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>> Mayor Reed: We have a quorum here on the floor. There's no labor update nobody to speak. So we're going to start in closed session. Xavier and Kansen are in the back. We'll go into closed session. That's what we're going to do.

>> Mayor Reed: (gavel strike) Good afternoon I'd like to call the San José city council meeting to order for August 14th, 2012. We'll start with the invocation. Vice Mayor Nguyen Will introduce the invocator.

>> Vice Mayor Nguyen: Thank you, mayor. I'd like to welcome monsignor Francisco Rios from our lady of refuge here today. Monsignor Rios came to San José in 1994 from New York and has since served in the Santee Lucretia neighborhoods. Located in the heart of district 7, this church is a place of peace for many Vietnamese, Hispanic, and American families to come to worship, and we're really delighted to have monsignor Francisco here with us today. Thank you.

>> We gather today at this meeting, we need to serve, we need to make some decisions, and we need to make all the efforts for our community. So we gather together, intent on doing good work. We seek to represent fairly and well those who have given us this task. May our efforts be blessed with insight guided by understanding and wisdom. We seek to serve with respect for all, may our personal faith give us strength to act honestly and well in all matters before us. We mean to serve our community, to use our resources wisely and well, to represent all members of our community fairly, to make decisions that promote the common good. May we use only our best skills and judgment, keeping ourselves impartial and neutral as we consider the merits and pitfalls of each matter that is placed before us. And always, act in accordance with what is best for our communities and our fellow citizens. We ask for this, in Jesus's name, a men.

>> Mayor Reed: Thank you. Appreciate the invocation. Please stand for the pledge of allegiance. [pledge of allegiance]

>> Mayor Reed: First item of business are the orders of the day. We have a request to make any changes from the printed agenda, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. For item 3.6 we will be discussing regarding the neighborhoods commission there's been quite a variety of memos that have gone forward and I just wanted to throw out that I think the discussion would be missing probably the most important component. And if I look at the

council policy that was passed in June of '07 and revised in September 2011, it talks about the council liaisons. The council liaison is the councilmember who is specifically assigned to be a liaison between the city council and the commission. The primary role of the liaison is to be the facilitator of communications between the commission and the council. Furthermore that the council liaison's responsibilities is to monitor the commission, to identify procedural and structural issues relating to the effective functioning of the commission for council. The council liaison for that commission, who is the only councilmember to have actually attended the neighborhood commission meetings with staff, is absent today. This item is not of any urgency to -- where a developer can't do something, or someone is going to be restricted any freedom. And I would simply ask you know because there are several memos wanting to set up some type of process that perhaps we just would wait till councilmember who the liaison nor this commission is back here I believe would be in two weeks. And I would just request for deferral and then we can have a full discussion with again the council liaison who actually attends these commission meetings.

>> Mayor Reed: Let me see. Are there any objections to deferring this under orders of the day? If there are we'll just take it up in the order and deal with a deferral at that time. There are objections to deferring it on orders of the day. So we'll get to it and I'll come back to you when we get to item 3.6. Anything else under orders of the day? Councilmember Herrera. Councilmember Pyle? All right. Motion is to approve orders of the day. On the motion all in favor, opposed, none opposed, orders are approved. We will adjourn this meeting in memory of Phyllis Simpkins, long time supporter benefactor of San José State university athletics and education. Passed away July 7th at the age of 87. Leaving a legacy of generosity to students and the community alike. Councilmember Campos has some additional comments.

>> Councilmember Campos: Thank you, mayor. Today I want to celebrate the life of Phyllis Simpkins. We sadly lost Phyllis from a long battle with cancer at the age of 87 on July 7th. It is without question that Phyllis lived an extraordinary life. Her commitment and devotion to give back to her community is one to be admired. She was a tireless fund raiser for various San José State programs which included athletics, the spartan foundation, the marching band, the international house, and the Department of Nutrition and FAA food science. Hundreds of students benefited from her involvement and she touched the lives of so many by her gratitude. Phyllis's

compassion and connection to San José State came at a very early age. After graduating from Santa Clara high school, Phyllis enrolled at San José State where she double majored in home economics and marketing. While in college she participated in a number of student groups including the Kappa Kappa Gamma sorority, both the sophomore and senior honor societies and the spartan spears, a women's organization, and she also served as student body vice president during her senior year. Although her contributions during her years as a student were extensive, they could barely be compared to the generosity she bestowed on her alma mater in her later years. In 1978 she and her husband Allen who she met her sophomore year at San José State provided the funding and leadership necessary to reinstate the spartan marching band which had dissolved in the late '60s. In 1994, the couple provided the primary donation for the construction of the Simpkins stadium center next to the spartan stadium and in 1997, they purchased and donated the Allen B. Simpkins international athletics building. As a result of Phyllis's contribution she received many awards including the 1989 California state university philanthropist of the year award. In 2008 the Cal State university system recognized Phyllis and her late husband Allen for their lifetime commitment to San José State by naming them the top benefactors of all time within the 23 campus system. Not just San José, but the City of San José, is honored to have someone like Phyllis care so deeply for this community. Her lasting legacy on her alma mater in the form of millions of dollars in donations is greatly appreciated. But more than her financial contribution we will miss her compassion that she had for people and her ability to touch the lives of so many in such positive ways. Phyllis Simpkins is survived by sons and daughters-in-law Robert and Carol Simpkins, William and Bridget Simpkins of Santa Cruz, and daughter and son-in-law Diane and James Bordoni and seven grandchildren. She will be dearly missed by our community. Thank you.

>> Mayor Reed: Thank you some Councilmember Campos. Our next item is the closed session report. City Attorney.

>> City Attorney Doyle: Mr. Mayor, there is no closed session report.

>> Mayor Reed: Before we start the ceremonial items, I'd like to recognize the youth leadership delegation from Taiwan is led by the Taipei economic cultural office who have joined us today. Thank you for joining us. We look forward to working with you. [applause]

>> Mayor Reed: And for our first ceremonial item, I'd like to invite Councilmember Kalra and representatives of Santa Clara County Alliance of black educators to join me at the podium.

>> Councilmember Kalra: Thank you, mayor. And as they make their way down let me just introduce who is going to be joining us here today. With the alliance -- with the Santa Clara County alliance of black educators, we have president Leon beachman, vice president Carolyn Johnson, treasurer Joséphine Miles, and members Karen Ransome, Patricia Allen and Rufus White. And I'm very happy to have them join us here today as we present a commendation to the Santa Clara County alliance of black educators. Less than a month ago President Obama announced that his administration was creating the White House initiative on excellence for African Americans. This initiative will work to identify best practices to improve African American students' achievement in school, and college, and will built a network of people grass roots organizations and communities to share those practices. Today we have right here a perfect example of a network of peek a grass roots organization that does just that. The Santa Clara County alliance of black educators. This organization has paved the way for numerous African American students to achieve academic excellence which is key for professional success as we all know especially here in Silicon Valley. The men and women who make up the alliance have repeatedly demonstrated their commitment for improving educational opportunities for African American youth for over two decades. Examples of this commitment include their involvement in bold initiatives such as San José 2020, a collaborative initiative to close the achievement gap in San José by the end of the decade. Another example is that fantastic green scholars program which fosters educational experience in science technology engineering and math also something that is incredibly valuable here in Silicon Valley. Over the past decade the number of African Americans with a college education has been increasing dues to efforts in organizations such as the Santa Clara County conference of black educators and others. That is why I'm proud to join with the mayor and our colleagues here on the council to honor them here today and to present them with this commendation on

behalf of the council in recognition of their unending commitment to providing educational opportunities and support to our local African American youth. Mayor. [applause]

>> Okay, hello. My name is Carolyn Johnson and last night I stayed up late to watch the Jay Leno show which is something I don't normally do because of the lateness of the program. But my interest was piqued by two of the program guests, first lady Michelle Obama and Olympic gymnast Gabby Douglas. During the interviews Jay Leno showed pictures of both of them when they were very young, and he commented on a photo of Michelle Obama when she was kind of under the age of 10, and she was playing on a weathered playground equipment that once was a swing set without the swings. He noted that she didn't look like someone who would grow up to be the first lady in the United States, and as we know, also an accomplished lawyer, but she did. Now one of the primary goals the Santa Clara County alliance of black educators is to recognize the abilities and the talents of our children at a young age and to inspire them to be the best that they can be. In the spring of 1990, a group of local black educators initiated a student recognition program. And it was focused on the need to provide positive achievements of African American students who attend school in Santa Clara County. The alliance is an affiliate of the national alliance of black school educators, called NABSE. This organization was founded by African American school superintendents to affirm the inherent worth, dignity and educability of African American students. Our organization acknowledges nominations from a tight network of supportive teachers, administrators, parents, extended family, and community members who encourage student achievement and firm the self-worth and academic efforts of our students. On May of this year, excuse me in 2012, we held our 23rd annual recognition ceremony and we recognized over 370 students here in Santa Clara County from elementary, middle and high school. This signature event was held at parkside hall with the support of many city council members that are here today. The SCABE program was a free event and students are recognized in multiple categories, and they have an opportunity to introduce themselves in a public forum. We take great pride in having provided this opportunity for recognition to an estimated 3700 students since 1990. 16-year-old Gabby Douglas like first lady Michelle Obama has dreams and aspirations, and according to Gabby, the real Olympics are in her future. Somewhere along their journey a supportive network of family, mentors and community believe in their ability to rise above the crowd. The Santa Clara County alliance of black educators has a mission to provide

excellence in the education of our students to close the achievement gap and to reach exceed the goals of SJ2020. We thank the members of the council for its continued support.

