San Pedro, house being site, anybody here, can we get a motion to continue this for a week? Motion is to continue for one week. All in favor? Opposed, none opposed, I think the last item is item 6.2, well, the last item until the evening agenda starts, 6.2, approval of amendment to the agreement with Anderson tree care.

>> Move approval.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, are we done with the afternoon agenda? We are taking up item 6.1 at -- well originally we were going to do it at 6:00, it's now 5:30. I know everybody needs a chance too eat dinner. Is there food close by City Clerk? In the back? Want to take it up at 6:15 then so we get a little bit head start on the long evening agenda? All right so we'll take a 45 minute be back here, start up at 6:15. [Recess]

>> Mayor Reed: Good evening, I want to call the San José city council back into session. We had a session that just broke up 45 minutes ago, so we're a little bit late starting on the evening agenda. The ceremonial item has been dropped. We will take up as the first item of the agenda item 6.1, the master cooperative agreement with the California High Speed Rail Authority for the master agreement. We have been limiting speakers to one minute so that everybody has a chance to speak and that we all get home, well, many hours before we're going to get home but we'll get home sooner that way and we'll have everybody participate that wants to because we have many more items after this so with that I'll turn it over to our staff, to begin the presentation.

>> Hans Larsen: Mr. Mayor, I'm Hans Larsen, acting director of transportation. And joining me is Katy Allen the director of Public Works. Discussion with the council about the California high speed train prompt. To keep the presentation brief in respect of the other items on the agenda tonight. Just by way of backdrop at the purpose of this item here today is to define the city's position and direction on the high speed train project based on the new context. And as I mentioned there's been a lot of change in the project over the last three months. The key elements the changes since the September meeting, we had discussions at length in terms of the downtown alignment issues aerial and tunnel options and we received direction from the council to seek a binding agreement with the High Speed Rail Authority on an aerial option that ensures an attractive design and if there was not an agreement, that we would consider further study of the tunnel option. So we want to talk to you about the follow-up we've done based on that direction as well as highlight recent project funding actions which have been significant over the past three months. Very quickly this is a bullet train project serving all of the state of California. Numerous benefits for the state, for San José this is a great project in terms of improving accessibility to San José, building a world class transit hub at the Diridon transit station and promoting our economic development goals. The initial goal to build a \$43 billion project that L.A. Anaheim. The project is 25% funded where state and federal funds and there's a goal to try to complete this by year 2020. In terms of status youth, one of the directions from council was to pursue a draft cooperation agreement with the High Speed Rail Authority. We provided the copy of the agreement in an info memo, we are very pleased with the agreement that we negotiated with High Speed Rail Authority, you can see the key elements of the agreement there. We are not

recommending that we execute this agreement tonight, primarily because we have some additional time to work through issues on High Speed Rail. The context before is that we wanted to be competitive for funding for the San José to San Francisco segment with near term federal dollars. Those dollars have been allocated to the Central Valley and so we do have the benefit of some more time to work through these issues, and therefore we're not recommending that we execute the agreement now but I think the agreement sets forth a cooperative approach and which we will be using as guidance as we go forward. Since the September meeting there's been a considerable amount of community outreach and cooperation there has been an exchange in letters between the California High Speed Rail Authority and the downtown association, the community coalition, primarily to address the approach and tunnel issues, and the High Speed Rail Authority has indicated a willingness to have further meetings with San José representatives as needed. So very open to having good communication in terms of the project direction. The high speed rail board took significant action to have all federal moneys segregated to a portion of the project that is near the Fresno area. The area in green is where the allocation is where the project goes from here, is anybody's best guess. For San José's interests we would love to be able to have the next piece be a connection from the Central Valley to Silicon Valley. That is about a \$10 billion project to make that connection. We think it's in San José's interest to advocate for that as the next investment. But we can expect that Southern California will also be fighting for an extension towards the South. It's noted that our portion is less costly, about \$10 billion versus \$20 billion so that's one of the advantages we have. Obviously there's more population in the L.A. area. One politically less controversial part of our recommendation is that we want to recommend that we advocate for the San José extension being the next phase priority. Clearly the key issue revolves around the requirement. An aerial option has raised concern about visual and noise. And the tunnel option, which has a host of issues related with how it fits with development timing, construction impacts, the BART project. It has a high cost, almost \$2 billion more than the aerial, and we're dealing with high ground water table and difficult soil conditions. The key policy issue regarding the downtown area, there's kinds of two options that we wanted to frame up for the council. The first focuses on answering the question of what it will look like. Many people are advocating for a tunnel because they're concerned that the elevated option may be ugly or not meet with our acceptance. What staff is recommending is that we invest over the next six months to define what this project is going to look like. By preparing what we call visual design guidelines. And at the end of that process if it's determined that the results are not satisfactory then the council can consider a more active approach in

looking at the tunnel. The other option, which is one that's recommended by councilmembers Liccardo and Oliverio in their memo, is to adopt the position now, urging full EIR study of both the aerial and the tunnel option, this would keep a larger range of options open now. But one thing that you need to be aware of is that the tunnel option is not one that is currently supported by High Speed Train staff. We would need to address that with them if we take that second approach. The recommendations that we have in the staff report the first is to receive an update which we've provided. The second that we lay out is to move forward with the process of working with High Speed Rail to prepare visual design guidelines for the entirety of San José all 20 miles, for the project that High Speed Rail is recommending. So that would include the aerial and the downtown. And what this would do is address the architecture of the project, the integration of public art, community compatibility and it really is looking at how this project fits within our community from an urban design and aesthetic perspective. We would want to develop this design to the greatest degree possible which is a recommendation from Councilmember Liccardo and Oliverio and we certainly support that. Let's take it as far as we can. We know that San José works best when it works well with its community. And we want to form two community working groups that are focused on one, the downtown area and the Monterey highway corridor area. We would want to take input from the good neighbor committee. They provided a lot of recommendations in termination of dealing with High Speed Train relating to place making, supporting the community, community development, attractive design, using durable and graffiti resistant material. We would want to incorporate that input as well as we support also one of the recommendations from Councilmember Liccardo and Oliverio is that we take some of the folks that participated in that process and have them on the High Speed Train community working groups. We think that's a good idea. We are also recommending that we bring on board a consultant team of experts that would support San José in terms of engineering, architecture and urban design that are helping us work with High Speed Rail and to do that both for consultant and staff report we are recommending an allocation of \$200,000 to support this effort. I'd like to have Katy talk a little bit about the architectural elements of it. Because Public Works, we are looking to have them help us with managing this project, based on their considerable experience they have in developing quality city projects. Katy.

>> Katy Allen: Thank you, Hans. Several months ago Hans and I started talking about the High Speed Rail project and as Hans mentioned we wanted to take advantage and use some of the experience that the city gained

in two areas. One is great architecture that we can afford that's functional yet iconic and something our community can be very proud of and the other is the community engagement process that we used as we went through the decade of investment. And I know every councilmember has had the opportunity to open libraries and a lot of different new facilities in your district. And clearly, our experience and the relationships that we built, the strong commitments that we made, to engage our community in the development of that, was critical. So obviously, we have two projects here that don't need to be identified, City Hall on the left, and the airport on the right. Nice architecture, very nice architecture. I think a strong statement, very strong standard and something we want to achieve with the High Speed Rail project. Again these are just a snapshot but what I wanted to mention is as we go through these design development alternatives with the community one of the best communications we have are pictures. So as Hans described the action that we're going to be working often or the activity that's going to be worked on in the next few months is to design these concepts with the community so people can start seeing something, start giving feedback and comment on something that everyone has seen together. So with that I'll turn it back over to Hans but again we have just started working with D.O.T. and I think in the future, between Public Works and the Department of Transportation, there could be a strong relationship, thank you.

>> Hans Larsen: Thank you, Katy. Just a couple of other things on the visual design guidelines. We want to address sort of the big picture of what this looks like and we see that there's an opportunity to have a positive impact on the downtown skyline. This is an example from a bridge in the Netherlands. Our standards are high as we mentioned looking for iconic and world class something that is unique in something. But at the same time we also want to get the small details right. And it is how we enter -- the project interfaces with the community at the community level and community scale. I think these are a couple of examples with the hands project at the airport the rental car garage and a recent project on a very effective treatment on freeway bridge columns that was led by the downtown association. So the visual design guidelines is one of the recommendations. The others that relate to how we deal with High Speed Rail on the tunnel issue, we've recommended a position that the position on the tunnel sort of depends what the outcome is on the visual design guidelines. The alternative recommendation offered up by Councilmember Liccardo and Oliverio, recommends full study of the tunnel option, really immediately, right now, as part of the EIR. Staff it's a policy choice from the council we're happy to support either direction that you provide to us tonight. The last one I just wanted to emphasize, right now our policy

position on High Speed Rail is to supply investment in the San José-San Francisco corridor given that the initial investment is in the Central Valley we'd like your concurrence to work with other Bay Area stakeholders to promote a Central Valley to Silicon Valley connection as the next investment for high speed rail. That concludes our presentation, be happy to take any questions.

>> Mayor Reed: I'm sure we'll have a few questions before we get done here. Let me start with Councilmember Liccardo.

>> Councilmember Liccardo: Thank you mayor and thank you Hans for the presentation. Thanks for all your work and the work of your team. I know this has been a many months long investment and I know of your time and many other forecast and I appreciate all that you've done to put it in a position where we can understand this project. because I know there's a lot of complexity of all in. I had one question for Rick about the procedural posture where we are where the implications are on the decisions we make today. If the city fails to raise issues or objections as to the adequacy of the scope of the EIR today, can the city as sort of the responsible agency under CEQA can we be found to have waived our rights to object in the future if we get down the road and find that this overhead alignment is simply not going to work for us?

>> City Attorney Doyle: Councilmember Liccardo yes, the short answer is yes there's that risk. Normally, your EIR comment period is the time that you waive, when it's out for public comment where you raise objections and you are not deemed to have waived up until that time. However I've noted that there's a -- on the CEQA Website there's a provision that says a responsible agency which the city would be in this case, if it's invited to participate in the scoping sessions it should take advantage of it and failure to object would essentially speak now or forever hold your peace. Would potentially constitute a waiver. So yes, there's a very real risk and if the council wants to keep that option open it should continue to raise it. I'll note for the record that the council has raised that, staff raised the issue back in 2009 and then letters signed by the mayor, you and Councilmember Oliverio in January and August of this year have kept that issue alive. So we are on record but if the council wants to continue to be on record I'd recommend continuing to do so.

>> Councilmember Liccardo: Thank you Rick, I appreciate that I recognize those letters are out there. The concern I have is that the council hasn't really spoken as one body. And that really animates my concerns in terms of the background of all this. I think it's going to be a considerable period of time before all these design issues work their way out. This is going to be a multi-year effort. I think we know that now more than ever. In the last week we've learned a lot in the decision of the high speeds rail authority to obviously select the alignment or the segment I should say in the Central Valley puts us many years away from construction. I think there's certainly an anticipation politically that Bakersfield will be elevated in importance as the high speed rail authority looks more and more to the federal government for funding, particularly with the Republican takeover in the house, Kevin McCarthy the majority whip in the house hails from Bakersfield. We have a Republican majority that is not otherwise as enthusiastic of high speed rail, the chairman of the trainings committee Mr. Mica, there is frankly a strong pull of gravity to the south on this rail line and that has me very concerned that we'd be making decisions now knowing that really, how this really plays out is going to be many years in the future and we have a lot to learn between now and then. I'm also mindful of the findings just made in the last week by the commission headed by former CalTrans head Will Kempton and certainly Will Kempton is well respected in transportation circles. He he had misgivings for high speed rail and led me less confident about conclusions drawn by the agency and by their consultants. For all those reasons and for the reasons that Councilmember Oliverio and I outlined in the December 3rd memo, I'd like to make a motion for the issues outlined in that memorandum.

>> Second.

>> Mayor Reed: We have a question on the floor. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I'd like change of Congress potentially in January. Obviously, we're going to see a different type of Congress, one that express very indifferent to a lot of the projects that are actually in the pipeline including this one. Does staff anticipate the lack of support or the change of support for this project moving forward?

>> Hans Larsen: I think with the recent changes in Congress the level of support for High Speed Rail has been dampened a bit and I think the initial investment in High Speed Rail we're looking at investing in about ten different corridors across the country and the view is that would be a little bit of an extension and we need to focus on a smaller set of projects. I think California is leading the country in terms of development of the project. And so I think if -- it's recognized that you know there are 14 countries in the world and another seven that are planning High Speed Rail statements. I don't think anybody's regretted the investment in High Speed Rail but it's apparently going to be looking at a smaller set of projects. So I think California is still in the running to get investment. Clearly the level of investment may be limited for the time being and so I think that's a real political and financial reality that the project is facing.

>> Councilmember Nguyen: Thank you, Hans. And then I just wanted to voice my support for Councilmember Liccardo and Councilmember Oliverio's memo. Recently I was attending a committee meeting in my council district, borderline of councilmember Ash Kalra's district. And to my dismay a lot of the people didn't know about the High Speed Rail project. We were talking about the aerial alignment and tunnel alignment. People were really surprised that we were actually moving forward with the tunnel alignment or showing support for that because obviously they were concerned with the noise issue, the visual impacts, the traffic congestion along the areas that are already congested at the time. Gets me to start thinking about maybe we should start looking at the tunnel alignment as well, and obviously this impact people down towards central South just as they do affect the folks living in downtown. So and that's why I'm showing really strong support for the study of the underground alignment. The air alignment obviously could be an icon if it's done correctly but it also could be a disaster if it's not done correctly. And so I think that the direction that my colleagues are putting in their memo is the right one to go so I fully support it. Thank you.