>> I just wanted to make it a special point to let all of you know that if it wasn't for the city council we would not be able to have our event at a city facility. And so we appreciate the almost near unanimous contributions of the city council. And we'll be sending out invitations especially early this year to make sure we get everyone there. I want to make one apology, in our program that we gave you, the Coleman, Councilmember Chu's name was misspelled. He is listed as handsome Chu. So -- and he wasn't too -- so we apology for that but we want you to know that next year, we'll straighten it out and we'd like to make sure that all of the city council as many as possible join us next year. Because it really is an inspiring event to see our young people there being recognized. So thank you very much. [applause]

>> Mayor Reed: Thank you very much.

>> Mayor Reed: Next item is the consent calendar. We have some requests to speak. I'll take that now. Mr. Wall.

>> First off I would like you to be aware that officer George Constantine was stabbed recently. He's healing up. He's the brother of Chris Constantine, and also the son of Chris Constantine, who I worked with at water pollution control plant, so keep him in your prayers. Item 2.3 committee reports, report on Rules. I requested the work plan of T&E be augmented as well as yesterday, Councilmember Liccardo was very generous and very courteous to let me speak on that item to augment his work plan for his committee to include our monthly updates for what's going on at the water pollution control plant. This is just to keep the council informed and to keep staff a little bit more reliable than they have been recently. The other item to be included on the work plan would be an analysis of a 37-year-old sewer service and use charge calculation rate that is very discriminatory per se and it needs to be reviewed and we'll discuss that later in the afternoon's program. The other issue is 2.9. I'm very concerned about this community facilities district. I'm concerned, if the lift station is built, and the project goes bankrupt or has at least just one unit that's operational, who's going to foot the bill to keep that lift station

operational for their sewage needs? So I'm very concerned about that, and I don't like the structure of it at all, the financial structure and the voting structure. Thank you.

>> Mayor Reed: That concludes the testimony on the consent calendar. Any items that councilmembers would like to pull for discussion? Councilmember Pyle. Did you have one? Is that left over, okay. Is there a motion on the consent calendar? We have a motion to approve the consent calendar. On the motion, all in favor? Opposed? None opposed, that's approved. Item 3.1, report of the City Manager.

>> Debra Figone: Thank you, Mr. Mayor members of the council. I just wanted to take a moment to acknowledge the success of last week's National Night Out. It was a wonderful evening as I'm sure you all know and a great reminder of why we do what we do. I did make a couple of stops with chief Moore and chief McDonald to meet with some of our residents and we were greeted with great enthusiasm. It was really a terrific way to close out a long day with truly positive energy. I appreciated a chance to listen to our residents directly and to see their pride in their neighborhoods. I just wanted to thank all our city employees who were involved in helping our community to make National Night Out a tremendous success and a special thanks to both chiefs and their teams and their departments for their support of National Night Out. They all worked very, very closely with our neighborhoods to help them organize these events which in turn we all know helps us to build positive relationships with our community. And although this is a once a year event I know we do see the benefits over the course of the entire year by way of collaborative problem solving in our neighborhoods. So congratulations to the council and the community for taking the community, through events like National Night Out to strengthen our ability to work together to continue to make this a great city. And that concludes my report.

>> Mayor Reed: Our next item is 3.3, the tier 2 pension plan ordinance for Federated system. Is there any additional staff presentation? This is the second reading, the third regent would be August the 28th if that is still the schedule, I believe. Councilmember Liccardo.

>> Councilmember Liccardo: Just a quick question for staff. On the third paragraph I realize I'm looking at a memorandum from our City Attorney. I'm trying to confirm is this a memorandum that is released publicly or is this a privileged document?

>> City Attorney Doyle: Yes, it is a public document.

>> Councilmember Liccardo: Okay, great, then I can discuss it. In the third paragraph there's discussion about the City having received comments and questions about the proposed ordinance from the Federated system board. Is there a location where we can see those comments?

>> City Attorney Doyle: I think the comments were given to staff. Staff has incorporated some of the changes in the first reading. We're going back on Thursday and having a conversation with the board's OER staff and our outside counsel will be at that meeting to discuss. And if there's any further changes we'll bring those back to the council before the second reading.

>> Councilmember Liccardo: I guess at the time of the second reading if we could us what comments were not incorporated that would be helpful.

>> City Attorney Doyle: All right, that's good.

>> Councilmember Liccardo: Great thanks.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Just clarification. When I'm looking at the ordinance, the items in red are the items that were suggested, or how do we know which ones were incorporated?

>> City Attorney Doyle: Thanks I could ask staff to amplify if that's necessary.

>> Mayor Reed: While staff coming down Councilmember Rocha.

>> Councilmember Rocha: I'm going to follow along the same line. The one two three fourth paragraph, the analysis that speaks about revised ordinance provided in advance of the meeting. Forgive me if I'm not reading it right.

>> City Attorney Doyle: Judy boyette is our outside council from Hansen Bridget.

>> The first question was which in response to comments?

>> Mayor Reed: Let's take Councilmember Liccardo's and then Councilmember Rocha do you want --

>> Councilmember Rocha: Do you want to clarify those Councilmember Herrera?

>> Councilmember Herrera: I was asking those in red, are those in response?

>> Those are the changes. And some of which we had originally drafted changes to the ordinance to correspond to the changes that needed to be made to agree with the bargaining and with the adopted changes in the charter. And then we also looked at all the comments that were received and made any changes that were needed to clarify or correct things that were pointed out to us.

>> If I could, Alex Gurza, deputy City Manager. The ordinance before you is a very long document. It is actually the entire municipal code of the Federated retirement system as well as the cost of living provisions. What Ms. Boyette did, all the changes are from the current municipal code. All of the changes you see in red are changes from the current municipal code in order to implement the second tier. Some of those questions were based on questions that were received from the board. Also in response to Councilmember Liccardo's question, many of the questions the board had were actuarial in nature and aren't really reflected here. But what we offered to the

board which actually happened is, we had our city consulting actuary Mr. Bartel talk directly to Cheiron the board's actuary so they can talk through the technical actuarial questions that they had.

>> Mayor Reed: Councilmember Rocha had a question.

>> Councilmember Rocha: So I guess then -- I understand a little bit better the process but how would this affect first reading, second reading if there's changes within it? I'm assuming --

>> City Attorney Doyle: To the extent there's fully significant changes we would have to bring it back for another first reading. If there are minor changes we could bring them back with the second reading but they would be so noted.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: Any other questions? Anything else from the staff, question we should have asked you we didn't or anything like that? Senior there a motion?

>> Councilmember Herrera: Motion to approve.

>> Mayor Reed: We have a motion to approve. On the motion all in favor? Opposed? None opposed, motion is approved. Taking to us item 3.6, actions related to neighborhoods commission pilot program board and commission structural improvement program. I think this one set a record for the most number of council memorandums on a single topic or at least within recent memory. Councilmember Herrera.

>> Councilmember Herrera: I was going to defer to my colleague Councilmember Oliverio if he still wanted to raise the issue that he was bringing up earlier.

>> Mayor Reed: Okay.

>> Councilmember Oliverio: Thank you, Councilmember Herrera. Not to be verbose or reiterate, but my main point is we're here discussing a commission and the most important facet in that discussion is the council liaison as I read in the council policy that position is responsible for the communication and observance and to identify procedural and structural issues related to the effective functioning of the commission and council and today that council liaison is not here. And I would just propose that we may want to take feedback from people who have come to speak on the item have some discussion but truly a full discussion on the item would have a council liaison present to discuss. Because that is the only council office that actually attends all of the meetings. And I would just make that as a motion and then take up any conversation we would like to.

>> Mayor Reed: All right, so we have a motion to defer. I have people who want to speak. So before we vote on the motion to defer we'll certainly want to let people speak that are here, Councilmember Herrera did you want to speak to the motion?

>> Councilmember Herrera: I want to speak to the motion to defer it. The only way I would support this is have a time certain to hear this or at least within two weeks because we really don't know when our colleague is going to be returning precisely. I wouldn't want to delay it that long. I heard you say couple of weeks, I'd be okay with that and certainly hear what you are saying and understand that it would be good to have the liaison here. But we have had to decide many issues without individuals here, and many serious issues. And so we can't always have everybody here. But a two-week deferral I think would be okay as long as we let those who are here speak, speak, because they have taken their time to come down and do that.

>> Mayor Reed: I haven't spoken to Councilmember Constant lately about when he anticipation coming back for a meeting. I don't know if he will anticipate being here physically.

>> Councilmember Oliverio: Mayor, first meeting in September if Councilmember Constant is unable to physically attend, if he doesn't call in, at least he would have the opportunity then to put in a memo, much like many of us would have the opportunity to do.

>> Mayor Reed: First meeting in September would be?

>> Councilmember Oliverio: 11th because the Labor Day weekend is cancelled.

>> Mayor Reed: That is the motion to -- I have several councilmembers who want to weigh in on this. Do you want to take the public testimony first or councilmembers weigh in? Councilmember Rocha.

>> Councilmember Rocha: I think it's more of a deferral, and while I concur with Councilmember Oliverio's opinion that we should have the liaison here, in terms of process, a case has also been made on many occasions that folks have shown up and we would like to go forward with the item. So I'm struggling between the two. I think maybe hearing from the community is probably a good start. And maybe we can get some feedback from them in terms of -- and I think we have some commissioners here as well about what their interest may be and I'd also like to hear from my colleagues. Thank you.

>> Mayor Reed: Councilmember Herrera did you have anything to add to Councilmember Liccardo?

>> Councilmember Liccardo: I just want to acquire, September 1st is an evening meeting.

>> Mayor Reed: September 11th?

>> Councilmember Oliverio: September 18th would be the evening meeting.

>> Councilmember Liccardo: Could I make a suggestion we set this on an evening schedule? I think a lot of commissioners would want to be here for the discussion. I certainly agree with the sentiment but I also think we ought to at least ask if there's some things we could request the City Clerk or City Manager, to return to us by that date, because I think we all have some questions that probably might be beneficial to raise. And then have the

information on the 18th to consider with Pete and everybody here. So I guess I would just ask before we make a motion to defer, at least consider what questions we might want to pose here to come back.

>> Councilmember Oliverio: Regarding to the neighborhoods commission?

>> Councilmember Liccardo: Yes.

>> Councilmember Oliverio: I'm certainly fine to second.

>> Mayor Reed: The motion is to defer to the evening of the 18th.

>> Councilmember Oliverio: Certainly but to take testimony today for sure.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I was going to make a similar point, because there are several memos here. I think we all have an interest in getting some feedback as to how the neighborhood commission has been going, and I think that generally speaking, speaking for myself, it seems like a very productive and positive commission but doesn't mean that we shouldn't do an evaluation of it as suggested when the pilot was first put into place and then I do think we can get some work done before come back on the 18th rather than just doing a pure deferral. So when we come back on the 18th in the evening it will allow for more community members to be there. We'll have any information or questions that we might have regarding how the commission has been operating. Can be presented by staff. And I look forward to coming back then and making this a permanent commission and with any recommendations or suggestions based upon staff and commissioner recommendations.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to point out that I brought the social host ordinance to the neighborhoods commission, served incredibly wonderful function, and without that, I wouldn't have the input that I needed. I agree with the September 18th, I think it needs to be at a time when more people are available. And then, in reference to that, as well, I'm hoping that we could also incorporate the neighborhood -- not just neighborhood but also, the other commissions that we've been talking about for months. There's been a lot of confusion in the community. Some are saying, oh you're going to do away with commissions? Well, no. But I think that's time to put that to rest. I don't know if there would be time or Dennis if you would have your report finished by then.

>> Dennis Hawkins: Councilmember Pyle, I think that we can certainly have enough information for the council to have a discussion and give us direction.

>> Councilmember Pyle: Okay so I'd like to add that intricacy. Where we're not just discussing the neighborhood commission if at all possible to discuss other commissions as well.

>> Councilmember Oliverio: I'd be fine with that.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I'm a little bit concerned that we're going to get away from the main topic which is -- and the reason why I was concerned about this enough to put forward a memo along with the mayor and Madison, Vice Mayor Madison Nguyen in July to go to the Rules Committee is that effectively after the end of June the commission no longer existed. And that was really the point of bringing it today, to make sure that it continues to exist. While we evaluate the other commissions. I think it sort of puts a logical question how do we evaluate a commission that doesn't even exist? So I want to make sure that it was going to be continued, that the work and I think that the memo that came out from Councilmember Liccardo today suggests that the commission be able to continue their work. So my concern was about the survival of this commission. The other commissions were not under the threat of being sunsetted out before they were able to be reviewed. So I just want to make

sure that our focus is on the neighborhood commission, the -- the results of the pilot and whether or not it goes forward. And my only purpose in that memo again was to have it continue, on while the evaluation was being done and have it included as part of those other commissions. So I'm good with the deferral but I want the focus on the neighborhood commission. And I just want to say thank you to the people who are here especially Judy Chirco for coming today to speak to this issue.

>> Councilmember Oliverio: Mayor.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Just to speak on the issue. I think it's very logical Councilmember Herrera and I would ask when we come back to renumber them and have them as separate items. Clearly they are different. There is overall commission restructuring and neighborhoods commission and I think that would separate the two items.

>> Mayor Reed: Right, we'll take that to Rules to look at the agenda. But the motion is to defer this to the 18th of September in the evening. We have some folks who would like to testify. Let's do that now, starting with former Vice Mayor Judy Chirco and then Jim cantori and Roma Dawson.

>> I'll try to keep it -- watch my buttons. I want to thank everyone here. I was really touched. I read Rose's memo initially and I thought, oh, cool, this is really exciting. And then so I want to thank the mayor and the Vice Mayor and Councilmember Herrera for their memo. And then I had seen Councilmember Liccardo's, Councilmember Pyle's and Councilmember Rocha and I thought I'm confused. I just -- I thought is this saying that it should be terminated or does it mean they want to evaluate it? So I really do owe a big thank you to Councilmember Liccardo for his clarification memo. And I'm grateful. This is something I feel is very important. The idea came from watching the strong neighborhood initiative and the leaders from each of the strong neighborhoods and how well educated, how they were able to participate so fully in the process of our city management and city input that I think it made us a stronger and especially those areas that had been so underserved and how they then became

really the strongest contributors to our city. How do we take that replicate it and duplicate it. That is what the neighborhood commission was. Obviously I take great pride in it but there were a number of people and community people that participated in the creation of this. So thank you to all of you. I like the discussion and I look forward to the 18th. And to have it truly evaluated, I know that's a component. Anything that needs to be sustained has to be evaluated. Because then you can correct, adjust, and modify. Thank you all so much. And it's always just -- I'm sorry, I enjoy being on this side of the dais also! Thank you so much.

>> Mayor Reed: Jim cantori and then Roma Dawson.

>> Thank you, honorable mayor and council. My name is Jim cantori, I'm a neighborhoods commissioner from district 9. I want to especially thank all the mayor and the council for your support and especially Vice Mayor Nguyen. And Councilwoman Rose Herrera, Don Rocha and Mr. Liccardo. We really have tried to do our best as a neighborhoods commission to do things that are positive for the city. And I strongly urge you to proof and expedite the existence of the commission through the end of June 2013. I had the responsibility to serve as chair of the neighborhood commission's rancho Del pueblo subcommittee and it's a very controversial issue as you know but we had commissioners from districts 2, 4, 5, 6, 7, 8 and 9 all supporting our recommendations we passed on to you Mr. Mayor and city council. I also want to thank Mr. Ernest Guzman and his boss, Kip Harkness. I want to thank councilman Pete Constant, we didn't always agree but we worked in concert for our fair city, third largest city in the state and is a top 10 of the United States. Our common ground is, we reach out to the residents of San José, we're chosen by residents, me, in our districts by a caucus process. So I ask again for your support, and hopefully, get your vote to amend and extend the life of the neighborhoods commission. It's a very cost-effective group for the city. Each month when we've met over 40 resident hours of free service are given to the city. And more importantly, with any lapse or gap, we run the risk and we probably will lose some of our best people on the commission. Because there are Tommy very committed people -- typically very committed people, overcommitted, and I think it's in our best interest to extend the life of the commission as soon as possible. Otherwise we'll be running short-handed of some of our most able bodied people. I respectfully ask your support to extend the extent of the neighborhoods commission. Thank you sir.

>> Mayor Reed: Roma Dawson.

>> Council has been talking about evaluation of the efficiencies of the boards and commissions since early 2003, so I guess a little bit more of a delay won't hurt. Don't want to rush into anything here, thanks to my councilmember Oliverio for bifurcating this issue, because it's been a source of great frustration to me personally that we only discuss the important consolidation issue in the context of neighborhood commission. So thank you for asking to cross-reference those separately because I think it's important to have that dialogue. I want to go back to remind you just of one thing. Council actually had a work plan in 2003. But I want to go back to the four-year-old council referral and reference a very excellent brief memo written by Mayor Reed, Councilmember Pyle, and Councilmember Chirco. Excellent memo. And in the text of that memo it notes that creation of neighborhood commission creates an opportunity to interview all, to analyze whether redundancy exists, mission are outdated and inefficiencies can be eliminated. That is really the heart of the matter, well said. So let's go back, direct the City Manager today, or at least on the 18th, to bring back you are all the good work that was referenced in all of the memos in the clerk's original memo. And thank you are for the excellent documentation. But there was a lot of work done by two of my favorite city employees and that's Norberto Duenas and Leslye Corsiglia. It mentions review that they've done. That material must be somewhere. Bring it forward. There are a lot of us that want to be of service and be helpful, to help you struggle through this difficult issue of how do we best serve the taxpayers, use their money efficiently for civic engagement. So thank you very much, and I look so forward to seeing what comes forward. Thank you.