>> Mayor Reed: Seems to me that the question is, when is enough study enough. And it's pretty clear looking at the letter from the High Speed Rail Authority to Art Bernstein back on November 1st that the High Speed Rail Authority staff has concluded that they've done enough study of the tunnel options. I think we as a city probably disagree with that because if you are going to conclude that the tunnel option is not feasible or practical, I think you have to know what the alternatives are. And until we know what the aerial alternative looks like, I don't think

we're going to be ready to decide whether or not they've made the right decision. I think what we ought to communicate in the letter, that can be contemplated, I have a right to them is, when they make their environmental impact final decision whenever that might be, looks like that might be August, if they haven't properly considered the alternatives, they're going to have a defective environmental document and we're not waiving our rights to challenge that. And that's a fairly simple question, as Councilmember Liccardo pointed out we don't want to waive our rights because we don't yet know what the right answer is. Even though the High Speed Rail staff may have reached their conclusion based on their analysis, the High Speed Rail Authority board has not. As they say in the letter, no decisions regarding board and administration make the decisions at the end of the EIR EIS process. which is what Councilmember Liccardo and Oliverio have suggested in a memo and what we've suggested with our previous correspondence to the authority board. But at the same time we are very much interested in having the light rail or having the High Speed Rail Authority be successful. San José's been a strong advocate for this project, especially coming through San José and not the Altamont pass so we can connect the economic centers of northern and Southern California with High Speed Rail. We have been an advocate, I suspect we will continue to do so. I want to thank Van Ark in the negotiation of the contract that we have in front of us, not that we're voting on it tonight but we have the draft which our staff and High Speed Rail Authority staff negotiated and it's in final form, anybody can look at it. They have gone a very long way to help us, and then, work together to figure out what an aerial option might look like. Because there's no doubt that you can build an ugly aerial option. We've seen plenty of them in lots of places around the world. But I think there's also no doubt that you can build an attractive aerial option that will be an asset to the city that we'll be proud to point to and say that's High Speed Rail Authority in San José. But this as Councilmember Liccardo has pointed out it may be years before the final decisions are made on constructing the project. And we want to make sure that whatever, we think is the right thing, doesn't get value-engineered out along the way, as the project fortunes ebb and flow. I think the contract we have proposed with High Speed Rail Authority will allow us to do that, that's of great value to us and I want to thank our staff and our lawyers for a lot of work they've put in to get that contract negotiated. I think that's the -- it's certainly the first I've ever seen like that, it may be the first ever in the state of California with that level of detail between anybody building a railroad and local deposit. So I think we've made a great deal of progress but nevertheless we're not giving up our rights and we will continue to be engaged with High Speed Rail Authority to make sure that we get the best deal possible for the City of San José. There are quite a few people here who

want to speak tonight. I think we'll take that public testimony. Again we're limiting all the speakers to one minute because we have a very long agenda in front much us so please come on down when I call your name so you're close to the front of the line. Jonathan Hamilton, Alexander Smirnova, Brian Adams.

>> Hello, my name is Jonathan Hamilton, thank you city council for letting me speak right now. And I'm very much for the High Speed Rail system going through San José because I have relatives in Los Angeles and it would be a very nice option to be able to simply take a train instead of having to pay tons of money for gas or a plane ticket. And as for the tunnel or above-ground options I believe that a tunnel would be rather hazardous, since this is California and earthquakes are quite frequent and could cost much more money than if an above-ground structure was simply built. And -- I believe that's it. Thank you. .

>> Mayor Reed: Alexandra Smirnova, Pete Adams, Colsted.

>> Mr. Mayor, city council, I'm Alexandra Smirnova, I wasn't in favor of this project when it was proposed, because it requires too much government spending and given the current spending it's our tamp money, so now that the project has passed, I think that the cost should be kept on minimum. And that please take into consideration that the money should be spent on it wisely. Thank you.

>> Mayor Reed: Brian Adams, Pete Colstad, Kenneth Muir.

>> Mayor Reed, honorable councilmembers, I'm Brian Adams, vice president for advance at Bellarmine college prep. On behalf of Bellarmine, I've previously expressed concerns about the High Speed Rail project that they may have on the campus and the campus park and neighborhood depending on the alignment through that segment. As noted in the December 3rd memo from councilmembers Liccardo and Oliverio regarding the high speed rail project we have one and only one opportunity to get it right. While I realize that much of the focus of discussion tonight is centered around the downtown core, I ask that you please, as you continue to work on a viable plan, that will provide the City of San José and community stakeholders with greater input ton project, I

thank you for also being mindful of the potential impacts along the San José corridor beyond the Diridon station area including north of Taylor Street. Thank you.

>> Mayor Reed: Pete Colstad, Kenneth Muir, Terry Bellandra.

>> Hi, live in the market Almaden neighborhood which is located basically at the north eastern corner of where 280 and 87 intersect. In general the community is in support of the train and the baseball station over at Diridon. We are very familiar with elevated structures, those are not particularly good photos, you see what we deal with. When 280 was built it's a very green project. They moved olive orchards out of way. It was a great experiment. They have no concept of what we would be facing now 50 years later. Right now that's the biggest problem that we have in our neighborhood. There's no money to maintain the landscaping. The area below 280 is a storage yard backyards for CalTrans. So we'd like for you to appoint a third party expert to analyze this tunnel thing. We learned at the devil's slide project that sometimes CalTrans and the state doesn't exactly get things right and maybe fresh eyes come up with something different. We would like you to exhaust all options before signing on with the aerial. D.O.T. has been wonderful to work with, the public meetings and meetings we've had on the side they have been cooperative and it's been wonderful. Thank you.

>> Mayor Reed: (saying names).

>> My name is Kenneth Muir, I'm a native Californian. I've lived in this area and San José specifically for 16. I spent a good deal of my year this year, on high speed rail in Taiwan, I would really encourage the buildings of high speed rail, in California, specifically the corridor between the Silicon Valley and the Central Valley. I'd like to see San José to L.A. connected first. I'm sure our neighbors on the peninsula would be very much interested in High Speed Rail coming from San José to San Francisco once they saw us traveling to L.A. and to San Diego in two hours. I was in L.A. in the late 50s and early 60s when smog was so bad, you couldn't breathe in the summertime. My life and I have just had a station installed in our garage, we are having a Nissan leaf delivered in the spring. .

>> Mayor Reed: (saying names).

>> Terry Bellandra. As a San José resident for 41 years and a Realtor here for 22 years I am concerned over the effects of an above ground noisy high speed rail track running through town and its effect on housing values. I urge you to include the underground rail option in the EIR. I applaud you for studying the design with professionals and studying the noise issues. Noise was left out of all the beginning high speed rail meetings I attended making many in the community mistrustful as many don't realize it is high speed rail metal wheels on metal tracks. Many thanks to councilmembers Oliverio and Sam Liccardo for your memorandum and recommendations and Mayor Reed for your comments a few moments ago. We only have one shot of this, let's not jump too fast, thank you.

>> Mayor Reed: Jack Nadeau, Henry cord, Sean Cottle.

>> Hi, Jack Nadeau. We have heard all the objections of the aerial methods, there are so many of them. But the point I'd like to make is the tunnel option would be good for the entire system. Not only for San José, the aesthetics, the wall dividing the city, the view of the hills obstructed, the noise, the wasted space underneath, just like underneath freeways, all those things are negatives for if aerial option. But the point I want to make, I don't know how much time I have I've gone to other meetings and I notice that the tracks have to curve to follow 87 and curve around and follow 280 for a while and that slows the train down. That slows the train down. Also it makes it a longer track which also slows the train down. If it's to be high speed rail it's got to be state-of-the-art, it's got to be world class and it's got to be straight as possible.

>> Mayor Reed: Sorry your time is up. Henry Cord, Helen Chapman.

>> I do want to thank staff they've worked tremendously with us it's a good work relationship and that's really important to us in the downtown and surrounding community. I'd also like to thank councilman Sam and Pierluigi for their memorandum. I see a consensus building here today. I think your decision tonight to incorporate both options in the study will serve us well in the future, thank you. .

>> Mayor Reed: Don Cottle, Helen Chapman,.

>> I echo what Mr. Cord just said as well as the fact that I would recommend that the council allocate a portion of the money of the \$200,000 that's being set aside tonight for an under third party study and analysis of the California high speed rail authority's tunnel analysis. So that we know that the analysis has been done, and that it is the results are competent from an engineering standpoint and we do not, we being the City of San José do not just accept with blind faith what Chesra is telling us about the tunnel alignment. So again I urge you to allocate a portion of the \$200,000 analysis to an independent consultant. Thank you.

>> Mayor Reed: (saying names).

>> Helen Chapman president of Shasta Hanchett park and good neighbor committee. You have an unit to lead San José in a direction that will significant in terms of building San José a true world class destination. Our neighborhood last always felt that norming high speed rail and diridon. Thank you councilmembers Oliverio and Liccardo for your leadership, as indicated in the memo, it's been a pleasure to work with the downtown association and many neighborhood leaders and the Department of Transportation to come to consensus on concern. I hope the partnership that we have forged will continue. Please keep the tunnel option in. Thank you.

>> Mayor Reed: (saying names).

>> Hi, good evening members of the city council thank you for addressing this issue. My name's John Leba, I moved from midtown to be near CalTrain. Like most people in the room I took CalTrain to San José. I work in downtown San Francisco by the transbay terminal which is going to be the retire. In the summer I used to walk underneath overpasses for the buses to get into the transbay terminal. They were filled with the smells of body odor, human feces, urine and vomit, their homeless encampments under those terms overpasses, different without those overpasses. Those overpasses were awful, and that's something we have to look forward to in San

José if we don't preserve all our options. I'm just asking you to preserve all of your options and realize that even the beautiful cable stay considering we have an airport right in the flight path. Thanks.

>> Mayor Reed: Yaz Naol. Have I.

>> My name is Yasanali, I'm living in a new neighborhood near Santa Clara station. in Japan. I am Japanese so I want to point it out two things today, one is I want to see things today, one is nighttime noise, only we can maintain the train track, only in the night, we already have the San José airport and the CalTrain but the San José airport we have a curfew. And then CalTrain that is a daytime, and then that is a lower track. But the 60 feet high elevated track, the number two radio wave interference. 16 feet elevated tower, elevated track it means the higher -- tie tower, highlight tower for the kinds of ethereal tower, and that is called radio frequency interference. So well, and and then I wanted to point out I learned about the tunnel option. There is a softer soil but we can introduce the new Australian for softer soil.

>> Mayor Reed: Sorry your time is up. Tom Cottle, Harvey Darnell, Richard Zepelli.

>> Being originally French I know the firsthand the grade good that such project can bring . While the French high speed rail has spread from Europe to over seven country, it is this project would certainly not meet your standard for noise and visual pollution. How would San José revenues be impacted by -- how would every house value be impacted? Sensitive revenue be impacted if every house value were to die by 50 to \$100,000. How would my kids and baby ever sleep when the train creates 80 to 90 decibels? France is the leader in high speed trains and yet who remembers a 60 foot high bridge crossing French cities? I don't because there is none, none that I know of. And there is none because the French are also famous for preserving their architectural heritage. The most beautiful option is the underground.

>> Mayor Reed: Sorry your time is up. Harvey Darnell, Richard Zepelli, Larry Aimes.

>> My good friends at D.O.T, greater Gardner community I'm representing tonight, thanks you for the program route for the for your support for the program route from consideration. That said we have always supported looking at the best aerial and the best underground route and I thank Councilmember Oliverio and Liccardo for their memo being presented tonight. We believe it should be a robust community process with a high quality consultant and we support D.O.T. on their appropriation tonight. We want to make sure that whatever is extended into San José and we very much support high speed rail, is the best quality extension so that we have a good extension of the downtown core. I sit on the general plan 2040 task force and we are he very concerned about the development in that area we want to make sure it is high quality. Thank you very much.

>> Mayor Reed: Richard Zepelli, Larry Aimes, M. crags.

>> Good evening, mayor and council, representing Willow Glen. I want to thank Pierluigi and Sam Liccardo for their memo, we support it completely and support High Speed Rail coming to San José. In Willow Glen I'm sorry we don't have a real clear picture how it's going to happen how it's going to come through. So continue being to work with the D.O.T, they're making a presentation on January 13th in Willow Glen and to give us a better picture of what it's going to look like. Rod Diridon is going to be there, Hans Larsen, Henry Sevene, everybody, we're really looking forward to that and we want to support the High Speed Rail as much as possible. Thank you very much.

>> Mayor Reed: Larry Aimes, M crags, Scott Knies.

>> Hi Larry Aimes, I like the aerial entrance. I think it would create a great entrance into San José, proposed alignment over 87 and 280 is much improved over the original alignments through the neighborhoods. That said I hope you will continue to study the tunnel alignment as well as aerial alignment. The study will prove that the aerial alignment is the best if that is the case. Also remove years of going what if? Mitigations for the sound so they don't impact the area whatever we build we'll be living with the results for decades to come. Thank you.

>> Mayor Reed: Jim crags, Scott Knies John urban.

>> M crags, Newhall neighborhood I applaud council's position needs to be that it encourages an underground option wherever it is technically feasible and wherever high speed rail chooses to pursue it. The EIR must fully and fairly include, evaluate the underground option that means burdening the aerial loss of use and enjoyment of their properties. Unless those dollars are included and paid aerial cost estimates are worthless and the city will be a party of uncompensated taking of horrific proportion both lost revenue and increased crime and rehab costs. Now regarding outreach. Giving us an opportunity to comment does not equate to acting upon our concerns. In addition I ask snail mail every property owner within one mile of the proposed route and provide them with A visual showing exactly what parts of the aerial structure will be visible from their property and two, a visual impact to their property 24-7 thank you.

>> Mayor Reed: Scott Knies Art urban Art burn Stein.

>> Welcome aboard Councilmember Campos. The California high speed rail authority has to build a statewide train project. It's not going to always be in the best interest of every city what the high speed rail authority does. It's up to us in San José to do what's best for San José. That means all of you with your leadership, that means the staff, that means the community altogether to do the best for San José with the High Speed Rail project. The test I believe will be 50 years from now when hopefully we have built this and we're looking at whatever design and alignment is ultimately chosen and we look at it with pride. And it -- and when we look at it 50 years we think boy, those folks back in 2010 really made some good decisions. Thank you for including both options, it's the way to go at this stage.

>> Mayor Reed: John urban, Art Bernstein Scott soaper.

>> Hole, John Auburn, Newhall i'm represented by these two guys, guys excellent memorandum, really really appreciate it. We really deserve the underground alignment and we all deserve the underground alignment. We really do. We're good people, and we are -- [applause]

>> Absolutely. High speed rail needs a station in San José. It really does. Just ask the people of Gilroy, Mountain View and Palo Alto who have pushed back, big time, all right? We are at the table, we have chips. And in front of us, and let's play, and let's do it right and let's get underground station at Diridon. Thank you very much.

>> Mayor Reed: Art Bernstein, Scott soaper.

>> Mr. Mayor and members of the council I am the recipient of that letter that the mail referred to from the California High Speed Rail Authority. We appreciate their responsiveness, as members of the downtown association, we let you know that we support the motion made by Councilmember Liccardo thank you.

>> Mayor Reed: Scott soaper is our last speaker.

>> Hello, Scott soaper I live in college park, I just want to voice college park support for the letter from councilmembers Liccardo and Oliverio. I submitted a letter earlier which should be in your packets, don't need to go into that because it seems to me those issues are being addressed. I would just like to say that I think the political reality is that if High Speed Rail gets as far as San José it should take quite a bit longer to get the San Francisco, we should be walk across the platform and get into a bullet train and that should really be into consideration of what's being planned for the future because that's probably the reality. Thank you.