>> Mayor Reed: That concludes the public testimony. We do have a motion to defer to the 18th as previously discussed. Anything further on that Councilmember Liccardo.

>> Councilmember Liccardo: I guess I'll support the motion. I guess I wanted to ask for friendly amendments to request for information to come back to council. And specifically I think we anticipate that after any pilot we would have some report. Essentially it says how it's going and it would be helpful to understand, we're certainly I think going to hear from our commissioners how it's been going. It would be helpful to hear from staff how is it going? And understand from the City Clerk's perspective or others in the departments, what recommendations

they have, as well, about if there's any tweaking that needs to happen then I any this is probably a time to do the tweaking, when we're at the end of the pilot and we're thinking about making this permanent. And so I'd ask for a report on the status of the commission and how it's operated well, and as well as the recommendations that are incorporated in paragraph 2 of the memorandum at a was authored by Councilmember Pyle, and Councilmember Rocha and myself. I know this raises what's something similar to a third rail about talking about other commissions in the same breath. Let me mention why I think it's relevant. There's been a lot of discussion around the challenges with the jurisdiction of the neighborhood commission because they can't really handle -- they can't consider any issue that is within the exclusive jurisdiction of another commission. And I think at some point we kind of have to address that elephant that's in the room which is, are they going to take on a broader mandate or not, and if so, what does that mean for the other commissions that have that exclusive jurisdiction? I think at some point we have to ask ourselves do we want a neighborhood commission that is just so narrowly focused on issues that nobody else is addressing? That in many ways they are not addressing the issues that may be the most important for neighborhoods that are coming to council. So I think at least we have to have it on the table. I'm not asking that we start bringing out the hatchet and going after every commission in the city. I just think we need at least to discuss about where the lines ought to be, starting with the neighborhood commission, whether those lines would be broader or not. That would be a long broad motion.

>> Councilmember Oliverio: Councilmember Liccardo, I understood number 1 and clearly number 2 delves into number 1. So clearly if city staff wants to present a report in summation of when the evolution of what the neighborhoods commissions has done or where it feels it could go or tweaks, I think that's great. And it sounds like the City Clerk was going to present some report to us on the broader context of restructuring of commissions, and I would defer to the City Clerk, in your mind what you bring back, does it contemplate the role of the existing commissions and where neighborhoods commission fit in or did not fit in?

>> Dennis Hawkins: Well, first of all, I think it's important to note that this whole process has really been a collaborative effort between the City Clerk, City Manager, and the City Attorney. And so I think we'll continue to operate in that venue, of a collaborative effort between the departments and the council appointees. The neighborhoods commission was addressed in my original consolidation report from last December. It sounds --

and that was one of the issues, was kind of the jurisdiction and how to get that neighborhood input, a way to do that. So I think that that would necessarily be part of the discussion.

>> Councilmember Oliverio: And just to continue in that, I think, again, that's why I offer the idea of the renumbering them. You know we really need to have a discussion on neighborhoods commission on that date. And then there's the other issue of the restructuring process. But if we don't know what we want this to be or not to be, I don't know how we get there. But I think I'm incorporating certainly the report-back from management on the neighborhoods commission and also the comments that Dennis, our City Clerk, made, is that all right, Councilmember Liccardo?

>> Councilmember Liccardo: That's great.

>> Councilmember Oliverio: Is that okay with the seconder?

>> Dennis Hawkins: And Councilmember Oliverio, if I could also mention --

>> Councilmember Oliverio: I see him looking at you.

>> Dennis Hawkins: Part of the report I think also needs to focus on the structural improvements of the entire board and commission system. Because that's a part of the question, as well.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: There's another piece to this too. One of the reasons we gave a longer time line is we didn't want to put pressure on the clerks office and demand more things than they could produce. We had conversations with the clerks office before we put together the time line that we put together. If it can be more aggressive great. But this staff has a lot of things to do, they're under a lot of pressure to meet a lot of deadlines. I don't want to put pressure to create undue burdens on our staff. Whatever we can reasonably get done by

September anti, I'm supportive of that. Fitts not reasonable I hope Dennis will say something so we don't pile too much on him by September 18th. And the other thing I just want to reinforce, I'm concerned about making decisions about the neighborhoods commission, that's really what this item is about. And we need to make sure we make that decision. It sounds like -- and let me clarify this -- on that day could we then vote to make the commission permanent, is that what's at issue that night, can we -- and I think I would like to see that happen after all this discussion. It's no longer just a let's continue it, let's have a vote on making the commission permanent, and in going forward that they will have some security that will be here.

>> Mayor Reed: I'll have to ask the maker of the motion whether or not because the motion is to defer action in front of us until September 18th. And I don't think any of the memos out here talked about making it permanent. We talked about extending it, defer it doing a pilot extension.

>> Councilmember Herrera: Does that preclude us putting out a memo on the 18th to make it permanent?

>> City Attorney Doyle: I think that's direction -- what's contemplated now and what the agenda item is, is to extend the pilot program. If you want us to come back with all in the alternative, make it permanent, we could make it permanent. But I just want to make sure, for Brown Act purposes, we have that option on the table.

>> Councilmember Oliverio: It appears for Brown Act purposes we already know.

>> Mayor Reed: So is that included in your motion?

>> Councilmember Oliverio: I imagine that we will have an item called neighborhoods commission and each councilmember should write their own memo, and just have a big party. No, just teasing. I imagine we can take action, whatever we legally can take action --

>> City Attorney Doyle: I think if what I'm hearing we would make sure the agenda item contemplates either extending the pilot program or making it a longer term, permanent or otherwise.

>> Mayor Reed: All right I'm not going to restate the most complicated motion we've had in a while. We all know what we're talking about and it's September 18th whatever we're talking about. That much, we know. On the motion, all in favor, opposed, none opposed, we'll take this up again on September 18th in the evening. All right, that concluded that item for the moment. Moving us to item 4.1, hearing on appeal of the final environmental impact report for the Newby island sanitary landfill and recycle rezoning project. We have 4.1 and 4.2 that are related. 4.2 is the zoning. I believe we'll have a staff presentation on 4.1 and 4.2 combined, we'll take whatever public testimony on both of those items at the same time, but we will then take separate motions on the two items.

>> Joe Horwedel: Thank you, Mr. Mayor. Joe Horwedel, director of Planning, Building, and Code Enforcement. We are here to discuss the Newby island sanitary landfill, the proposed rezoning and the environmental impact report, for the EIR. I did want to start with an aerial photo of this site. As you can see and from your experience, it is important to note that it is surrounded by a number of open space and industrial type uses. It is out in the bay lands. It is adjacent to the City's water pollution control plant. And industrial uses on the opposite side of Interstate 880. It is a project that we've worked quite hard to do what the environmental issues of having an industrial use like this of a landfill in a wet land area so we have worked really closely with fish and wildlife and the Don Edwards refuge in making sure that the landfill as it expanded over the years would continue or actually improve its relationship with the surrounding bay lands. The issue before us today is a protest of the environmental impact report, the certification by the Planning Commission. The City of Milpitas challenged the EIR for this project and there is a quite lengthy staff report. I apologize for the length but we really wanted to make sure that we addressed the issues that were raised by the City of Milpitas. These are important questions that are raised. We wanted to make sure that we fully analyzed and answered every one of those questions that were raised. An important distinction and it's one that runs all the way through the challenge from the City of Milpitas is related to what is the project, and how does it relate to what is approved or existing today. The proposed project is for a landfill that exists today. It's been out there for about 80 years. This rezoning would allow the landfill to continue to operate by adding about 100 feet to the height of the landfill. It includes recyclable material processing. Again those are a number of those processes exist today out on the property. And then composting

out on the landfill with the materials recovery. So it is an expansion or continuation of existing uses, that are on this site. It is not about adding wholesale new uses to the property itself. These are all the issues that were raised. It's in the staff report. I do want to just note that issue 1 that they had raised is related to the Muni code, our Muni code is quite clear that the Planning Commission has that right to certify EIRs. Issues 2 and 6 raised by Milpitas really focus on what is the existing state versus what is proposed. I think there's quite a bit of confusion on the appellant part around this. This EIR analyzes the project as it exists, and not as it -- the Milpitas thought it might be. Objectives in number 3 are ones that the appellant is concerned that the way the project is described in the EIR unnecessarily constrained what are viable options. We looked at this very closely to ensure that in fact this project description allowed a fair analysis under CEQA. And that all the way through this process we have been very comfortable with how this is described. We do not feel that it unnecessarily eliminated viable options from consideration. And form 5 the issues that are raised are about the setting itself and it is really focused on odor. I think there is no disagreement that there are odors that occur in this area. This is an area that has bay lands. It has landfill, composting operations on this site. There are other landfills in the area. There is also the City's water pollution control plant. All of those from time to time may cause odors. What the issue that is in front of us with this EIR and with the zoning is, are those odors significantly worse than they exist today? Not that are there odors on the property. That's a very important distinction under CEQA. So it is one that why we spent so much time, and the staff report really working through that issue. And that's again going back to lots of words on it, but the word change is the operative word, is this project a change from the existing situation. And our conclusion is there's not a significant change, there is not a significant impact from what exists on the site today. And so the uses proposed with this project are what we analyzed with the EIR. It allows for relocation of those uses within that property. But even with that the applicant is included measures that would prohibit for example the composting operation moving into area D that is the area Moss close to the City of Milpitas. We've included a line that says composting cannot move any closer than that light. We've prohibited numerous uses off the area D parcel so that those would not be adjacent so those would be uses that would be noisy, that would have excessive light or have odors. And so we have really worked with the applicant to minimize any impacts that are greater than exist on the site today. We will continue to go and work through at the permit stage to see if there are things we can do to reduce those even more, but from a CEQA standpoint, we have designed the project to not increase impacts over what we have today. So staff is recommending that the council uphold the Planning

Commission's certification, that you've considered the EIR, conducted the hearing today, and found the EIR in compliance with CEQA, and that we move forward with the planned development zone for approval.

>> Mayor Reed: I have some requests to speak. This is an administrative hearing so we'll allow the appellant an opportunity to go first. We'll allow the appellant to have five minutes, I believe we have representing the appellant we have Daniel de porto. And then we'll take whatever testimony might follow. Allow you five minutes if you want to save some or use it all up, it's up to you.

>> Thank you, Mayor Reed. Members of the council, staff, I appreciate the opportunity here. My name is Daniel de porto, I'm here on behalf of the City of Milpitas. And the city is concerned that the EIR document does not adequately evaluate impacts that may have an effect on nearby residents of the landfill in the City of Milpitas. I note that the staff described the uses on the other side of I guess that's I-880 as industrial. In fact, Milpitas there is a residential community in Milpitas that's immediately on the other side and is very close to the area that's known as the D-shaped parcel on the landfill. The City's concerns with the EIR relate to what we think is a problem with the methodology that they use to evaluate the potential impacts. As staff described, and as the EIR describes, the landfill itself is divided into three distinct areas. One is the landfill proper which is on the West side of the entire project area. The D-shaped parcel is on the east side very close to the residents in Milpitas and the recyclary is also there. We are not as concerned with the recyclery as we are with the D shaped parcel because the current conditions on the D shaped parcel are that there are really no noise or odor generating activities that are occurring there. That portion of the landfill as described in the EIR is currently used for trailer-style offices, employee park and lockers. All of the noise, odor and light and glare-generating activities occur to the West, on the landfill proper. What the authors of the EIR did when they evaluated the impacts that might occur from moving activities around is to lump the D-shaped parcel in with the landfill and conclude that if an activity is occurring on the landfill but is moved to the D-shaped parcel then it's still on the project area. So there is no possibility of any impact. And that, common sense should tell us that that's simply wrong. If you relocate an activity, approximately 2,000 feet closer to a residential area, then there may be impacts on that residential area. Now, we don't know whether in fact there will be impacts because in addition to lumping the D shaped area with the landfill area they concluded that they did not need to -- the EIR authors concluded that they did not need to do any analysis of the

impacts of moving those activities to the D-shaped parcel. Because they were already occurring in the project area. That is in violation of the requirements of CEQA. CEQA is very clear that if you -- that just because an activity is permitted, is allowed under a permit, if you are modifying or changing that activity, then you have to evaluate the impacts of the modification or change to the activity. That's a decision that was issued by the Supreme Court, just last year. It's called communities for a better environment versus south coast air quality management district. And there can be no dispute that just because an activity is permitted under a given permit, if you're changing the nature or modifying the activity in some way you need to evaluate the potential impacts. Here in the EIR, the EIR does not make any attempt to evaluate whether, for example, relocating the gas recovery system from the landfill to the D shaped parcel, much closer to the residents in Milpitas, whether that would have any significant noise impacts. The EIR acknowledges that the gas recovery facility is the largest noise-generating activity on the site, that it is audible for more than 2,000 feet away, and yet, no attempt was made to evaluate those noise impacts. That same flaw, the assumption that simply relocating activities within the project area can have no impacts, infects analyses relating to not only noise but odor and light and glare. So no noise studies were performed on relocating those activities. No light and glare studies were performed. And as a result, since there are no studies in the EIR, the conclusion that there will be no significant impacts is not supported by any substantial evidence in the record. My light is flashing.

>> Mayor Reed: That's because your time is up. That's the way it works.

>> Okay.

>> Mayor Reed: Time runs out, whether you want it to or not.

>> Understood. I'm happy to answer any questions.

>> Mayor Reed: If there are any questions we'll ask you to come back up when we get done with the public testimony. Councilmembers may have some questions.

>> Thank you.

>> Mayor Reed: David Wall.

>> Director Horwedel, are biosolids going to still be used for cover on the height?

>> Mayor Reed: Let's get your two minutes of testimony. We'll get back to questions when we're done.

>> Okay, I'd be concerned first of all in the EIR I didn't see a consideration for concentration of leachate, leachate analysis that might impact our friends in Milpitas. But the main point here that I want to talk about, Mr. Mayor, as chairman of the treatment plant advisory committee, with Vice Mayor Nguyen as member of TPAC and assistant City Manager Shikada, member of TPAC, Councilmember Chu member TPAC, perhaps the odors that have been smelled all along, with reference to complaints about the residual sludge processing, were coming from the landfill operation as was previously discussed by myself for several years at the treatment plant advisory committee meetings. This is important to note, that the main focus and impetus of today's discussion is on odors. And that's what I want to put forth. If biosolids are going to be used, that is very beneficial to Milpitas. Because they do use the sewage treatment plant to the benefit of their cities and citizens. Thank you.

>> Mayor Reed: That concludes the public testimony. Staff do you have any additional comments or responses to questions, et cetera?

>> Joe Horwedel: Thank you, Mr. Mayor. Yes, we did analyze biosolids as a daily cover that are used today and we anticipate would continue to be used. We did look at those as one of the odor sources and wanted to make sure we weren't creating problems there. It was raised about the D-shaped parcel and that staff had not done analysis on numerous uses that might occur on that property. And that staff would go through and respond that we have looked at the noise in light of the existing configuration of the landfill and have set that as a baseline. We have put standards in the zoning that say that within 700 feet of the property, or 750, I forget the exact number, was there is a buffer around the entire landfill for activities that create vibration, noise, light, glare, because of the

impacts potentially to the wildlife in the bay lands we have this buffer restriction that would be in place with this zoning. The D-shaped parcel because of the shape of it and how much of it is surrounded by riparian or the bay lands actually would be within that restriction. So the protections we are building on the entire landfill are doubly so on the D-shaped parcel. We did not see the need to provide a noise analysis of uses that may or may not occur in the future, because we already had protections, performance standards built into it. If at some point there is a proposal to put uses on the property, we would go through, through the planned development permit process, do the specific noise and light, glare, vibration type analysis at that point to ensure that in fact it complies with that standard. But we think the standards built into the EIR, into the zoning are more than adequate to protect the environment.

>> Mayor Reed: I had a question. There's a letter, June 6th, 2012, from the City of Milpitas to the Planning Commission. In reading the letter, it occurs to me that the California Environmental Quality Act is quite often used as leverage to get something. And it appears that Milpitas wants something with regard to odor control. And so I'm curious if the staff knows what is it that they want that's brought them here? And what about this zoning does anything to deal with the odor issues?

>> Joe Horwedel: Mr. Mayor, you are correct, is that CEQA is many times used as a leverage point in negotiations between parties or as a weapon to stop activities. As a part of the odor issue it is one that I think Milpitas has been very concerted over the years. They actually have adopted an odor strategy that the local enforcement agency staff have worked to implement and allied the landfill operator, has been working to implement on the site. I do not know specifically what more they are looking for that there are discussions I understand between the operator of the landfill and the City of Milpitas. We have not heard the contents of those discussions. As we've not been in those meetings. But we have continued to look at the operation of the facility to try and deal with the odor issues that are within our control, our regulatory control. So I guess that's the best I could answer to that.

>> Mayor Reed: Okay. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just wanted to move to approve the staff recommendation. And I also wanted to state that I think the City of San José, we want to assure that the City of Milpitas, that we know odor come from different -- many different sources. And we are conducting an odor study that will work with Milpitas and with all stakeholders. Thank you.