>> Mayor Reed: That concludes the public testimony. We have some additional council discussion on this matter, I think. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. So in previous discussions, on this subject, I have always been very interested in the tunnel option but was willing to not -- was willing to set that aside in terms of this project coming forward very quickly and the funding being there. And certainly didn't want to be one standing in the way of it but I've always had concerns about not following through on the tunnel option. So I'm very happy to see this memo by my colleagues, and commend them for taking leadership on this. I think some of the critical points, and questions that are being asked here, about looking at the underground alignment may be what we are requesting

some of the things that have been asserted, particularly, you know, some of the points here made that even in the 15 percent level of injury that's already been done why hasn't that -- why can't that be published within the EIR? I think that's a really good question that's being asked in this memo. In terms of in the past looking that the high speed rail option would happen before BART, working together with BART and doing a tunneling, it's obvious that High Speed Rail is going to be prolongedful years into the future with all of the things suggested including the change of Congress and the lack of willingness to fund these projects immediately. So I highly support this memo. I think we have time as has already been said to do this right, and to make sure that both options are considered. Because I think there's been some good arguments made about the above ground alignment too but I'm certainly very interested in the tunnel and I know that many areas throughout the world that have high speed rail find tunnel options to be the advisable one to protect the environment and to keep the high quality of the community and San José is as good as any city in the world. I think we need to look at it that way and we need to promote both options so I'll be supporting the motion.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I wanted to thank you for being in this process, and dealing with a not perfect situation. I.e. that high speed rail a state agency and cities as much as we have some ability to speak about the issues don't really have final control. Whether it be if budget that's going to go towards it, the above or under, but we're trying to manage the situation and Councilmember Liccardo I appreciate the collaboration on memo and you know which paragraphs are yours because they have a distinctive humor in them. With that said I think it's important we don't pass the opportunity, this is going to take us as everybody has mentioned a lot of years and many billions of dollars. That said we may have two options on the table and that discussion may be sometime in the future for us to discuss but it's important that we don't pass up the opportunity brought up by our City Attorney Rick Doyle I appreciate the comments this evening thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I know the focus has certainly been downtown but I just want to thank staff for all the work they've done but certainly to also make sure there's an inclusion for a community working group for south of Tamien. I'm sure I'll be working with Councilmember Nguyen to make sure we get out in the community and get good community representatives that can serve on that working group. Because although the proposal in our districts looks like it's going to be at grade, obviously how the railway interacts with the surrounding neighborhoods both in terms of pedestrian and bicycle access and making sure the grade separations are going as much community input as possible to ensure that happens. On the memo, I want to follow up on a question that Councilmember Liccardo asked regarding the waiver of making any claims going forward and Rick you'd indicated that although there had been the city's kind of been on record in letters and so on in the past does this give us even greater I mean your estimation is because this is a full council action to just give us a greater -- greater statement in regards to any objection or at least raising the question of underground alignment?

>> City Attorney Doyle: Yes, if the action passes it is formal action of the council and this would have the entire added weight of the council .

>> Councilmember Kalra: I think with that as well as reading the memorandum and giving some careful thought to it, I think in addition to that, the reality is that this has been as it has been throughout the state an extraordinarily vetted project both by the City of San José and governmental agencies. As Councilmember Liccardo and Oliverio indicate in the memorandum, looked like a significant portion of the work appears Santo to have been done at least to get some of the initial analysis of what would be required within the EIR. The reality is that alternatives have to be expected anyway, and if we want a full vetting between them I think that would be appropriate. I will be supporting the memorandum and the motion on the floor.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor. I couldn't in reference to cost is there a ratio or a formula, Hans?

>> Hans Larsen: Councilmember Pyle, the aerial option is .7 billion. It is about a \$2 billion differential or little less than four times difference.

>> Councilmember Pyle: with conventional methods. And I say that because I can't believe there aren't more methods than the typical drilling and I don't know if -- what those might be. I know in France they use some different methodology and do you -- there is, there's the fellow that talks. Do you know of any particular methodologies that could be looked into rather than just the conventional approach?

>> Hans Larsen: Well, in terms of cost estimates that are prepared by the High Speed Rail Authority and my belief that they're using sort of the best practices available around the world, that form basis of their estimates.

>> Councilmember Pyle: I wouldn't just count on that though. I hope when we take a really solid look at this that we would question all of it to see what other options there might be. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you mayor. I just wanted to state that I supported both options during our previous discussion and I will continue to support both options, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you mayor. I just wanted to thank the many community members that came out to speak and the ongoing engagement. We have seen ongoing very sophisticated engagement from city letters, epitomized by the op Ed piece I did want to raise one question that was raised by Sean Cottle. Hans, as regards, it relates to the \$200,000 that we'd be spending on really look at this overhead alignment and design and so forth. And the question is if staff had the discretion to be able to use some portion of that, to hire a consultant to dig a little deeper to ground particularly around the issues of cost and engineering feasibility, question would be, do you have any sense of how much that would cost out of the 200,000, and whether or not that could be

targeted effectively so we could get really some kind of independent basis so ultimately we're really in a box where we've got to take the overhead alignment we could say to the community and to ourselves that at least we've checked with an independent set of experts to really understand that the cost and feasibility issues really are as they appear in the High Speed Rail Authority report?

>> Hans Larsen: Councilmember Liccardo, the 200,000 that we recommended being allocated that's to address -- work with High Speed Rail Authority, they are going to be doing the bulk of the work. This is to provide a effective participation and oversight of their work kinds of of the project as they've proposed it. So it's a 20 mile section and part of what we're doing is investing in an effective outreach process with the community. So I think you know, the budget that we're recommending is really what we think is the right amount to deal with really the visual design guideline process. The question that was raised and that you're bringing up is whether we want to also invest in doing some kind of independent third party check of the High Speed Rail Authority's work with the tunnel. I would if that's something council wants us to look into, I'd probably best take that back work with other resources like Public Works on perhaps scoping some kind of you know tunnel audit process. I couldn't give you an answer on what that would cost, and I think we'd need a lot more input on sort of the level of review that the council might desire in that regard.

>> Councilmember Liccardo: Okay, Hans I appreciate this is probably not something we want to examine in great depth this evening. We are going to be here really late tonight. We can talk about it more offline and perhaps revisit this. Thank you very much.

>> Mayor Reed: I believe this concludes the council discussion on this item. We have a motion on the floor, made by Councilmember Liccardo a little while ago. I don't see any further discussion on the motion, all in favor? Opposed? None opposed, that motion is approved unanimously. [applause] we're now going to move into the general plan hearing items. And we will take up a couple of the items on the zoning. There's a general plan and a zoning on a couple of these. We'll have one set of hearings on both items when we do that. But the first thing to do is the general plan consent calendar items. Is there anything that councilmembers would like to pull off?

>> Motion to approve.

>> Mayor Reed: We have a motion to approve the consent calendar. One request to speak on the consent calendar. Before we take the vote let's hear what Roger stores has to say. FTC inter.

>> Good evening, honorable mayor, city council, my name is Roger stores and I'm a resident of district 4. On March 29th, 2004, the majority of this council participated in a study session, the information presented was sobering and enlightening. While the material is three and a half years old I would encourage you to watch it because not much has changed since then. Here are some highlights that I'd like to share with you. We only have about 15% of our land in this city dedicated to employment lands, whereas, Mountain View, has double. Generates 60% of the revenue that the city gets, whereas the remaining 85% dedicated to residential generates 40%. Whereas, the employment lands generate eight times more revenue than employment lands, most residential uses. The only residential exception is high density luxury condominiums, high rise towers. Neighboring statistician protect their employment lands.

>> Mayor Reed: I'm sorry your time is up. That is the only request to speak on the consent calendar I have unless we've got another one. Lina Silva. Now is the time on the consent calendar items.

>> Hi, I live at Halen avenue and I'm objecting to the proposed development of Lester property by Summerhill home. And I wanted to know what will happen to the white owl that are living in the fence, living over there behind the fence. That is my first concern. My second concern is impact on the foot and vehicle traffic around Halen. Every morning when I come home from work before I go to sleep I will look around my backyard and look at all the wildlife that's out there including the wide heron, the brown rabbits, what will be done to those wildlife out there?

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

>> Thank you.

>> Mayor Reed: I believe that concludes all the people that wanted to speak on the consent calendar. Items, are there any items that council wants to pull for further discussion? We have a motion to approve the consent calendar. All in favor, opposed, none opposed, that's approved. Item 10.2, is a general plan text amendment south side of Aborn Road between Alessandro drive and Ruby avenue. We also have a zoning matter 11.2 on the same item. So I want to take the public testimony on both of those at the same time. When we get into the discussion we'll take action separately, we have to do the general plan work, before we can do the zoning work. I'll let the public speak, whatever they want to speak to 11.2 or 10.2. I'll turn it over to Joe Horwedel.

>> Joe Horwedel: Thank you, Mayor Reed, property known as the Mirasou winery. This property and general plan amendment rezoning did have an EIR that was prepared and there was a resolution for the council to consider with this item. I do want to note for the council and the public that we did post a revised version of the resolution this afternoon that added additional information regarding the benefits of this project as noted in the staff report. The proposed project is an important component of improving the economic health of the village center in the Evergreen specific plan. It also preserves the historic winery building as a part of the development and also hifng home and integrates that into the commercial development and in the consideration of the significant and unavoid annal impacts related to air quality and transportation at a cumulative level staff is recommending that the council don't the statement of overriding consideration because of the benefits of the profits as note net our resolution and our staff report. And staff is availability and lastly we did look at an environmentally superior alternative in the EIR which was the no project alternative because that alternative did not achieve the project objectives, the environmentally sphere I don't remember alternative in the EIR is considered to be the reductioned scale project. Staff did consider that as a part of the general plan amendment and proposed rezoning and is recommending approval of the proposed rezoning as again it achieves the goals of the city and historic preservation, economic development and achievement of the Evergreen specific plan. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I know we have people here to speak but I'd like to put a motion on the floor. I'd like to move my memo, if we can put it on the screen there and that is to approve a text amendment on Aborn Road and Alessandro drive and Ruby Avenue. First of all I want to thank Joe Horwedel, Laurel Prevetti, Manuel Pineda, and I guess I need to get a second. Did I get a second? Mike enderby, and Summerhill homes, working with the community and the city not against it in achieving a project that I think is going to be a wonderful addition to the Evergreen community. First I'd like to talk a little bit about the history, and that's the history of the Mirasou family and their importance in the Evergreen community. Everyone has hoped there wok some preservation to the buildings. Since 1854, the Mirasou family was producing distinctionive wines special place in the minds and hearts of the Evergreen community. I mean I remember every 4th of July fireworks at Missouri sow, the annual Christmas holiday gatherings there, the barbecues, grape run foot races through the vineyards and every one. The final project that is built here must be high caliber and meet the high expectations of the Mirasou family and they're legacy in the Evergreen community. The site is important also because of its connection to the Evergreen village square village center destination to the entire community. Village square. When we consider the Mirasou project it is important to look at the combined destination of the Mirasou project and Evergreen village square and get an idea of how this area will look and feel at full buildout. When we took a look at it we wanted to see how can these go projects unified and work together to create one destination not two separate projects that are just next to each other. This complete project is really going to improve the walkability of the area, improve retail, complement the existing neighborhoods and increase the viability of Evergreen village square. If this project was just about all the corner of Aborn and Ruby then this project would not have my support. It's about supporting that entire area. In the very beginning I held focus group meetings with not only Summerhill and Chappell, but to try to get an understanding of what was possible with this property and this project. In addition to that we held many communities meetings. I felt it was very important to go out to the community. We had meetings that were required but we had additional meetings as well. I think there were ten all in all with two district 8 Evergreen rounds table neighboring town home HOA community two meetings with neighbors within a thousand feet of the project and historic review. So the project before you today reflects the desires and input of the community and the Mirasou development project in Evergreen village square will be seen as one unique summerhill homes which is detailed in the memo. This joint marketing agreement will help ensure that the community as a whole will have

this one coordinated unified and vibrant shopping destination. The agreement they will work on jointly will include place making elements these elements will signify that key element and thanks to Joe Horwedel and his team we have a direction and purpose of how we can achieve signage and purpose for the entire area on Aborn Road. Toxics. Members of the Evergreen area have raised issues about the toxic cleanup and as the valley of heart's delight where almost every acre of this valley had orchards of some kind, San José has learn that San José has been at the forefront of this kind of cleanup especially for residential projects far before other communities. That is why the applicant will be required to clean up this property as if they were going to live there and work rigorously to clean this site as required by the EIR and all state and federal standards. We are also asking for additional retail. After talking to the business owners and retail experts it became East ruby avenue adjacent to the main pedestrian accessing to the lake an directly across from Evergreen square. That is why the applicant incorporate pedestrian access opportunities to and from the site and integrate the lake. In addition and it's in my memo we've asked that the construction of those -- of the historic preservation as well as the place making the signage and the landscaping occur before the residential housing begins construction. Lastly on the issue of historic preservation, the historic Mirasou buildings are important to Evergreen and history of the valley. That's why the applicant has volunteered to complete the preservation of the buildings during the first phase of the construction. These buildings will be assets to the community, however they may be ultimately reused. This is going to be built out and it will remain to be seen what they will actually become but they will be available to either go towards the retail component or possibly a community center could happen there. There's a lot of different opportunities with these buildings. Traffic in Evergreen, everyone can agree that traffic is a problem. In one of the community meetings the applicant agreed to do transportation improvement near the project. We've also asked for that in the memo and to the construction of the project and I also was asked by the city attorney's office to read, to add there to the motion. So I'll just read this as I was told to read. The final EIR for this project did identify significant and unavoidable cumulative environmental impacts in connection with traffic and regional air quality. However as described by more kale in the updated draft EIR resolution as well as in the testimony heard this evening, approval of this proposed project is anticipated to result in several benefits to the community therefore I move as a part of my motion that these outweigh the significant unavoidable, impacts in the resolution.

>> Mayor Reed: The resolution will be for the text amendment, the general plan part. We'll come back before he we take up the zoning issues but we're taking testimony on the project whether it's general plan or zoning level of comment whatever people wish to speak to. We'll do that now. We usually allow the applicant to five minutes, but due to the press of time we have to cut that down to two and a half minutes so we'll take public testimony after that. I believe the applicant is represented by Joe head.

>> Joe head, Summerhill homes and with me Bob Hankins, the project person who handles all the details on the Mirasou family land. Let me hit the highlights because Councilmember Herrera really gave an excellent summary of better than a year's work and we're proud to stand before you this evening with the work that we've accomplished with her and with the community. Also it's interesting to note tonight that a sixth and seventh generation of the Mirasou family David Mirasou and his son are in the audience, a culmination are a big part of it and I'd like to recognize them this evening. A little quick wave. We have committed in writing to Chappell, to do a - to do the joint marketing of the support of the Evergreen village retail center. Details are all worked out between us and the kinds of things that Councilmember Herrera talked about have been under study around actually going to occur. in June of 2010 after we had worked since October of 2009 with planning staff and Public Works, sort of the ordinary process and a about one, Councilmember Herrera convened several design charrettes, including city planning staff, a retail consultant, retail architect, residential architect, civil engineers, historical architect and historical define the project we went out to the community, further refined that, the details of which we may need to talk about tonight or they're broadly based and you've read them in your reports if there's anything we need to answer. I might point out to you and I'm doing this in a quick form in my two and a half, we did day a step in our conversations with the school/community that we've committed an amount over and above the statutorily required fees, we will provide \$700,000 in cash, construct two classrooms, for the high school district a cash amount of \$225,000 plus an additional 60 for homework study and additional lab work, and I think that's my wrapup. Thank you very much. We're here for detailed questions later if you like. Thank you.

>> Mayor Reed: Kelly Doroty, Bonnie Mace and Marcella Mota.