>> Mayor Reed: Okay, we have a motion to approve the staff's recommendation. I just want to be clear that the recommendation, the staff recommendation is in the memorandum, consisting of part A, holding a hearing which we've just done, part B upholding the Planning Commission's certification and adopting a resolution to certify one two three four items including reading and considering the final EIR, findings that the final EIR was completed in compliance with CEQA, the final EIR reflects the independent judgment and analysis of the city, and the director of planning, building and code enforcement shall transmit copies, et cetera, on that. So that is the staff recommendation, so that is contemplated by the motion. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Just had a question for the appellant's attorney. Sir, would you be willing to -- thank you. I just want owed to make sure I understand your argument clearly. I think I heard you say that simply clearing in the aggregate a collection of uses on a site of land is not sufficient, if you were going to rearrange the location of those uses on the site in a way that may cause new impacts, is that your assertion?

>> That's close.

>> Councilmember Liccardo: All right.

>> The point that I was making had to do with what the court said about whether you need to do environmental review, when you're modifying operations or activities on a site. And the activities are already operating under a permit. And what the court said is that it doesn't matter if the proposed activities, that you know, you want to implement, would fall within the permit. The court said you still have to identify and evaluate what impacts may result from the changes that you're going to implement. Now, it could turn out that you could evaluate those and find that they fall within the existing permit, and there would be no significant additional impacts. In which case,

then, you know, a project approval would be in order. But you still need to take that step of doing the analysis, of the potential impacts, from the changed activities.

>> Councilmember Liccardo: And your assertion then is the EIR document is inadequate because we did not identify impacts or assess impacts of the movement of uses within the site.

>> Yes, my assertion is that there are proposals to relocate activities on the site, and the conclusion that there would be no significant impact from the relocation of those activities is not based on any analysis. It's based on the assumption that since they're already permitted, there's no need to do an analysis.

>> Councilmember Liccardo: And specifically, the sensitive receptors you say are the residents in Milpitas that are now uniquely impacted by this relocation.

>> I'm saying there is a potential for this, yes.

>> Councilmember Liccardo: And sir, thank you for being here. If you could stand here for a moment longer.

>> Sure sure.

>> Councilmember Liccardo: I just want to ask Renee or anybody with the city. If you could just respond very specifically to that.

>> Renee Gurza: Certainly. Renee Gurza, with the San José city attorney's office. Because the entire D-shaped parcel is within area that is within 700 feet of endangered species habitat, this rezoning does not allow new sources of noise or vibration to be located on that part of the Newby Island site. So the speaker is correct that there may be some relocation of uses but not onto the D shaped parcel because of the additional noise, light, glare, if that is proposed it will require additional environmental review because it is within the area, the 700 foot

buffer of where we have endangered species habitat. So it may be that it didn't jump out at Milpitas, because it's within the biological mitigations. But there is a prohibition.

>> Councilmember Liccardo: Okay. Thank you, Renee. And also to be clear, you're not saying, sir, that if you got a smokestack that emits 100 pounds of emissions a day, and you're seeking an EIR to emit 200 pounds, then in that EIR you have to go back and assess the impact of the original 100 pounds and clear that as well? You're not saying we have to go back and look at the --

>> I'm not sure that hypothetical is what I'm saying.

>> Councilmember Liccardo: Okay.

>> If I could put it a different way.

>> Councilmember Liccardo: I just wanted to be sure because clearly I hear the city saying look, you're talking about impacts of existing conditions which is not the subject of this EIR.

>> Well if I could put your hypothetical different.

>> Councilmember Liccardo: Yeah.

>> I would say using the smokestack example, if you had a smokestack that was permitted to emit 100 pounds a day but you were emitting 50 pounds a day, and then you wanted to increase that to 100 pounds a day, you would still need to do an EIR. And that is almost precisely what the CBE versus south coast air quality management case said.

>> Councilmember Liccardo: Even if you already have clearance?

>> Under the law.

>> Renee Gurza: Just a quick clarification.

>> Sure.

>> Renee Gurza: The case that the speaker is referring to is an analysis, what is the baseline against which you evaluate the impacts. If you have a permit to emit 100 pounds but you are only emitting 50, that case stands for the proposition that when you're analyzing the delta, the delta needs to be from 50 not 100. So it's a base line case.

>> Councilmember Liccardo: Okay, thank you.

>> I would agree completely, and from our view, the baseline with respect to activities on the D shaped parcel is the current status of that parcel which is no -- no noise, odor or light generating activities. It's basically used for parking and office. And the current proposal, I understand that you know, there may be biological mitigation measures in place, that arguably could preclude moving uses there. But nonetheless, the proposal calls for among other things to relocate the gas recovery system to the D shaped parcel. It also calls for -- or it would permit, I should say, the use -- the establishment of a solid waste transfer station on the recycler which again is very close to the residents. No analysis was done of those impacts, it was deferred.

>> Councilmember Liccardo: Okay.

>> Renee Gurza: If you would like a response?

>> Councilmember Liccardo: Yes.

>> Renee Gurza: Our response under CEQA is to make sure you know what could reasonably happen, what's reasonably foreseeable, yes, there is this proposed project, but the scope of the environmental clearance also clearly draws the line in the sand or this dump in this particular case, because it says although -- we are disclosing that there are a variety of uses that occur on the site and that they could be relocated. However, with regard to the D-shaped parcel because I know the City of Milpitas is concerned about that area, that particular area, although we've acknowledged that uses could move around, that area is within the 700 foot buffer of endangered species habitat. So this environmental document does not clear additional significant noises, additional significant vibrations. And I think it, again, the applicants can speak to this. But the applicant, in addition, has offered to draw a line past which composting will not occur again, going to the odor issue. So that's a voluntary submittal by the applicant. But I think the speaker would be raising a concern, were it -- but for the fact that we've e-actually precluded the activities that he's concerned about.

>> Councilmember Liccardo: Right, okay, thank you very much. Thank you.

>> Mayor Reed: Anything else from the staff on this? We do have a motion to approve. Now, this is the motion on 4.1. We'll come back for another motion on 4.2 if this motion passes. I'm going to support the motion. I think staff's done a good job of analyzing this. It's clear there's some existing operation issues that have to be worked out with the operator and the City of Milpitas and are I think they are working on that and I'm confident that they'll continue to make progress on it. So I'm going to support the motion. On the motion, all in favor? Opposed? We have none opposed so the motion carries. Councilmember Chu. Would you like to consider 4.2 motion?

>> Councilmember Chu: Yes, I'd like to move the approval of the proposed PD zoning for Newby island and the recovery as recommended by the staff and the Planning Commission.

>> Second.

>> Mayor Reed: All right we have a motion to approve the rezoning part of this. I have no additional requests to speak. We took all of that so it's just about the council. On the motion, all in favor? Opposed? Motion is approved. None opposed.

>> Joe Horwedel: Mr. Mayor, just before these two fine capable staff are leaving here this really was a tremendous amount of work. The applicant and his team did a tremendous amount. But Sylvia and Renee for pulling together the staff reports and John Davidson from our environmental team was really a crush of work to get this done and it was really complicated to walk through but I really wanted to recognize them. So thank you.

>> Mayor Reed: Our next item is 4.3, a zoning code amendment for certified farmers' markets.

>> Joe Horwedel: Thank you, Mr. Mayor. This is one of the ideas coming out of the priority setting sessions and part of our goal of how to complement the general plan by bringing fresh foods into our neighborhoods by getting out of the way of bringing fresh foods into the neighborhoods. So staff is recommending approval of this.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to thank an awful lot of folks who have been involved in this starting with the health trust, Fred Ferrera and Todd Hansen and Rachel Popluck, and I know it has taken a lot of time from our staff planning and parks and so I appreciate all the time Joe from your team. First five I want to thank Laura Buso, the CFMA, and working partnerships all for pushing forward, and we always appreciate the grant money that helps us move these initiatives forward because otherwise they would be sitting in a very, very long line indeed. I just wanted to pass along thank you and thank you to my colleagues Councilmember Kalra and Campos also for pushing, as well.

>> Mayor Reed: Vice Mayor Nguyen.

>> Vice Mayor Nguyen: Yes, just also wanted to chime in and also thank staff and thank my colleagues for the memo. Obviously, this is a very important issue. I'm just really glad to see that that people who have electronic benefit cards, using WIC, have access to healthier foods. I really believe that families on a budget cannot be left out of our plan for a healthier city. And so for the first time I just feel like you know we're doing something great and we're incorporating people that traditionally would not have access to healthier food and produce, so thank you for all the work.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Also wanted to repeat the accolades that Councilmember Liccardo and Vice Mayor Nguyen had given. I think one of the things when the health trust and first five and the health department were looking at is, you know, they were looking at districts, council districts like 5, 3, 7 and you know every council district has these food deserts. And when you looked at some of the corner markets that were for the most part liquor stores, really, becoming a venue for folks to try to just you know buy cheap, fast food, it tells you that we really need to do something to bring in choices. Fresh choices and healthy choices. And I think that we've gone a long way to accomplish that. So I also want to thank staff for really putting a lot of thought into it and putting together a good ordinance. With that, I would like to move the memo authored by Councilmember Liccardo, Kalra and myself.