>> Good evening, my name is Kelly Arotty, I'm here representing Chappell industries, we're the majority other than of Evergreen village center. I'd like to thank Councilmember Herrera, Summerhill development group for consulting with us as to how their development will affect our project . We believe this project is being designed in a manner that will be complementary and beneficial to the Evergreen village center and we look forward to working together through balance of this approval process. Thank you.

>> Mayor Reed: Bonnie Mace, Marcella Motta and.

>> Thank you, first of all we'd love to commend Councilmember Herrera and Summerhill homes for working with the community over the past year and really developing a comprehensive partnership that will make an iconic place that people will really look forward to going to. Secondly we want to commend Summerhill home in going above and beyond and giving \$700,000 225,000 approximately a little more to fund homework centers and other facilities at the east side union high school district. This is really phenomenal and important overcrowded school district as it is. Moving forward we'd like to support Councilmember Herrera's memo and particularly I know I'm strapped on time here a couple of points. The first is the proximity for the use of traffic improvement and traffic impact fees. We would like the Planning Commission said this that capitol and Aborn be one of the intersections, very crowded intersection we use Tiff fees for that. We wanted this to be one place we don't want it to be two separate places that is extremely important for us. Three we want to make sure that the historic buildings are not only preserved but there is some kind of a --

>> Mayor Reed: Sorry your time is up.

>> Thank you very much.

>> Mayor Reed: Marcella Mota wronger stores.

>> Thank you Mayor Reed, Councilwoman Herrera, Liccardo, Nguyen Pyle Chirco, Campos, congratulations, constant, Councilmember Chu, Oliverio, Kalra, always wanted to do that, City Attorney Doyle and Ms. Figone,

thank you for the honor of being here and thank you for your Councilwoman Ms. Herrera. And misconcern here I'm a father of two girls, I live in the Evergreen area and misconcern here is a story which I don't want to happen to Evergreen. And that story is, Fred Watson park. And that Fred Watson park as we know causes very great concern which I think we need to be concerned with our legal exposure which Mr. Rick Doyle should take a look at, legal exposure of the toxicity which would probably impact our budget which is an item for our manager Figone. The toxicities are there. We know what DDT is. I just don't see that the environmental report is a bit shallow, I'm very concerned about that, I just noticed that the special --

>> Mayor Reed: Your time is up. Roger stores is our last speaker. The Roger is not here, I think we're done. Roger. That concludes the public testimony on this. This is the general plan text amendment for us. We'll come back later for the zoning level on this project.

>> Joe Horwedel: Mr. Mayor, general plan text and land use diagram.

>> Mayor Reed: There are multiple phases but the general plan text amendment. Councilmember Liccardo.

>> Councilmember Liccardo: Mr. Mayor, I plan to support this, congratulations Councilmember Herrera and Joe, for getting this over the finish line, Joe head of course. I just had a quick question for you Joe about the 3031 unit cap in the ESP. My understanding is, we're pulling the 107 units from the 500 unit pool in the Evergreen East hills comment policy. I understand that. But I don't understand why we have to increase the 3031 unit cap and we can't pull that out of the aggregate.

>> Joe Horwedel: Councilmember Liccardo, the allocation for Evergreen, this is coming out of the large project, the 150 units set aside, the 3,000 approximate number is the reflection of the total amount of housing within the Evergreen specific plan which is different than the Evergreen development policy The Evergreen development policy will go all way from 101 to 680. because it is mostly built out at this point there weren't extra units within the Evergreen specific plan so adding this 100-plus units does go over the existing cap for the Evergreen existing cap so with this we are essentially increasing the cap.

>> Councilmember Liccardo: So every time we draw from this 500 unit pool we will be.

>> Joe Horwedel: I think this is the only area that's been contemplated for adding in.

>> Councilmember Liccardo: Okay, thanks.

>> Mayor Reed: On the motion, all in favor, opposed, none opposed, that's approved that concludes our general plan work on 10.2. We still have general plan work to take up on 10.3 that's an amendment on the West side of South Monroe street at Tish, between Dudley and baywood. We'll take discussion and presentation and testimony for anybody who wants to speak on the project on either of those items all at the same time and then we'll vote on the general plan level and then come back later for the zoning. So there's no additional staff report at this time? Take some public testimony. We'll start with the applicant. Gets a little extra time, that would be John McMurrow I think is going to represent the applicant and we'll take public testimony, so we'll have two and a half minutes for the applicant.

>> Communities, I'll just direct my comments toward parcel 2 which is right here. This is the office sector. It is kind of in the corner of the office component of the Winchester commercial sector. A part of our project is really focused on this component. We were originally going to have development here which is parcel 3. But it turns out the city has wanted to expand Santana park for about ten years. We're not going to do that going to cooperate with the so Santana Row can be expanded. Baywood will be demolished and there will be a sidewalk to Santana Row right here. Currently located in the back, has no access to Santana Row and has horrible frontage. When we're done, it will have a park coming up directly to it, it will have a connection to Santana Row which it doesn't now have. The key component of the sidewalk is it will connect Santana park, they can't even get there and so this will make that connection and then the neighbors and the residents over on this side can access Santana Row directly. They also have to currently walk around. So it's a key pedestrian link for this area and our project is key to making parcel 2 a viable office parcel. The main difference between the last time we were here was loss of

job. This has no town house site which in today's economy is very much needed. Thank you. I'll turn it over to Aaron barger with Barry Swenson builders. They're going to be doing the office.

>> Mayor Reed, councilmembers, thank you for this opportunity tonight to speak to the office development of this project. I know we have a short amount of time here so when we were first presented this opportunity, we were pretty excited. The site is located adjacent to Santana Row, the mixed use component where the housing is located has good synergy with the office site. And one of the he keys components here is that the purchase and sale agreement for this parcel that we're purchasing is very attractive to us. The contract provides the necessary time for us to work through this downturn in the economy. We all know that the commercial sector has been hit, hit pretty hard over the last few years and we have the time in our contract to work through this downturn and we have a lowland basis in our purchase contract and that along with our patent pending land maker structural system we feel we'll have an office product we can deliver at rents lower than our competition and give us an opportunity to obtain financing for the project. Just for your review we have a massing study of the initial concept of the project, seven story building, 90,000 square feet, parking within the structure with two levels below grade, two levels above, each floor plate is 19,000 square feet --

>> Mayor Reed: Sorry your time is up. Take public testimony on this at this time. We'll start with Marsis Sonerquist (saying names) please come on down and then Bill Szart.

>> Hello and thank you. My name is Marci Soderquist, I live right behind Santana Row right adjacent to this project. I want to support this project fully, I'll tell you why. I speak for myself and many in this community. Many in the neighborhood said please please please, and Pierluigi, part of this building involves a vacant and abandoned, SBC, older homes across the street this SBC building is the only, and I repeat the only commercial building surrounded by residential which is why we would like to see it rezoned to the residential. To not change this zoning would not only mean that we're stuck with this eyesore which attracts vagrants and hotel that might end up in our community. I was pleased to see that is week when I came to the Planning Commission meeting that there was -- they had thoroughly researched this project and unanimously voted to approve this project.

>> Mayor Reed: Your time is up.

>> Oh, you're kidding.

>> Mayor Reed: (saying names).

>> Hi, I'm Marci's neighbor and also want to speak on behalf of many in our community. We love the project. The -- it's like you have this incredible Santana Row, you have these beautiful office buildings on Tisch and Winchester. And then gangs hang out there. Have you seen the plans, have you seen what they've done? It's got everything that I wrote to you Pierluigi. I want our community to be more like Santana Row, I want to have a lot of residential, I want to have that park that look like the parks around your guys's home, this park looks like a third world country. We really want to bring our project toward, it is connected and we would really like to have it go forward so please please say yes.

>> Mayor Reed: Terry Bellandra, James Zart (saying names).

>> Terry Bellandra, is the city paying to play? For a future property where the future proposed ballpark is to be located or is this a rumor? I'm hoping it's a rumor because if it seasonality this sets a very bad precedent isn't it? Every on employment land. If they promise to build an office building on a nearby piece of land at a future date? Is the city in negotiations with AT&T? Will there be sunshine on this deal? Why don't we see until we are able to get the ballpark built. Instead of compromising this plan now before our news general plan takes effect next year. We hear commercial space isn't viable at the time, I can tell you high density is --

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

>> Hi, I'm Bill Sdard. That's the 124 home high density development.contiguous. We're asking you to please to problem of it, since the last time I was here, by the way it's nice to see all of you again, silver stone extraordinary benefits that the city is looking for. It's consistent with the city's development objectives and also provides a

substantial benefit for our community. We really ask you to approve it this time. It's good for the community, thank you.

>> Mayor Reed: (saying names).

>> I'm James toll. Live in the houses just north of this. Whole reply support this, this is absolutely a win on every front. An unoccupiable building gets torn down and replaced with a building that is much more attractive and habitable. The park gets expanded by over 30% I think and it has access to Santana Row, I think the Planning Commission approves it, the neighborhood approves it and hopefully you'll approve it as well.

>> Mayor Reed: John start. About.

>> Trading for balm park is not acceptable. A's are not dedicated to this developer protectors a trade where promises are made and then they walk out, think Cahill park. The As can walk and so does the developer. What does the developer mean when the market is ready to preserve our office space we maintain the financial flow into our coffers, please vote no .

>> Mayor Reed: (saying names).

>> I'm Craig Zuhall. What did I miss? I not job produced net income if that's still the case then I do not get why the city council would approve a proposal to call for 66% of the acreage be devoted to housing in addition, San José's housing market does not need and additional 104 housing units as that will only put further downwards applies on housing structure, there may not be low last of jobs as city claims but there are additional the proposal should be denied avoid these negative impacts on the city, it's comments and its community.

>> Mayor Reed: Roger stores, trying to keep you on time.

>> Mayor Reed, members of city council, Helen Chapman, president of Shipnha. In 28, I supported the council decision not to improve the GPS amendment for the Envision 2040 is looking to raise the ratio of jobs to housing. I'm concerned when I read Councilmember Oliverio's blog that the possible connection exists between this property and the AT&T property needed for a baseball stadium. I appreciate hearing from the developer and I understand before there's any vote thank you.

>> Mayor Reed: Harvey Darnell.

>> Thank you, Mayor Reed. I wanted -- I forgot last time to congratulate Councilmember Campos on his election. Councilmember Nguyen on your reelection, thank you, I'm glad to see you're both up here. As a member of the 2040 task force I'm very concerned whenever we're converting commercial or business land to residential. We have far too much capacity in this cities for residential and I want to make sure that as you consider this, that there is a tit-for-tat conversion of some residential property, to commercial, so that we don't lose any more acreage. We certainly don't have the acreage that we don't need, the numbers that we have enough employment lands and we have enough tax base we need to support the residential. Thank you.

>> Mayor Reed: That concludes the public testimony on this, let's bring it back for some council discussion. First let me disclose that since, been, it's been about two years that this project has been in front of us. I didn't support it at that time but since that time I've had meeting around Leon Beachman, Mark G. Prvetiona Imrvetionoli of South Bay development, Todd Trakel and others let me just answer the question that people have raised, AT&T owns this property, they're a there is no promise, there is no deal between this property and the property that AT&T owns around the ballpark site. So this project needs to stand on its own, be judged on its merits, like the other projects in front of us. I would staff to talk about where the general plan 2040 task force is headed, whether this proposal would be consistent or not consistent with that and then second since we don't have the 20s 40 adopted yet, but is this scirchlt with preservation of.

>> Joe Horwedel: Thank you, mayor. The J.P. Envision 2040 task is looking as part of the village at Santana Row valley fair. Being in a village would allow in the future jobs and or housing to occur once the plan was

put together. We have not gone so far as to put specific uses on properties. That would happen later through a village plan. It is staff's opinion that the residential density that's being proposed is, if you were going to put residential it would be the appropriate density to put on the property. And that's partly our recommendation of why we moved forward this year with the density proposed. It also would be possible to do commercial, so it's one that we're still obviously would look at that if we were through a village. But as a part of the -- under the employment framework is what the policy says is because it is commercial land and we need to have no net loss of jobs. So we do have a commercial we gave that information to the applicant about a year ago. And as a part working through the project they have brought forward an office builder, Barry Swenson builder who last put together a proposed design you saw the elevations of, that tower staff and in the economic development department have looked at the concept and he it does conform to the framework, it is actually a viable office project, the goal we have put together market does not support an office building at this moment on spec basis. The first office building that is built between Cupertino and Downtown San José should be this one. The barriers make that possible, as parts of what you have seen in the staff report is comment accommodating that land values, we've looked at that time pro formas about rents in the area to make sure it is in fact a viable office building and we have looked at the risks configuration, owners all may sense so we don't have inherent payment flaws in this designing.

>> Mayor Reed: Thank you, I'm going to be supporting this, at this time. Because it's the direction that the general plan is heading and consistent with the framework acknowledge there just had to be done in a way that preserved the jobs and I think this project will do that. Even though there are some risks, every project has some risk on whether or not it will ever be built, so I'm be supporting the request for the change at this time. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I hope you will be open minded after I speak on this issue tonight. It is not as clear cut as it may appear. We've already had this issue come to council twice and we voted no twice. First in November 07 then in April 2008. The only thing that's changed is we have a new lobbyist representing the applicant and there's a new illusion of jobs some day. The prior proposal in 2008, complied with the employment lands framework by rezoning an existing shopping center in district 9, underlying zonings residential to change it to residential, however the council did not support that proposal. AT&T owns land

there. AT&T owns land in the wake of the propose baseball stadium. I met with representatives of AT&T who wanted to make a deal on selling their property for baseball only if the city council would rezone this parcel. Rezoning land is a big power, rezoning lands is a big responsibility. Rezoning land brings millions of dollars to the landowner. Rezoning does not necessarily bring tax revenues. John Weis from the redevelopment and Paul Krutko from the Office of Economic Development were in attendance at the meeting among others. It was quite an intense meeting. It was an intense meeting because I would not waver, I told them no. I could not be more clear that I would not support a conversion and that if they went forward they bares all the risk like they did before. However at the end of the meeting the AT&T reps seemed smugly confident that baseball was really important to the council and they would get their way. It smells like, it looks like and I feel it is a quid pro quo. Yes, it's not attached, yes we're not voting on it in the same agenda item but the underlying effect is that's in the room, that this is a, let's play ball for pieces of lands. And you know what? We had this come forward to this council before. It was proposed to rezone the Istar property in Edenvale to build a soccer stadium and somehow that deal got pulled out because it wasn't really appropriate to be doing at a throws things. Now for us councilmembers we typically have community meetings when it comes to proposed ooms staff can attend. So even though the applicant and the lobbyist use staff time, to come up with a proposal, my council office wasn't even contacted to attend the meeting. So the community meeting was conducted in a vacuum of truth, the developer could say anything unchallenged with no barometer of truth. So when I read the staff report on page 9 that says the developer, we had a community meeting and everyone was notified and the meeting was at Corey school, I wasn't there, no one from my staff was there. Certainly we as elected representatives be able to hear what was said by the both the developer and the community I can only imagine how one of my other councilmembers would feel if you were not even invited to the meeting, no less work with your schedule. What we are doing here is using the residents as pawn to the advocate for the project. I cannot blame them. Why, because AT&T is an irresponsible landowner who does not maintain their building. A vacant building that has numerous code enforcement cases. I spoke of these code enforcement cases when this came back to the council in '08. But after the vote, mysteriously the building became well maintained. But now, a few months ago, the building stopped being maintained. A landowner using a building to manipulate residents is wrong. And you know what, it was such a big problem in this city that we passed an ordinance on vacant buildings unanimously a few months ago to make sure that vacant buildings were maintained so they didn't become an eyesore to the area. Now, after that

second vote, when we voted no I met with the residents of the villa town center town homes which you heard the speakers speak in favor of the project. And I'll be candid some of you were not very happy with my decision to not rezone employment land to housing. Really that was a fraction of the meeting. The majority of the meeting we spent talking about street maintenance, maintenance of parks, police responsiveness and quality of life items. You know what I can't provide those things unless its have tax revenue to provide those services. The villa town homes conversion to housing in fact it has commercial on both sides of it and what I call residential creep and the mayor calls the domino effect is that we can constantly convert the next parcel to housing. This area is unique for San José. Because it actually is tax-producing. It's home to valley fair, Santana Row. It's really unique. It's also going to change dramatically with infrastructure of the 280, 880 interchange. We are going to have a massive offramp coming from 280 downloading to Tisch avenue. It is going to be a premier area to locate office. Now, I have not voted against every housing project on this council. We all voted unanimously often a housing project in my district, to 100 units to the acre, this parcel is not. In fact if we all took a vacation and didn't vote on land use for some time in the future we have 21,000 units of housing already improved and entitled on land that's zoned residential that we haven't had any construction on. 21,000 units that are already planned, every time we put in an unplanned development we disrupt the planned development. 21,000 units. The postage or the proposal tonight needs to be looked at closer. The post taxing stamp piece of land for jobs some day is truly some day. A seven-year option, and if the developer does not come through, the city would take over the option. Well, we've sat through a lot of closed sessions together and without revealing anything that was secret in closed session we can say that real estate is one of those topics and every time the city has owned land it's been very problematic for us. We can't market it well, we can't sell it well. It takes us are years to dispose of it. I don't want to necessarily hold on to a piece of land anywhere in the city I don't want to. We would probably rezone the postage stamp parcel into housing or maybe we would be coerced into eminent domaining the interesting that it's a seven year option. Not only is it a some day seven year option it's strategic. You see I have an opportunity to serve on the council for six years. Interestingly enough, the option is for seven years. Santana Row, federal realty would not buy the postage stamp parcel and they are the adjoining property owner. You would think the adjoining property owner would find this parcel the most valuable yet they passed since they thought it was too small and undevelopable. In fact the developer was trying to plan out the some day office building and came up with ideas like digging a cave underneath Santana park to park the cars. Where have we done this in San José? There was

underneath the housing but that did not go forward since the housing developer does not want to tie the two projects together. So in the end we would get the housing and no jobs. However there is an office builder that would build office on site however AT&T wants to make more money on the safely land for housing than do what serves San José's lands use goals for jobs and a tax base. AT&T will say they did not receive a formal proposer. However AT&T has no reason to talk to an office developer when they feel they are in the position of advantage to reap millions of dollars through a rezoning. When asked about the property AT&T says they are in contract so they cannot discuss it with anyone else. But you know I could compromise if they said we'll build the office first then maybe I could vote for it. But you see that's not their intention. As I said back here on the council November 1997 during our budget section when we had a \$70 million budget deficit which is now \$90 million I cannot ask our employees for concessions if I cannot hold the line on converting the land that we've heard so much about so many prerequisites a gentleman who spoke at the beginning we hear it all the time but we somehow see the picture and we go let's have that and it's just one more. Death by thousand cuts. So it's been an incredible long year for us, I cannot and will not jeopardize those jobs you are asking me to make a strayed which is unfair to city employees and residents. I feel terrible that the residence and employees who have gone through this when we actually can control something of this. I'm going to stress that I really feel this smells like and looks like a quid pro quo and it's problematic. You know what if it's such a big public benefit for a stadium then the city can use eminent domain. However part of that we must vote tonight on converting land from jobs to housing. Here's what I know. Baseball may not come to San José because of major league baseball so why should we make a decision to convert the tax base and give up this piece of land where it may be for nothing? So with that I'd make a motion to deny the rezoning.

>> Mayor Reed: We have a motion on the floor to deny the -- actually we're dealing with the general land portion of this first so we need to recast that motion first.

>> Councilmember Oliverio: Rick Doyle what is the proper terminology here?

>> City Attorney Doyle: Deny the general plan amendment.

>> Councilmember Oliverio: Okay. It will be the same denial on my part.

>> Mayor Reed: We all know what we're doing here, Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I have a slightly different viewpoint than Pierluigi. And I want to explain why. First of all, I'm very, very familiar with this property. I drive by it every morning on my way to work and every night on my way home from work. And quite frankly it will probably be district 1 after 12 months after we redistrict. So I know it really well. I'll tell you as someone who's been watching this property, and watching the reports come by I haven't had the opportunity to have the meetings with AT&T and others like you have. I've had some casual conversations about it but no real in depth conversations about this particular project, since it was last denied. But there's a couple of issues I have with denying this. One is, we created an employment lands framework, conversion of employment lands framework a while back. And when we set that framework up, we set that framework up so that we would have a clear message to people, when they wanted to convert their land and says, this is what the rules are in San José. This is what you should expect if you want to do business in San José. And we did this because we wanted to provide certainty and we wanted to give people, well before he they got to council the ability to seize what the rules are. We heard from our planning director, that this project fits within that employment lands framework. I know we heard from one of the members of the public that he they were concerned about the acreage and that it should be an acre for acre swap. And I just want to take a moment and ask Joe, refresh my memory because I'm pretty sure the framework talks about capacity not necessarily acreage is that correct?

>> Joe Horwedel: That's correct. For commercial land we base it on employment capacity and not acreage.

>> Councilmember Constant: Okay, so if we have this framework and we've set the rules out very clearly and we've given a level of expectation to landowners then I believe we have the responsibility to make sure that there's some certainty in those rules and that framework for people. Now, I can tell you that I personally have no knowledge of any connection between this and the AT&T property near the ballpark. We heard the mayor make a

very clear statement that they're not connected. So I'll ask Joe. Are you knowledgeable of any connection between these two parcels of land?

>> Joe Horwedel: Earlier on there was extensive discussions he of connection. During the negotiations the Redevelopment Agency staff met with me several times trying because AT&T was insistent the a acquiring of land downtown for that.

>> Councilmember Constant: Was your decision on this your decision from the Planning Department based on that at all?

>> Joe Horwedel: It was not.

>> Councilmember Constant: Or you evaluated this? You evaluated this independently?

>> Joe Horwedel: We've been very clear with AT&T and the Redevelopment Agency that we would not go through and trade land use entitlements as a part of that acquisition.

>> Councilmember Constant: Well, I understand Pierluigi how you may not be happy with the property owner's decision and determination on what they want to do with their property. But when it comes down to it, one of the great benefits we have in this country is the fact that we have property rights and that people have property rights associated, rights that are associated with property ownership. And while we have zoning powers, we also, as I mentioned earlier, have to do that within a certain framework or within certain guidelines that we set up. But I believe this does fit within that just purely from that perspective. But I also want to talk about the perspective of the character of the neighborhood. One of the things that concern me, last time we heard this, was what we were going to do, to keep the consistency of the neighborhood together, the continuity of the neighborhood. And when you go in this area, and I'm very familiar with the newer development, village, I forget the second, village park, village center, I've been in there, in fact when it was first built my wife and I came very, very close to purchasing one of those homes because we spent a lot of time looking at those homes. And it is really in the middle of a

residential neighborhood. And it is abutting a park. Which again I'm very, very familiar with that park because my children love that park so we spend a lot of time in that park. They get to go to the park there and also visit the firefighters at station 10 who coincidentally like my kids a lot more than they look me but that's a whole 'nother story. I think it really does fit in with the neighborhood and it will be a good project. Now, as far as the commercial building there I think that is the appropriate place to put a commercial building. It fits with the -- what is it the Sherman building there and the Rockefeller building there. The access to the street will help create a better park and also better access to the site. Most importantly to me it preserves the capacity. And I think that is what we should be looking at and we should be sticking with in the framework. I'm sorry I can't support you in this. In the motion this event fails, I will be prepared Mr. Mayor to make a motion after that.

>> Mayor Reed: Any further discussion on the motion? Councilmember Kalra.

>> Councilmember Kalra: Yes, mayor, thank you. I just wanted to also follow up on Councilmember Oliverio's comments oops in regards to this being connected to downtown. I am not aware of this, at least they didn't want to talk to me at all, in this connection, even if there were discussions at some point with the planning Department pmg in fact the majority of the Planning Commissioners approved this project well before there was any connection today. There are some of us that have a different opinion on some of these conversions if this is not a net loss of employment lands. And so so I think this is definitely a unique part of San José. Santana Row. Joe I wanted to know if you could talk about the village concept, how this if it were approved how this would play into the -- because I mean Santana Row is probably one of the original village, it is the concept that all other villages are going to be judged against, in some ways. We've talked about that in my district whether some areas will be a village and very concerned about how the zoning is leading up to that and how if this were approved, how does this interact with the Santana Row concept?

>> Joe Horwedel: Councilmember Kalra. It is a little bit hard to say how that would play out not knowing what our ultimate goals would be in the entire village. I would say is that in this corner of it there are limited options of what you would do in the area that's being proposed for housing and that we would be looking at things how the parks get built how the street circulation goes in where the jobs and residential go. I think the piece that is missing with a

general plan amendment now versus going through a village process is we really don't have implement tools or requirements put on it that look at phasing or timing. As Councilmember Oliverio noted the developer is unwilling to go and hold residential until a time an office building is built. That may be coming out of the general plan amendment. We are looking at a phase of 90,000 housing units and the task force is concerned that building 90,000 housing units without jobs is a problem. That is what you'll see happen in village plans, looking at some sort of phasing horizon whatever we end up calling it that links how the development gets phased as well as infrastructure and other contributions that different parts of the development have to contribute to essentially incentivize other parts of the plan. But it's kind of right now I would say a little bit too much conjecture on my part.

>> Councilmember Kalra: And the current zoning that the the Planning Department recommended to be converted to the high density residential, the reality that any vacancies in the commercial market would just as much affect the ability for that to be occupied as it would any other new construction of commercial. I absolutely hear some of the concerns raised about the commercial market as well as the residential market I'm trying to look forward to how this fits into the residential neighborhood and if we are going to maintain the same amount of employment lands given the density of the commercial property or the office building suggested that otherwise you know how this fits into the adjacent neighborhood as well as Santana Row.

>> Joe Horwedel: Yes, I think the basic pieces fit together with the neighborhood and as I said earlier the residential density is a good match? The task force is going, has been in these transition sites like this that we should not try to jam density and we should be thoughtful with it with residential because we really have too much residential for the sites available. Our real challenge is going to be the job side with the general plan update and that's why I say we're going to be looking at some sort of linkage and triggers because when we're assuming a 35% floor area ratio under this plan today under the envision plan that's coming forward that F.A.R. is going to be dramatically higher than what's shown here for commercial.

>> Councilmember Kalra: Okay. One thing I do and I mentioned this when I came before. When I was on Planning Commission, I do like pedestrian access for this, although it's certainly not a definitive factor, I can understand why neighbors nearby would like to have at least that access available and to follow up on

Councilmember Constant's comments obviously we're doing a general plan update and what have you. But I think that if the current rules allow for it, if we don't lose the -- again all going to -- everybody has -- obvious, everybody has different opinions on whether there should be a question if employment lands are preserved adjacent to the suit. At this time I'll be opposing the motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I'm looking at trying to understand what the applicant was mented. As I look at the deal, it appears there would either be a purchase agreement, I guess there would be purchase agreement contemplated on parcel 2, along with the property owner, parcel 2 granting the right of first refusal, do I have that right, Joe?

>> Joe Horwedel: Councilmember Liccardo, silver stone has an agreement with Barry Swenson builder for Barry Swenson builder to acquire the office site. What city staff had talked to the applicant of silver stone about is if for some reason Barry Swenson builder decided to not pursue the project that the city should have the opportunity not a requirement but we would have the ability to say yes, we're interested or not, to essentially step into those shoes. And the thought being, it is in a location that is adjacent to Santana Row. So it is in a destination part of the city that is a good location. It is not our expectation that that would come our way but if for some reason Barry Swenson builder decided they didn't want to build office buildings anymore, we have talked with other office developers, we have talked to federal reality about this site, some different permutations. We thought the price that Barry Swenson was quoted for the land was a good price for the land. In our conversations with the developer going back to how to make this the first office building built between downtown and Cupertino, that we wanted all of the construction taxes permit fees all those fiscal costs that would tie up a project to be taken off the table. So what has occurred with this is that the land value essentially was written down to take that all into account and as we looked at the pro forma, that we could step into it without having to incur cost on it. Spl.

>> Councilmember Liccardo: Let's go to the first issue of right of first refusal. We would be using something other than redevelopment money?

>> Joe Horwedel: That is correct.

>> Councilmember Liccardo: So putting aside for the moment that we don't have money, if we look at the purchase agreement agreement for a moment and it sounds option option on this site?

>> Joe Horwedel: They have an agreement between the parties. It is not in a formal contract and that's why we've structured as a part of --

>> Councilmember Liccardo: Okay so at this point there's no strike price?

>> Joe Horwedel: There's a quoted price.

>> Councilmember Liccardo: There is.

>> Joe Horwedel: And monthly option price or payments that are laid out, between silver stone and Barry Swenson builder to maintain that seven year option on the property.

>> Councilmember Liccardo: Okay and seven years it goes away.

>> Joe Horwedel: And seven years that option would go away and we also felt that AT&T needed to be a party to how all the mechanics would work around on this.

>> Councilmember Liccardo: Right. I mean I'm just guessing with the vacancy north of 20% acknowledge I think a seven story building is that correct?

>> Joe Horwedel: That's correct.

>> Would be using their concrete construction system that they perfected. It's also possible to use it's a modified steel frame that we've used at Santana Row for the residential that's a much lighter weight steel that works at that site.

>> Councilmember Liccardo: Well I'd be happy to be wrong but I don't think there's much chance in seven years that there's going to be much of a market force driving somebody to build seven stories out there. I hope I'm wrong, I hope the economy recovers in a pace that wants people to build office out there. I guess I'm pessimistic whether or not this ever gets built and whether ten years from now they come back and rezone it residential anyway. I appreciate extraordinary lengths that staff has gone to make this work, I don't doubt you've done it with good intentions to go the right way. I'm kind of troubled or puzzled how this would play out and I'm not sure house enforceable this all is when you get to the right of the configuration refusal, because after all we can only pay a price for a property that is supported by an appraisal and if the property owner doesn't like the price I imagine they have a right to not make an offer at that price. So I'm just trying to struggle to see how this all plays out.