>> Mayor Reed: All right, we have a motion on the floor. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and just want to joy in the praise of many of the community partners and the staff in bringing this forward. I want to thank councilmembers Campos, Liccardo and the other councilmembers that have expressed support. We all know how important this is especially because of so much of our community has already developed out and it's very challenging as we all know to bring grocery stores and fresh foods into so many neighborhoods, particularly the food deserts that Councilmember Campos referred to, when oftentimes their only options are, are the corner markets, the liquor stores, I think now you find that some of them put out a banana or two that say they are full service. We all know the reality of them. If we have to bring the

food to them, if we have to bring the mobile farmer markets and bring them into the communities let's at least remove as many of the hurdles as possible. I'm glad we're moving this process forward and I think the community is going to be fully supportive of these goals in the long run, thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. My appreciation to all those involved for pushing this issue and to my colleagues as well. I had a question looking at the staff report, there was -- the intent was to streamline and reduce the fees to get to where we want to get to on this issue. I guess my question is did we also look at the larger scale full farmers markets, looking at the cost and time it would take, if our ultimate goal is to bring fresh foods to whether it's the food deserts or our residents did we consider looking at that as well?

>> Joe Horwedel: Councilmember Rocha, the ordinance deals with two scales, there is a small scale which allows several vendors and then it goes up to 10,000 square foot facility. To come out so for the small scale we just said they're allowed by right. There is no approvals required by staff. For the larger ones that go up to 10,000 square feet we recognize that the proximity is residential, and the scale of this in existing shopping center for example, we did that with the special use permit. It is a pretty minor permit that we do through planning, it doesn't go to the Planning Commission or come to council and it's one of the things that we will watch and see kind of do we peel that piece back? The one thing we did not touch is the current, essentially if you wanted to be a flea market a large scale operation or you didn't want to meet the definition of a certified farmers market, that still has a conditional use permit piece tied to it. That's one that I think is worth looking at a little bit more in the future. But we wanted to get this piece done and out on the street. The goal is to get small scale across city rather than just a few larger ones.

>> Councilmember Rocha: So the threshold of voters if I understand correctly for an SUP or C.U.P. is 10,000?

>> Joe Horwedel: If you go above 10,000 you would be in a conditional use permit.

>> Councilmember Rocha: Are there any above 10,000? So we may not have any operators of --

>> Joe Horwedel: I'm kind of thinking whether the San Pedro one would be big enough to cross that scale. But those are in the public right-of-way so those are also in a different regulatory structure.

>> Councilmember Rocha: Okay. The other place I was going is also looking at the cost of these permits from 1400 to 2400 and to use a pun if we are really interested in pushing this issue as a city are we willing to eat some of those fees ourselves, was that ever part of the analysis?

>> Joe Horwedel: We did not put that in as part of our analysis. It would be essentially reallocating our General Fund dollars from another part of the organization to do that. That may be something that may be a prudent investment. We did not bring that forward.

>> Councilmember Rocha: Because thinking for myself to that point, the cost in the overall city fund General Fund budget a small hit if this precludes some folks from being involved from I'm assuming these costs get passed right on to the vendors and the folks buying the food. So if we're not taking it seriously if we want to be aggressive I guess in this, that might be something we consider in the future.

>> Joe Horwedel: That is what we thought. We thought about why we defined this small category, that was part of our thought, was how to go through and avoid the cost, either out of pocket for them as well as the cost to prepare an application. We said where are the places where we would have very low risk or moderate risk and let's go through and allow those by rites right and recognize we may get some complaints but that way we don't get into the cost recovery. Our goal it allows it really to incubate and let the smaller ones which are probably more sensitive to price to allow them to go try out, with really low risk, just go find a property owner that is willing to let you there and they can get up and running. Once they get successful and get bigger, then come talk to us about a special use permit was our strategy.

>> Councilmember Rocha: Thank you, great staff work. Do you think it would be fruitful for us sorry again a good outcome for us to have maybe a report on this in a year to see how some of this has worked or do you think we shouldn't have any issue on that and not necessary because I don't want to create any more staff work.

>> Joe Horwedel: Yeah, this is one where the partnership with the health trust, and a couple of the councilmembers noted them, they have been a very valuable partner for our staff in doing this work and have really been tracking this. So I think it is one where I would want to talk with them about I'm assuming they're going to be working through with the county who certifies this in tracking what's going on. We could report back jointly what's going on as opposed to trying to count them all ourselves.

>> Councilmember Rocha: Maybe a better place would be the NSC committee or something. If I might ask the maker of the motion and the seconder if they would be interested in having referral potentially to committee to get a status report in a year, assuming there's a necessity for it again. I'm not going to suggest staff make that extra work if it's not necessary. Thank you.

>> Councilmember Campos: Yes, we could take your recommendation Councilmember Rocha.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I wanted to thank staff for their excellent work and how important it is to have these smaller markets available. I know Pacific coast market which operates one in district 8 is wildly successful. But we could use smaller plots land for people to be able to do this and provide vegetables community to come together and work together. So eat healthy and then be able to work together as a community so I heartily support this, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. This has really come full circle for me. Because I remember as a little girl being at my grandmother's house, the produce truck would come by and everybody would run out of their houses to get fresh fruits and vegetables. I would also like to recognize the attendance of Dr. Fensterscheib here. You take this area very seriously and I want to thank his involvement in trying to get the county on the same wave length as well. So thank you, to all of you for working so hard to get together.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: As Councilmember Pyle noted Dr. Fensterscheib in the audience how often the health trust has helped to fund city staff to implement those ordinances. But do you have anything up your sleeve that you will be approaching the city about for any initiatives and you can walk a little faster. Trying to speak slow. But I'll look forward to any comments you may have. I know you have a healthy agenda there at the county. (inaudible).

>> Thank you, Councilmember Oliverio. Who is my own personal councilmember. I'd like to acknowledge that. And I did put in a card to speak but since --

>> Councilmember Oliverio: Oh I'm sorry. I forgot.

>> Maybe this is my minute, I don't know.

>> Councilmember Oliverio: I apologize Mayor Reed.

>> Mayor Reed: Depends how long your answer is.

>> Uh oh, I'll put in my other bit of information. You know farmers markets are a really important part of our overall strategy and there will be other strategies that have to do with food carts and other things that the health trust will probably be talking about. But as you know the funding that we've been able to provide the health trusts and

others in this area has come from the affordable care act. So for those that wonder where that money goes this is one of those areas that we've been able to take money and actually funnel it through and bring it to fruition here at this council meeting and hopefully expand the small farmers markets. And what I see is instead of as many fast food restaurants as we have, we will have fast tracks to healthier foods. Especially fruits and vegetables for our community. I think that's the key thing. And the barriers to make sure that the food stamps or EBT makes it more accessible to low-income people I think is critical. And was mentioned this is something that is very cohesive to neighborhoods. It helps build neighborhoods, and cohesion that puts more eyes on the street. So there's a safety issue. I have in my own area we do have a small farmers market in the rose garden area and it really brings neighbors together. So I think it's a win win situation for everyone in the community. And again I would just urge the council to pass this and I would like to publicly thank the health trust and all of those members of the San José city staff that have worked so hard to bring this forth to you today, so thank you.

>> Mayor Reed: I'd like to take the rest of the public testimony now, please come on down when I call your name. David Wall, John silvera Pam Gudino.

>> For disclosure purposes I'm licensed by the city to sell vegetables and farm products from my property. I don't, because I just like to give it away to be honest with you. I support what's going on here. But I do have some problems from a procedural standpoint. These nonprofits are commercial entities. And you are going to enact governmental sanctions to allow these commercial entities to operate. But they are discriminatory per se. Because what if a girl scout troop or a group of old folks that have property that want to sell vegetables but don't want or don't have the ability to deal with these food stamp requirements so they are precluded from participation in a government-sponsored event? So I think that that should be addressed. Also, not saying that these commercial entities that are listed as going to be participants as vendors, are a Trojan horse, so to speak, coming into neighborhoods. But they can be. And also can be an attractive nuisance because of the clientele that may come in and cause blight or disruption of the public peace. To which the city doesn't have the resources to combat. On a lighter note, I looked at some of the facilities that are permitted. And two of them are mortuaries and cemeteries. I kind of think that's kind of humorous because selling healthy foods at those places are a little too late to the folks that are going to be there permanently. Thank you.

>> Mayor Reed: John silvera, Pam Gudino, Irma Gutierrez, figure out the order when you get here.

>> Hi, I'm Pam Gudino, I'm here from Selma Mayfair. The others that we're work being with work with hundreds of families each year to promote good nutrition but as I heard a lot of speakers talking about we know the struggle when there's way more fast food restaurants and liquor stores than places to get healthy food in their neighborhood. So we just want to support the efforts that are happening here to make farmers markets more available and accessible in our communities. I think it's really important to change the dynamic so I came to help these women speak out in favor of their effort to increase the accessibility and availability of the markets.

>> Mayor Reed: Irma Gutierrez, about Mary.

>> [In Spanish]

>> I was going to translate for her. For Irma.