>> City Attorney Doyle: Councilmember, the first issue is the purchase and sale agreement and that needs to be consummated that hasn't been done yet. Once that's done it's my understanding that that is assignable to the city, and the city would be able to step in and exercise the right. It's to your point we would have to have the funds available at the point in time when we would have to exercise that.

>> Councilmember Liccardo: I hope soon will be the Dane when we have money to do that but thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I take it very seriously, looking at employment lands in any proposal to convert employment land. I understand this meets the formula. I'm not moved, I'm not convinced that this building would ever get built, like Councilmember Liccardo I'm having those doubts as I'm looking at this and hearing the discussion. And so I am going to support the motion that's on the floor.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you mayor. I will not be able to support a motion because I felt there is really not a net loss of employment of job capacity. I can you know my -- don't have a crystal ball to really give me a good indication of what might happen in seven years. But I'm very familiar with that piece of property because I used to have a piece of San José in old village, during the break used the Santana park and the building has been an eyesore for 20 years. We were there 87 to 2000. A so I'm happy to see someone come in and kind of renovate the place. I'm pleased with the pedestrian connection between that park and the development in the Santana Row. I also wanted to thank the Young family, been sitting there efficiently for the past couple two hours I hope they're ready to go to bed!

>> Mayor Reed: Councilmember Campos?

>> Councilmember Campos: Thank you mayor. When I was on the Planning Commission I do remember this as well, as a matter of fact I believe I voted against it. If I remember correctly, the framework was fairly new, and to me it was clear, that I couldn't see where we he were replacing job lands appropriately. So I voted against it. It is a clear cut plan that the portion that will have the office building will bring jobs. Whether that's for us to be able to predict in seven years will the economy turn around and be able to deliver on that? You know we don't have a crystal ball. But I think that that's the risk for the property owners, or the -- whoever's got the land tied up. And I think that's a risk that we should take. I mean I think we need to do whatever we can to bring in the potential for jobs. In other parts of the city. I think this area has the great potential to -- it has that vibrancy now. It's surrounded by existing neighborhoods by commercial centers there's an existing office tower near it. I think that you know that could support that eventually. So with that I will not be supporting the motion.

>> Mayor Reed: I think that concludes the council of debate on this item. I have no other request to speak. The motion is to denial the general plan amendment request. We'll come back later for zoning discussion. I assume. All in favor? One two three in favor so I have Liccardo, Herrera and Oliverio in favor of the

motion. Opposed? Everybody else, so that motion fails on a 3-eight vote. Councilmember Constant you wanted to put a motion on?

>> Councilmember Constant: Thank you mayor I would like to make a motion to approve the general plan amendment. I heard a second? I heard a couple of seconds? Councilmember Pyle I think, Councilmember Pyle the second on that. Councilmember Oliverio.

>> Councilmember Oliverio: I was wondering if the maker of the motion would entertain a friendly amendment to require that the office building be built at least at the same time as the housing? At minimum if not before?

>> Councilmember Constant: I don't think so. I don't think that we can -- no.

>> City Attorney Doyle: Councilmember this is something you would take up if this motion passes that's general plan amendment, that is more of a zoning issue.

>> Mayor Reed: The motion on the floor is to approve the general plan amendments. On that further discussion, all in favor? Opposed? Oliverio opposed, Herrera and Liccardo opposed so that passes on an 8-3 vote. We will return later, to get to the zoning question. So that amendment is approved. We'll now take up 10.4, associated with Evergreen east hills project for six sites, I'm not going to list them all, is there any additional staff presentation on these?

>> Joe Horwedel: No Mr. Mayor.

>> Mayor Reed: A lot of projects that are hanging around pending general plan task force. Councilmember Herrera.

>> Councilmember Herrera: Thank you, player, this is a lot of general plan amendments I want to make a motion to recommend to deny 10.4 A B and C.

>> Second.

>> Councilmember Herrera: These should be denied because they are inactive general plan amendments and because they are all inconsistent with the 2020 general plan and east hills development policy, inactive, out of date out of sync and with Evergreen residents and where we're going as a city and as has been stated earlier San José simply cannot risk losing any more employment lands.

>> Mayor Reed: I have a motion and second, by Councilmember Herrera and Councilmember Liccardo. We have a couple of requests to speak, Bonnie Mace and Roger stores. O.

>> Thank you, mayor and council. Bonnie Mace representing district 8 round table and steering committee. We would like to support Councilmember Herrera and deny all these Jims. They are inconsistent with the general plan as envisioned in 2040, with the Evergreen development policy, none of which will be used for these opportunity sites, they are inconsistent with the idea that we should have no employment conversion. This is essentially closing the books on something that should have been closed four years ago and please do it now, thank you.

>> Mayor Reed: Roger e-stores I don't think is here. Nope. We have a motion to deny all these. Approve the staff recommendations. Further discussion? All in favor? Opposed? None opposed, that item is approved. Item 10.5. It's amendment on the East side of south 10th street approximately 350 feet north of birch street. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. I just wanted to approve Planning Commission's and staff recommendations to deny the general plan amendments.

>> Mayor Reed: We have a motion to deny. Further discussion? I have no cards on this, none to speak. All in favor, opposed, none opposed, that's approved. Well denial is approved. Let's not get carried away here. 10.6 an amendment on south side of Campbell avenue north of O'Brien court.

>> Councilmember Oliverio: Motion to deny.

>> Mayor Reed: Councilmember Oliverio. Okay. I have some requests to speak on this. I'll take that now. Terry Bellandra, Tim urban, Kim Craig. Come on down. Thank you, Terry Bellandra. Again employment lands need to be protected. This small tract of land is extremely impacted already, due to housing projects that were not required to pay park funds. Please deny this project and give this neighborhood some relief, thank you.

>> Hello there folks John urban Newhall neighborhood association. We need to preserve our employment lands. I'd like you to go ahead and deny this project take it off the books please. We like the present occupants, Basil, they produce lots of income for the city. We have no problem living next to light industrial. We would like the money like for parks maintenance. We would appreciate if you take it off the books, thank you.

>> Mayor Reed: Craig followed by Tom Clavell.

>> Crags some Newhall neighborhood council, mayor and council san José needs jobs and revenues it does not need more housing and is a net drain on city coffers, especially the discussion we just had on 10.3, we have a weak housing market we do not need more supply when demand is so weak. The proposed change should be denied to leave the 7 much 08 acres to be jobs and revenue producing property it now is thank you.

>> Mayor Reed: Tom Clavell.

>> Has been a wonderful project of this council and I applaud that. Beyond privacy issues of having neighbors being able to peek into Newhall properties and observe every one of my almonds, there's a real federal regulation issue here. The section 207 of the telecommunications act of 1996 grants the right to free over the air TV which many in Newhall do, many residents in Newhall have access to that and use that right. A high rise there would block that fairly given right and block signals from the Sutro towers and denying a federally given actions let's not waste time and money let's not build a high rise there, thank you.

>> Mayor Reed: Matthew bright, Juliet Eichler. And.

>> Matthew bright. I do want to give you a portrait of what's on the site and why it's important to maintain these employment land. So those who don't know Zazel, it's a high tech company, you can get anything you want, custom calendars, custom Christmas ornament, custom skateboards. This is the exact kind of business we want to keep in San José. You are going to be tempted many times of course to try convert this land or to convert similar land. Remember Zazel what they're doing it's the right thing for San José. Thank you.

>> Mayor Reed: Juliet Eichler.

>> I'm Juliet Eichler with the neighborhood Newhall neighborhood association. I support the denial of this project because right now we have only one way to get to our business, via if we have a high rise building built here there may be additional traffic and congestion during the rush hour and that's why I'm against it. Thank you.

>> Mayor Reed: Trisha Wallett.

>> Hi, my name is Fransia Waletta and I'm a resident in the Newhall neighborhood. I'd like to per swayed the council in place of Zazel. Lives in the neighborhood with Zazel adjacent to where we recently bought a home and really don't mind it continuing to stay there. Thank you.

>> Mayor Reed: That concludes the public testimony. I just wanted to clarify the motion I believe to approve the staff's recommendation Planning Commission recommendation of denial.

>> Councilmember Oliverio: That's correct, mayor, because the property owner is not AT&T.

>> Mayor Reed: I didn't know that was in evidence. You never know. I think that concludes discussion, clarification, motion is to deny, all in favor, opposed, none opposed, that motion is approved. Item 10.7 is

amendment on 14 acres from light industrial to medium high residential and some acreages, high density residential and general commercial in other acreage and it's at King road and Las Plumas. I have no requests to speak, no cards. Further discussion, all in favor, opposed, none opposed, that denial is approved. Item 10.8, amendment on north side of grimley lane approximately 110 feet west of Almaden road. Motion to deny. All in favor, opposed, none opposed, motion is approved. Now that concludes the items under general plan amendment so I think we need a motion to close the general plan hearings and --

>> Motion.

>> Mayor Reed: Motion is to close and finally approve all of the previous actions, we usually do this over multiple nights so sometimes this doesn't seem to make sense but motion is to close the general plan hearings which would approve all that we have done. All in favor opposed one opposed Councilmember Oliverio. Motion is approved. That concludes the general plan items on the agenda. Now we'll go back and take zoning level action on two items we've already discussed at the general plan level we will not take additional testimony that's item 11.three, rezoning on the south side of abornl road also known as the Mirasou project. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor, 11.2 I'll make that motion to problem of the zoning on this item. Is it 11.2? Yeah.

>> Mayor Reed: Motion to approve the zoning based on the comments in your memo?

>> Councilmember Herrera: Yes, I just wanted to -- I'm not going to repeat everything, I pretty much said everything in my already comments but I once again want to thank staff, want to thank the developers, Chappell and Summerhill, and the Mirasou family, I wanted to call out Bonnie Mace from the District 8 round table. All the support of this. I wanted to thank Summerhill for stepping up and doing the additional improvements with the Evergreen and high school.

>> Mayor Reed: Motion is to approve staff's recommendation. Include the CEQA.

>> Councilmember Herrera: I don't have to read that again, do I?

>> Mayor Reed: No you don't, it's part of the record. You could but I recommend not. I'm sorry, who had the second? I think -- Councilmember Liccardo had the second on that I believe. On her motion on the rezoning. Nancy Pyle claims it. Okay. So shall we vote on who gets the second? We won't. We'll vote on the motion. All in favor, opposed none opposed, that's approved. Item 11.3 is rezoning for property on the West side of South Monroe street which we just had a general plan hearing on. We need a zoning level discussion on. Hey, City Attorney Rick Doyle, planning director Joe Horwedel, what sit that could be done to stiffen up the some day office building without the zoning?

>> Joe Horwedel: With the planned development zoning it is possible with the conditions that linked the office zoning and residential together, that is something that the staff has raised with the developer and they were not agreeable to doing that, we have done that in rare occasions, not normally.

>> Councilmember Oliverio: So let me ask you this Joe. Clearly building the office building first would be of great hardship but perhaps doing it the same time, probably be somewhat more attainable?

>> Joe Horwedel: Correct.

>> Councilmember Oliverio: Well I would, knowing that we have done the general plan, approve the zoning but approve the office construction at the same time as the housing. .

>> Mayor Reed: All right we have a motion to approve the rezoning with the condition councilmember Oliverio just described. Discussion on that motion, Councilmember Oliverio anything to add? Councilmember Herrera.

>> Councilmember Herrera: I've successfully worked with developers on several projects where this exact thing has been accomplished even tonight with Mirasou, with the Mirasou project we have agreement that the phase 2

will happen even before the housing will commence. Unfortunately, Councilmember Oliverio, you were not involved, not invited to the community meetings upset that's sort of shocking to me but those kind of things usually happen during the discussions but I think it's worth pursuing tonight if it is some kind of willingness on the part of developer to work with the project to do that, that could be accomplished. I'll support that.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I think it's a bit of a hardship to exactly come one a time to get that accomplished. So I would be foafd to that. And I wanted to get some feel for where the developers were coming from.

>> Mayor Reed: Why don't we take a minute and get the developer instead of having to wait on the audience we'll have Mr. McMurrow address that question.

>> Wait, I appreciate your comment. We couldn't do that, it would just kill the housing component. We don't know when the office market is going to come back, everything would just -- nothing would change, nothing would get done here. So we're trying to make some progress here.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just don't feel it's appropriate to put this type of condition this late in the game and I just can't support it.

>> Mayor Reed: Further discussion, Councilmember Oliverio?

>> Councilmember Oliverio: That's okay I'll just have the vote.

>> Mayor Reed: Motion with condition that requiring housing, at the time of the residential? In favor, Oliverio, Herrera and Liccardo. Opposed, everybody else so that motion fails on a 3-8 vote. Councilmember Constant.

>> Councilmember Constant: I'll make a motion that we approve the rezoning as staff recommends.

>> Mayor Reed: Motion is to approve the rezoning with staff recommendations, further discussion on that Councilmember Oliverio.

>> Councilmember Oliverio: Yes, we're trying to make profit, ladies and gentlemen you're just giving up your tax base .

>> Mayor Reed: On the motion, all in favor? Opposed? Three opposed, Oliverio, Herrera and Liccardo. That motion carries. We'll now take up 11.5, that's a rezoning on the West side of north third street and finish up the meeting with the always exciting reorganization of Cambrian 36. 11.5, rezoning on the West side of north third street. Councilmember Liccardo.

>> Councilmember Liccardo: Yes I would like to make a motion articulated in a memorandum October 26th, to deny the planned development rezoning, but allows the applicant, flexibility to designate carriage house as one of the three conditions with the building code and that all other project conditions described in the requirements from Department of Public Works would apply.

>> Mayor Reed: We have a motion. I heard a second but Councilmember Herrera got the second. I sums Jerry de Young is representing the applicant, is that the case?

>> Yes, Mr. Mayor, Jerry de Young, I was hoping to state, you have reached the calendar, I appreciate you moving us up before the 11.4 application. I'm concerned when someone says deny the zoning. I think what you mean is approve a rezoning to allow the use of the carriage house as long as it meets all the requirements, as long as it doesn't add additional units to the property and then the -- that it meet the conditions as described in the

Public Works memo. Because if you deny the project in its entirety, then the other two conditions are irrelevant. So with that, Mr. Mayor, I'd hope the councilmember might accept a friendly amendment from this side of the dais. [Laughter]

>> And recommend approval of a different kind of project, thank you.

>> Councilmember Liccardo: Your point is well taken and I was minimally trying to wrap myself around this one. The question he is Rick can I approve a rezoning that doesn't change the underlying use on the site in any way ?

>> City Attorney Doyle: Ask the planning director.

>> Joe Horwedel: Mr. de Young asked the same question I was going to want a clarification on.

>> Councilmember Liccardo: Great. So I will then make a motion to approve a rezoning for three units existing land use but to allow the carriage use to be used as a living unit as was described.

>> Joe Horwedel: Right and then we would come back at second reading of revised documents to show all that do show that we've implemented your direction.

>> Councilmember Liccardo: Thank you.

>> We would come back probably in early January.

>> Mayor Reed: Revised motion and second. We do have a proper motion on the floor. This is still a planned development zoning, correct, we're just talking about the terminates of it? Staff is comfortable how we --

>> Joe Horwedel: That was going to be my comment, in order to make the carriage house a residential unit, the current RM zoning could not meet the setbacks for a building.

>> Councilmember Liccardo: That is incorporated in my motion.

>> Mayor Reed: Very good. We have some people that would like to talk on this item. We will take the public testimony at this time. Don Gagliardi. Brian hunter.

>> Good evening, Brian Hunter. I live i've lived in this neighborhood for a long time even longer than Sam seems to think, it's really more than three decades now and this house started out as a duplex lived in by a single family when I first knew it. Unfortunately the property did burn down as you know, it was reconstructed as a civil plex without any reviews, I guess the property should go back to what it legally was before that happened and I would encourage you to deny this, thank you.

>> Mayor Reed: Don Galliardi. Jennifer, I don't see Don so go ahead, Jennifer, and then Chris McSorely.

>> My name is Jennifer Sobieski. I recently purchased a housing one block from this property. It is a duplex Victorian. I immediately noticed the park problem and I feel that adding additional units is bad for the preservation of that neighborhood which is important to me. I'm sympathetic to the number of reasons, I had a chance to read a number of his reasons but if this goes up to four units or six units, if it gets risen beyond three units it's going to be that way forever and I don't want that to happen so I ask the council to deny his application to raise the number of units for any reason. Thank you.

>> Mayor Reed: Dave Dudek and then Chris McSoreley.

>> I'm David dudek. Upset it turns out that the property as it's zoned right now the three units that are there already exceed the parking, the density, and the open space requirements, they don't meet any of them. It's legal nonconforming right now. If a fourth unit is legalized it would set a bad precedent that anybody in the

neighborhood could then add additional units to their property and it is basically in complete disregard for the existing zoning. We also believe this is the only nationally recognized historic district in the City of San José and historic preservation, buildings that are owner occupied are much better taken care of than buildings that are not owner occupied and if you want the house to be here 120 years from now, 120 year old house there is much better chance that it's going to be in good shape if you keep it owner occupied. Make sure you don't increase additional units because every time you add an additional unit you make it less economically.

>> Mayor Reed: Sorry your time is up. Chris McSoreley. Judge.

>> Hi, my name is Chris McSoreley, I'm a resident and an owner in the Hensley historic neighborhood and I would like the council to deny any motion that would increase housing density within the Hensley historic district. Because increasing, you know, density of a property is bad for historic preservation. It just makes it less likely that the building would be kept in a historic, you know, that the historic nature of the neighborhood would be maintained. So thanks.

>> Mayor Reed: That concludes the public testimony on this matter. Councilmember Liccardo, had a question for you. How many units are you talking about just in simple terms?

>> Councilmember Liccardo: Yeah, three units, we're not changing, adding any units here. I appreciate the clarification mayor because I think there's some that has the misimpression by approving we're increasing the density. They can shift without adding any additional units.

>> Mayor Reed: We have a motion on the floor. I have no request to speak on that so I guess we're done with the discussion. All in favor, opposed, none opposed, motion is approved. Taking us to the last item on our agenda, 11.4. Public hearing ordering the reorganization of territory designated as Cambrian number 36. I think I'll ask Joe Horwedel if he has any additional comments on this item. This has been in front of us a time or two.

>> Joe Horwedel: Thank you Mr. Mayor. Staff did put forward a supplemental memo on this item that you may remember at the last hearing staff put forward several different scenarios of how the annexation should proceed or could proceed. One of the ideas that we were initially pursuing is whether the fire district should not being he detached. That is different than our normal means of dealing with annexations. We have had extensive conversations with county staff that serves this area. Really based on the concerns that the residents have raised and the desire of maintaining fire service as they see today. After the last council action, at the end of October, staff had continued those discussions with county fire staffer as well as discussions with Lafco and the county controller and through those discussions we he have modified our recommendation, still moving forward with the annexation but in a more traditional manner where we will recommend deattaching from the fire district and enter into a separate agreement with the county fire to serve this area. The city fire chief is here and has been involved extensively with fire staff and myself in those meetings and the one outcome coming out of those discussions however the decision is reached tonight, the whole issue on how services are provided on the edges of the city are an important one as we local agencies grapple with our costs in providing services and the work and the agreements that have gone on with county fire staff and city fire staff in looking at about how to best provide services to both jurisdictions has been our goal coming out of that and I think there's a lot of positive work that is coming out of it. Clearly there is still the emotional issue out about which city residents which to align themselves with and that planning staff has continued to look at that issue. That we do think our original recommendation still makes sense, that this area has been planned for annexation into the city that we've been looking at logical service boundaries all along and we still think that's the right boundary to do. There is a letter that came from the mayor of Campbell we received late last week on this issue asking for deferral to study the issue some more. That is an issue that we had raised previously with the city of Campbell and that we have considered that thought about cleaning up the boundary similar to what we're doing with the fire service about how we really provide best service. Cities should continue to look at how our boundaries, that is something that may have merits, it is not a simple process but it is one that you know we have as city staff looked at previously and I think the council discussion tonight would be helpful about how best to proceed, and our staff recommendation is to move forward with the annexation. It does not preclude an ultimate if there is a boundary adjustment to occur here or anywhere else on our boundary that that could proceed. But having a council discussion about how best to proceed we would be interested in tonight.

>> Mayor Reed: I'm prepared to take that testimony at this time unless council has what we can and cannot do he's issued some supplemental memorandum on that but I'd like for him to have a chance before we get into the public testimony to talk about some of those legal issues.

>> City Attorney Doyle: Thank you mayor, I'll try to be brief given the hour. We received a letter, the council received a letter actually we were copied from the Minet law firm, it raised a number questions. We issued a supplemental memo which I think went out yesterday and it covers those just briefly, the first issue was the findings, the allegation that under the government code, necessary findings cannot be made, our response is again, they aren't in the packet but quite honestly the planning director and the planning memo goes to great length to talk about the great benefits that the city's municipal services that will be provided that meet the government teffs and to the extent that there is an allegation that the area does not receive services from the city and that road services would be reduced due to pavement quality, there is nothing in the letter and what's left is the existing infrastructure and everything that leads into this pocket or serves this pockets whether it is Bascom or Curtner or larger streets. The larger issue is the 218 issue, commented upon by City Attorneys up and down the state and that is do you need to get voter approval before you can annex by voter approval meaning the people that are being annexed do they need to approve the taxes? There is no case law in point, there is two cases that can be cited the attorney general opinion which clearly shows and addresses the issue as to whether prop 219 was maintenance to apply. The conclusion was no. Now, this was in the context of nonstreamlined annexation process but we believe the logic applies. And similarly, there is a superior court decision while we can't cite for precedent is the only case we're aware of that has actually gone to trial. Out of Fresno county, city of Fresno, Lafoo challenged the city of Fresno's right and the superior court ruled in favor of the city mainly, nothing was in plain language is even contemplating annexation. And then most importantly, these taxes and fees and I can think of three in the last three years in which the utility users tax, the 911 tax and the card room tax all have been approved by a large majority of San José residents. So no matter even if you add these folks and those taxes were lawfully enacted, there are a number of taxes that are preproposition 13 that are in the City of San José, which don't -- which were lawfully enacted at the time and then there were some others that were even enacted in '90 with voter approval. To the extent that we've met the law whether it is 19 or 218, doesn't take away from the

fact that they are lawful taxes. The practical, superior court focused on the fact that you can't have some residents pay taxes and not other residents. If you are part of the city you pay the same. The speaker addresses this issue I have to acknowledge the fact that there is no superior court authority but the better view is what the superior court applied.

>> Mayor Reed: I think I'll take the public testimony now. Please come down when I call your name. Again, we are limiting length to 1 mon. Michael Chrisman, Judy La France Patrick King, Jim Aspenall.

>> Good evening my name is Michael Chrisman, we stand before you with a humble request for government to do the right thing. There are new opportunities and developments to consider. Let us not rush to order the annexation but instead work together to consider all of the issues for everyone's benefit. Campbell renewed their commitment Keeping San José whole, Lafco encourages both parties to work together. Please take advantage of this opportunity. Lafco's letter October 22nd, 2010, "it is critical that the two cities work through this issue cooperatively. And to fully explore the boundary and service delivery issues for this area. Please respect Lafco's desire to keep these areas together regarding Cambrian 36".

>> It is the city of Campbell's desires to renew discussions regarding Cambrian 36. Thank you.

>> Mayor Reed: Judy La France (saying names).

>> Thank you. As Campbell has night their letter. We look forward explore new alternatives opportunities and options that were not part of past discussions. It is Campbell's sincere hope that we will be given the opportunity to explore all available options up to and includes pocket divisions territory exchanges service exclusions, et cetera. Please take advantage of this opportunity and recent developments from December 6th, 2010, as the planning department said, that the decision is now to detach us from the central fire protection district and the recommendation to contract fire service from county fire, the outstanding issues continue to be there is nothing writing right now with county fire, that there's no firm costs or terms --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Patrick King, Jim Aspenall, sniems (saying names).

>> No service level identified, up known joint response with San José and could complicate dispatcher and response. Please defer ordering annexation until all services can be established. Campbell 36 is not an underserved rural pocket, needing benefit from annexation. We currently have the benefit of numerous urban services, water and sewage, no changes, storm drains, sanitation and trash, the vendor will change, code enforcement, roads, community services without dual identification requirements, fire and police services. Retaining fire and EMS services levels is being addressed, the same level of police protection has not been addressed, levels option City Manager report of records and reports. San José police department response times are twice that of county and cam.

>> Councilmember Oliverio: . County and Campbell do not abandon calls. Please defer ordering annexation until all the services can be established. Thank you.

>> Mayor Reed: Jim Aspenall Carey Whittaker, Ken prochsaka,.

>> Good evening everyone my name is Jim Aspenall. Campbell is reality to engage, services do need to be finalized. time and effort to address everyone's concerns here. There is no reason to rush to a decision for this annexation. In closing please defer the vote to order annexation of Cambrian 36. available with Campbell, doing will strengthen community relationships. Please make sure these opportunities are not lost, not productive, working together will be a win win for all thank you.

>> Mayor Reed: Carey Whittaker Ken Prochaska Chris Whittaker.

>> Hi, if you recall the last time I stood before you it was my birthday and a lot of people on the council didn't understand what I was doing here. I really was here because I feel that strongly about that this issue and I feel that committed to work on this and see that the right thing is done. And I'd really like to know what the city council is doing to respond to what cam beam is bringing to the table and whether or not you would consider what we're asking for tonight which is a deferral. And for the two cities to sit down and see what really would be best for our community and for yours. Thank you.

>> Mayor Reed: Ken Prochaska Chris Whittaker and (saying names).

>> Ken prochaska, I spoke the last time frustration I think the residents of this area have made a very cogent case for why the discussions with Campbell should continue, why in fact we like to be part of Campbell as this goes through and I don't feel we've really been listened to. It's like you all have just made up your mind. I have to say from what I've seen and read the reports this is basically a wash. It's not like you're going to get some big huge revenue from us and yet you're going to have to provide services. It's kind of arbitrary which city we go to you have the history of sphere of influence, that's been probably 50 to 60 years old. New circumstances require new look at it as far as I'm concerned. We have made a loll of about cases for why we think we should be able to go. Would I ask just as others have, that you consider reopening discussions with Campbell and act like representatives even though we have no one official here please act like elected officials.

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

>> I think the main point I feel strongly about are the benefit. We're supposed to receive a benefit and it feels like someone's telling us you're going to benefit. And it seems to me you should ask the people receiving the benefit if they believe it's a benefit if that makes sense. I think you've heard overwhelmingly, we don't believe it's a benefit. Now we're hearing that Campbell is willing to negotiate to you, willing to offer up this ever so precious tax generating industrial area that I heard that while I've been sitting here for several hours how residential is a burden, and these businesses that have jobs are tax revenue. So don't you people you have an obligation to the -

- to citizens of San José, to fully investigate those options? Those options that could actually bring more revenue into the city? While at the same time meeting the humble request of the residents. Thank you.

>> Mayor Reed: Sorry your time is up. Chris Whittaker Jeanette Toney, Tom Davis and then Lisa Suletanech.

>> Good evening, thank you for this time and opportunity to talk to the council. I am a resident of this particular Cambrian number thrk at 480 Dulles drive. My husband and I have been resident since 1985. Prior to that I lived at downtown Campbell on third street. i have raised four children in that house my children went to St. Lucy's school and we are in the parish at St. Lucy's in Campbell. We have a strong feeling of being a member of Campbell and that's why I'm here for you to consider negotiations with Campbell because it's a very, very strong we are only one mile from downtown Campbell. We are eight miles from Downtown San José. I hope you would consider negotiation. Thank you.

>> Mayor Reed: Sorry your time is up. Tom Davis, Lisa Spetonich, John Spetonich.

>> Legally right and morally right are two separate issues. I wrote like to extend our thanks to council persons coomples fair mind members of the council to consider additional time explore all options with Campbell. Surely this extra time will go a long time to pacify our neighborhood. I think that's very important. San José has existed for well over 200 years without our neighborhood, surely it can last a fuse more no, sir.

>> Mayor Reed: (saying names).

>> Good evening. Provide conclusive consistent responses regarding services. So my question is fiscally, who would be correct, Mayor Reed or the senior planner? My point is, possibly not all of the facts are being asked or answered either to you or to us. That tells me the additional opportunities and options have also not been explored. Please don't look for the quick dollar. It's a lose lose situation by doing that. It reminds me of the story of the tortoise an the hare. Glms good evening I say my wife talks too much. Our neighborhood has not been asked for a preference because we are slightly smaller than the size requiring a vote but we did turn petitions, 65% is

not just a majority but a supermajority. You may have the power to force this annexation but you will not are foblg intent of the law. Our system of government at all levels is based on the consent of the governed. It is your sworn duty as representatives to follow the will of the people. Making decisions that affect the citizens. We plead with your sense of honor to fulfill your duties with sense ever due diligence with respect or the the intent of the law. There are options besides and our neighborhood Campbell is wanting to work with you and it can be a financial benefit to the City of San José. Please work with Campbell. Thank you.

>> Mayor Reed: Caleen Chrisman Brenda Freed Rick Susan caplin.

>> Seemed loyal to be annexed into Campbell, after all that is our address. The bottom line is that you're not enhancing our lives but putting them in danger. I feel we're nothing more than a dollar amount. You promised things would not change and he they are. In fact the police department changed as recently as yesterday. Emerson and white oak have to travel through my neighborhood to get to Campbell. It was against your values. What about the values of the 850 people here? Lives and relationships are risk. Pleats do the right thing an, for once give politics a good name.

>> Preanal da freed Rick, Susan Cavalins, James harmer.

>> Good evening, high, I wanted to say firstly, thank to the two councilmembers that voted for us, and I hope you will recollection that tonight. I'm asking to you defer this annexation vote for tonight so we can fully explore the options that Campbell is offering. Secondly I want to address an issue in the paper that we should have known that at some point we will be going to the City of San José. When I bought my house 11 years ago, I did not receive a disclosure in Lafco ooms the address of Campbell would sometime go to the City of San José. How was I to know? Lastly, the revenue reports that have been prepared by the City of Kang Campbell and San José were all preliminary. The costs don't go up, they go down. The chance of you coming into a positive number probably will be low --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Hi, I'm Susan Carlins, I've lived in the neighborhood about 20 years. I just heard 60% but it seems virtual unanimous. We don't tend to have so much political agreement. I want to strongly suggest, city of Campbell to end this in a more positive way for the neighborhood. Thank you so much.

>> Mayor Reed: Jam Harmer, Lisa Harmer, Jeff Harmer.

>> Good evening. The annexation of parcel 36 was the subject of a recent letter to the San José Mercury News editor. The writer was a San José resident. He questioned annexing more people into San José when services are being reduced. The writer likened the situation to a sinking boat. He wrote San José citizens are bailing as fast as they can. While the city council is loading more people onto this boat. Is this a responsible action? I urge the city council members to explore the avenues proposed by Campbell Mayor Lowe's recent letter. A win-win situation is available. Time is needed to examine these issues. Please take the high road. Seek a win-win proposition with Campbell. Prove to your city residents your commitment to your and their city. Thank you.

>> Lisa Harmer, Jeff Harmer, Randy White.

>> Good evening, my name is Lisa Hammer. For the past 60 years ago Campbell has been the city that has been providing services for me and my family and we consider it our home. I'm asking that San José fully answer. First please explain in detail why Proposition 26 and 218 and state code 526, 375, 299 do not apply to our situation. Second please consider the letter from Campbell Mayor Evan Lowe, more profitable to the City of San José than the current annexation proposal. Lastly Campbell last bin our home for annexation that fails to consider alternatives that may prove more profitable to San José than the annexation I currently brought before you, thank you.

>> Mayor Reed: Jeff Harmer, Randy White.

>> I'm Jeff harmer, good evening honorable mayor and councilmefn, City Manager, City Attorney. I happen to be Lisa's father, and my parents purchased in what they call the 36 pocket in about 19 throng. And contrary to what the member said on the dais several months ago, there was very little talk the fact that he they were whine the San José sphere of influence, and would somehow be annexed into San José. Like the councilman mentioned last month I also toured the Internet and I came up with just a half-page on Lafco's Website. A Hap half-page, and they indicate it's any one of these criteria are not met, then streamlined island annexations. The fact that they will not be approved.

>> Mayor Reed: Sorry, your time is up. Randy white is the last speaker. If anyone wants to speak please get a card in.

>> Mr. Mayor, council, here we are in the final hour of this very long battle. It's been interesting. You're a city of over a million. We're a community of a thousand, 300 homes, 100 acres and we are asking to you do the right thing. Especially in lieu of the changes that have been made by Lafco's denial of having county fire without a contract. That drastically cuts into the revenue that's going to be generated from our tax revenue. It is somewhere under 200 K now. It hardly puts a debt into your 90 million deficit. A million in your city, a thousand more is just a drop in the bucket compared to our feebltion and our wish to stay in the county, but I know that's not possible so Campbell is our only other alternative as a small community. So I do ask you to stay the execution of this -- thank you.

>> Mayor Reed: That concludes the public testimony. I think there'll be some council discussion, bring it back for that at this time. Vice Mayor Chirco.

>> Councilmember Chirco: Just last Thursday, we received a letter from Campbell making a new offer to discuss some kind of fair exchange for this territory. And I would like to give Campbell an opportunity to make a fair change. This is the first time we have already expended huge amounts of staff time. I have a question for Joe. Is it

possible for the council to annex this pocket tonight, but gives staff the direction not to register the annexation with the county for a six-month period?

>> Joe Horwedel: Vice Mayor Chirco, that is possible. That the action the council takes tonight is essentially ordering the annexation to proceed. We do, then, pass that onto the county. There's not a prescribed time frame for that and because of the service delivery class we normally go through and batch those and hold them for a bit. It is possible to hold it for six months or some amount of time. But to essentially have approved it tonight and told to let it wait.

>> Councilmember Chirco: So that being available, in that period would it be possible for our staff to engage Campbell in a discussion about their offer and determine whether there's any possibility for a fair exchange?

>> Joe Horwedel: I think it's possible. As you've noted not something we've set aside time for but staff is willing to go and have discussions with Campbell if in fact there is a serious offer and I think that needs to be something that happens next week rather than July 1st.

>> Councilmember Chirco: Absolutely, that's why I only want the six months. Seven days -- the letter was dated the 1st so six days before it comes to council for the final hearing after over three years of conversation. Talk about the 11th hour of the 11th hour. I think annexing this property, but directing staff not to register it for a six-month period is a good compromise. It gives them some kind of the agreement. But at the same time, it puts a time limit on the negotiations and gives a clear date for when the annexation would become effective if no agreement is reached. I believe that this is a fair compromise and would like to make a motion at this point. Then I'll read the motion.

>> Mayor Reed: We'll give you a chance to read the motion.

>> Councilmember Chirco: Configuration I move that we adopt the staff recommendation to annex this pocket with detachment from the central fire district. Second, I move that we direct staff not to register this annexation for

a period of six months. But most importantly third, during the six month period direct staff to review and consider any proposal from the City of Campbell on this issue that is fiscally neutral for San José. That would be my motion.

>> Second.

>> Mayor Reed: All right we do have a motion on the floor. I'd like for if I could the chief to talk, Chief McDonald to talk about how we would deliver fire services if this were annexed once it's registered or whatever we have to do with the county and ultimately do all the switching of whatever has to be changed, how would we deliver fire services.

>> Mr. Mayor, members of the council, the agreement that we have, to provide services initially the same they are today, the two Campbell stations closest to this area would continue to provide the initial service for the county automatic aid agreement that we have in this area ultimately or mutual aid agreement that we already do have. Our discussions though have been to more essentially from that kind of agreement and so our interest would be to provide services in the area from all of the fire stations whether they're city fire stations or they're Campbell fire -- they're central, excuse me Santa Clara County fire stations irrespective of who's closest in termination of all the types of calls that would be in that area. We would assume that it's just ours and we would respond to all of our resources in that area. The technology supports that both in terms of if we detach or we don't detach, the area from the district, and it will be seamless in terms of the callers of that experience.

>> Mayor Reed: Thank you. Councilmember Constant.

>> Councilmember Constant: First of all I want to thank the Vice Mayor for her motion because this is what I've been asking for all along but, and there's a couple of big buts here, I take exception to the comment that the first time we heard of this was at the 11th hour of the 11th Howard, I have been delivering a message from Campbell for over a year. I brought it up in council meetings [applause]

>> Councilmember Constant: I brought it up at Rules Committee meetings. I brought it up directly to the City Manager. I brought it up directly to the director Joe Horwedel from planning, I brought it directly to the mayor. I've said it on this dais multiple times. That I, in my capacity as formerly the chair of Lafco, which by the way whoever didn't know Lafco, when I first got assigned to it I thought the mayor was sending me off to a comedy club. I didn't realize it was actually work. But as the chair of Lafco I dealt with this a couple of years ago and I brought it up and I can't tell you how many times I've delivered the message after meetings with the current mayor of Campbell the previous mayor of Campbell the City Manager of Campbell and I delivered that message time and time again to a blank wall that wouldn't hear it. So I really take exception to that fact because I know that the offer has been there. I even got into very specific discussions, that had been had and options that had been proposed. And I really -- anyway I'm just glad we're moving in the right direction. My second concern with this motion the way it is, I'm going to support it because I think it's important to give the six months. But I'm hoping that we're e-not ringing a bell that we can't unring if we get very close on an agreement with Campbell and then all of a sudden we're up here and the Vice Mayor's no longer here to remind us of how and why the motion was made, and we are being told, well, six months ago we made a decision to annex. And we're only 92% there, and we can't finish it so we're just going to plow ahead. And that's what I really worry about because the City of Campbell has been asking for collaboration and cooperation. They've reached out multiple times. I within our own organization have brought this forward. So I'm going to go through it with all optimism that we're going to be able to come to an agreement. I do think that I really would like to have the City Attorney and the Planning Department really look at that council policy about exchange of acreage as it refers to in our council policy on deannexing property. I do think need to take a close look at that not only for its plain language and also for its intent. It talks about deannexing, not exchange urban service areas, it talks about deannexing, and I hope that can be a constructive part of the conversation as we move forward. Bought I think he we do have a chance of having a win win win situation, which I might remind people I pointed out almost a year ago that we could have come to this situation, where Campbell could achieve their objectives and the City of San José could achieve their objectives and the residents could achieve their objectives. I look forward over the next six months as continuing to be the city council's representative on Lafco I'm respectfully asking that I be kept informed of what's going on in this process, as it moves forward, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you and I want to thank the Vice Mayor, I think that it certainly shows that she's been listening. To allow this space is critically important especially with the most recent letter from the city of Campbell. I want to ask the staff what happens if we are two weeks short of that six months and we are at that 95% 92% close to agreement is there anything that requires us or is there a flexibility at that time, if for example if we go five and a half months and nothing's been done then go forward. If we're that close, is there anything that requires us the flexibility to ignore it or --

>> Joe Horwedel: Councilmember Kalra I think you captured it crejt if five and a half months from now we have a letter slide across our table that says here's our deal, it's probably doomed for failure. Ergo my statement, we really need to have something next week. I will come back to the council and say I think we're close and going back to the objectives and I think that's the important part. We need to be clear what is the objective we're stwrieg to achieve? I'll come back and share that with the council and have you weigh in about, is it worthwhile putting more time into it?

>> City Attorney Doyle: If I may chime in, the six months becomes ministerial at that point. As Joe indicates, if we're close to a deal we could come back to city council. You could direct us to inform council and keep them abriesed of where we are. Clearly it is pooh minute steer yam act but we will keep the council informed.

>> Councilmember Kalra: In that case I will be able to support the motion now more recently you've been talking about having talks about seeing what San José can get out of it as well. And now if there really are serious. We'll find out, community has really expressed their feeling and their thoughts and they have spoaj to the Campbell leadership as well, let's gift a shot. That's what I felt when this came before us last time, at least give them an opportunity. There is a relatively short window, that's why I'm asking those questions, in these dealings it can take a while for an agreement. It allows plenty of time for hopefully, there will be some construct ifdz discussions early on and we can go from there and I think it goes without saying that we'd like to certainly be apprised prior to the update, I think all of us would be interested in knowing why those.

>> Joe Horwedel: Councilmember Kalra, I think had a that's really important. From staff's standpoint we will be doing a mass mailing to the council, have we received something or where are we with that? It's not something we come to you in June and say whoops.

>> Councilmember Kalra: At that point we'll know whether the time is enough. Well, I guess we'll need to know if talks are happening, if we get closer into the spring we'll know, if Campbell doesn't follow up I'm sure -- the community members will be doing their part to reach out to Campbell circulation reaching out to us. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you Mayor. I first wanted to commentator Vice Mayor Chirco for her openness and creativity to a path to solution. We're at least open to it. And I want to thank Joe and your team all the extraordinary time you have spent on this and it's far more time than anyone would actually desire. You can spend it on jobs produced to, I think it's important for folks to be aware of what has been, I'm kind ever curious you know Pete in terms of your conversations with Campbell in every offer that you've been aware of does it usually entail a swap of residential parcels?

>> Councilmember Constant: There was a discussion about splitting residential and commercial policies as I've asked before. The council policy I invite you to do so it was a split of the commercial and dredges.

>> Okay, so that is that the City of San José would take the commercial and the residential would go to Campbell, is that what you're saying?

>>> Yes.

>> Councilmember Liccardo: So I just want to indicate that my understanding of past upset totally unroisk because folks generally don't want to go from one city to another and that is a challenge. If 96th what we are

dealing with openness to make some progress. I'd be very interested in knowing if Campbell is going to be there to directly third hand that hasn't been the case. I look forward to having this come to a fruitful conclusion.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to commend Vice Mayor to get it cpts we are plooferg forward on the neassments but given the chance to, coming here today and their patience as well, and Joe Horwedel's staff. So hopefully maybe San José will get the commercial and Campbell would get the residential that's my home.

>> Mayor Reed: City Manager.

>> City Manager Figone: Joe, can you give us a reasonable period of time to discuss with Campbell, given all you have in front of you?

>> Joe Horwedel: I'll use the term realistic rather than reasonable. I think it is realistic that this will take probably in the kind of on the low end, 40 more realistically about 80 to 100 hours of staff time to work through this between planning and finance staff and police staff.

>> City Manager Figone: So I do think it will be important that you get together with Campbell and see if we can make some real progress and inform the council as soon as possible.

>> Joe Horwedel: This is one we need to decide quickly to decide if there is momentum, and the last piece I would ask the Vice Mayor if we can talk a little bit more about the revenue-neutral kind of current revenues or revenues had the annexation occurred, you know there's going to be those kinds of discussions that would radically affect the negotiations. Yes.

>> Councilmember Chirco: Could you repeat the question?

>> Joe Horwedel: For looking at a revenue neutral alternative with Campbell, clearly some of the ideas that have been talked about just bringing in commercial residential is one batch. But I want to make sure kind of what the basis is, is it from today's revenues or what the revenues would be if we had gone forward tonight with the annexation, that is kinds of the revenue neutral point.

>> Councilmember Chirco: To me that is the revenue neutral point. We have put huge amounts of resources into this already. This resolution was put before Campbell almost a year ago. And I appreciate that Councilmember Constant had these conversations. But as far as I know the City Manager, the Planning Department, and apparently, Councilmember Constant, you were the only one that had any conversations with somebody in Campbell that indicated they were willing to put something on the table. I respect that you had that relationship but unfortunately until I got the or everyone got the letter dated December 1st that's the first commitment that I have seen that they were willing to have a meaningful conversation. I say revenue neutral that's exactly what I mean. We've gone forward, this was something that was approached with Campbell and we went ahead with the economic studies, the two different ones. We've done all of the work necessary for annexation. And my hope would be that this would be, so this would be minimal to nothing additional cost and it is just to allow Campbell the opportunity to act on what Councilmember Constant has been aware of. And since we now have the written documentation it seemed a fair opportunity to see if we could actually put some meat on the bone.

>> Joe Horwedel: Okay that gifts me some direction. Thank you.

>> Mayor Reed: Just want to go back to why we are here. The State of California decided that these county pockets have to go. This is no fun for us it is no fun for you. We know you want to be left alone. This is 100% true, of anybody who wants to be left alone. The laws of the state and the county, we have been planning this since 1976, that this was a San José urban service area and sphere of influence. Refaimpled by Lafco in 2006. We have been planning this for some time, the state and the county, we could have been home a couple of hours ago and would you have been happier as well but nonetheless this is the situation he we are in I'm going to support the motion. I'm concerned that these negotiations might become a time sync and I'm relying on the judgment of

staff to see if there's anything there, if there's not that's the way it is. We have a six month window to see if there is and what Councilmember Constant has heard this is what Campbell really, really wants to do. With that I'm going to support the motion. On the motion all in favor, opposed, none opposed, that's approved. I think that just about completes our agenda for the evening. [applause]

>> Mayor Reed: In fact that does complete our agenda for the evening so we are adjourned.