>> Mayor Reed: Yes.

>> (in Spanish) says she wants to make sure each and every one of you understands the importance of fruits and vegetables for her and her family. (in Spanish).

>> So we know we all know the importance of fruits and vegetables the nutrients the invite minutes how important they are for life. We neat farmers markets, more of them, more fruits and vegetables available if we want to make the changes in our families and our communities to have healthy libels, we need these changes to start now. (spanish) so in our community Irma is a volunteer at Veggielution, where they have accessing to organic fruits and vegetables. That is a family so her children fall in love with fruits and vegetables. (spanish).

>> Mayor Reed: Sorry your time is up but let's have the translakes please.

>> The point is that for a lot of the families, the families in our community don't have a lot of income and fresh fruits and veg fabulous are placed out of reach. EBT cards making farmers markets EBT friendly because for a lot of people that is the only way that they can buy the food that they need for their families. And so she thinks that's an important part of the change that has to happen.

>> Thank you.

>> Mayor Reed: Maria Teresa barcenas, Nojelia bustamente.

>> Good afternoon, councilmembers, my name is we are the residents of Mayfair. I am making a lot of healthy change in my family. And now we are buying organic and fresh fruits and vegetables in the farmers markets. My daughters like to go to veggie Lutioon at prush mark. Opt I started to buy in another new market Mayfair community centers and my dawshtsz start to eat more fruits and vegetables that we didn't try before. People in our community are low income and they -- it will be great that these kinds of farmers markets September the EBT because they have the same chance that I have to buy them. Thank you.

>> Mayor Reed: Noralia Bustamenta.

>> Hi, my name is N orvegtsralia Bustamate, thank you for listening. Not only listen to me and what the community needs. I live here for ten years. I have my daughter, she is two and a half years, and I like to eat fresh food. But for me, it is very difficult. Not only for me, for all community. It is very expensive. We buy fresh foot. And the food stamp I asking you if you can put more food, farmers they can sell fresh food for us and be more easy for us to do it. Sometimes the people can do the farmers in the house but we live in apartments. We don't have the place to put plants in the apartments. So ask you if you can do something for us. Thank you.

>> Mayor Reed: Avo Macdesian, Frederick Ferer, trout.

>> Honorable mayor, members of the city council. I'm Avo Macdesian Santa Clara County. And we're also a partner in the Healthy Food Campaign for Healthy Food San José. According to the Public Health department one in three young children under the age of five are either overweight or obese in our county and two primary causes for that number are -- causes for that number are we are here today to thank you for bringing this issue up to address at least the accessibility and we know with accessibility comes consumption. We're also happy to have members of our community here today in which first five was a partner in making sure that we held 15 community meetings and had over 700 residents just like the ones behind me come to these meetings and express overwhelming support for farmers markets in their neighborhoods. Again I want to commend city staff who we worked closely with on this ordinance and this amendment and urge you all to vote for approval. Thank you.

>> Mayor Reed: Frederick Ferer, trout.

>> Good afternoon, Mayor Reed and members of the council. My name is Frederick Ferer, I'm the CEO of the health trust and I'm delighted to come before you today to address the ordinance you're following. The campaign for healthy food San José over the last nine months has worked open really to do three things. One to reduce the barriers, not certified farmers markets, second to increase community gardens and third to bring mobile produce vendors targeted for fresh carts program. We want to applaud and thank the Department of Planning, Building, and Code Enforcement for their work this last nine months which significantly changed the permitting process to farmers markets. These changes that are before you today were going to do the following things. They're going to reduce the cost and process barriers to bringing new farmers markets into San José by creating a new category of the small certified farmers markets. We also going to make farmers markets more accessible and more affordable to residents in need of healthy food by making sure that they have Cal Fresh and WIC and ABT forms to be able to make payment. The second part of the campaign though is to increase the healthy food access through community gardens. The memo that was submitted to you by Parks, Recreation, and Neighborhood Services is grant period. We're very disappointed in the PRNS memo in that we will -- and will continue to work with them but there is a deadline of September 30th and we're going to work with them to get the following things done which they committed to do in this -- during this grant. And those things that we want to be able to bring before you as

well are first, the draft of model joint agreement use agreements to allow residents to use access publicly owned land for community guarantee purposes such as the vegetation that you all new parks, third, allow on site sale of produce from shared plot community gardens and fourth to develop the application and permit guidelines for farmers markets to operate on city property including regional parks and community center sites. These are critical part of this whole strategy around access.

>> Mayor Reed: Sorry, your time is up. Our last speaker is trout.

>> I'm really glad you brought this up today and I agree with all the speakers. And you know anything we can do to help organic farmers is excellent. And -- but they missed the most important point, nobody mentioned that Monsanto owns 90% of the corn, genetically seeds of deexception I forget the name, seeds of deception and it gets into how the genetically modified corn is really poison and how Monsanto is suing the organic farmers, you know because they want a monopoly. As David Rockefeller put it, capitalism, how did he put it, competition is sin. So that's a good thing. Anything we can do to help these health food folks is fantastic. You know Alex Jones and Stan Monteth talk about this very long radioliberty.com. Now, a minute left. How can I pack this into one minute? Okay some capitalism is excellent, it's good, okay? Monopoly is bad, it's evil, it's wicked. And Monsanto wants a monopoly. This, if you study this genetically modified corn they tout it as it's really good it's healthy because it kills the insects. It does kill the insects but what do you think it does to you? The monarch butterflies died, if you study this book I'm not lying, they're eating this stuff, it's poison, it is part of a conspiracy, not everything is a conspiracy but there is really a conspiracy of these monopolies particularly Monsanto that wants to reduce the population and kill people and we don't want to think about that. I do encourage you to help all these organic farmers to do everything we can to kick the butt of Monsanto. Thank you.

>> Mayor Reed: Ross Signorino do you want to speak?

>> Yes I would like to Mr. Mayor, thank you very much for this opportunity. I think one of the things that should be stressed here that it doesn't take much land in your backyard to raise your own garden and have fresh vegetables at all times. Not just farmers markets. I think farmers markets are good. I frequent them myself. But nonetheless

some your backyard, take advantage of your backyard. Even if you don't have much land can you grow totals and different fruits and vegetables. Yes, fruits too, oranges. In a pot. So it doesn't take too much. I think this should be stressed too, that people could do this on their own. Now, on the subject of Monsanto, genetically altered food. From what I understand, all this time it's been going on for years, and they find scientists, there's nothing wrong with it. Because we've been using and eating genetically modified food if you will for a long time. We're not getting into any kind of disaster. It is to preserve food for as long as we come. With the world population as it's growing these things have to be looked at and how to give food a much longer shelf life. Thank you all vex. And Bon Appetit.

>> Mayor Reed: That concludes public testimony. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I just wanted to be clear on the friendly amendment from Councilmember Rocha, that would be the neighborhood services commission that I would like to see the recurring item for review. And then the other one was just the comment, regarding the request from Fred. In the memo, item 2 in the memo, direct staff to continue to work with the health trust. I would expect staff -- Fred had listed four items that really, really make sense. That's the gist and direction that item 2 was referring to, that we really want to make every possible opportunity to make fruit and vegetables and other farm items available to youth. I think he pointed out we have a great model there with Veggilution. If we could have more around the city that would be awesome. As well as having the ability for folks at community gardens to be able to sell from there. You know I know we need to flesh that out but if you think bit, it makes sense. So those are my comments. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Actually I was hoping I could ask Fred if he would be willing to come down and help clarify. Because I know we've had some conversation over the last week and a half and we checked with angel Rios and my understanding staff was going to come forward this week with a memorandum, specifically recognizing commitments that had previously been made with the health trust along the lines of each

of these initiatives. I'm wondering when you are referring to being disappointed in the staff memo, are you referring to an earlier memo or the memo that has just come out?

>> The memo that you just sent to the mayor this week which is the second draft of the memo.

>> Councilmember Liccardo: Okay, I don't think I've seen that. I'm a bit in the dark. Perhaps we can be helped to understand. Because we were certainly inclined to write something ourselves but were assured there would be something coming from staff so we declined. Thank you, Julia.

>> Julie Edmonds-Mares: Julie Edmonds-Mares does detail what we have done to date and our future intentions and we're still working on that at the staff mom.

>> The staff memo, e-mail that was sent to us said that that was sent to the mayor and council. We had no knowledge that that was not sent.

>> Councilmember Liccardo: Strong language that will help support our mutual goals. Is that correct Julie?

>> Julie Edmonds-Mares: Participate with the health trust already and addition actions we'll take in the near future.

>> Councilmember Liccardo: If you could yownl and therefore we could be on the same page, that would be great.

>> Julie Edmonds-Mares: Sure. The memorandum from planning also detailed the community outreach that Parks, Recreation, and Neighborhood Services partnered with planning and with the health trust to really increase community awareness about access to healthy foods. And in the memorandum itself and sorry Joe do you have the page? It talks about the public outreach that's already been accomplished. In addition to that the mayor and council through this last budget cycle also funded an additional half of an FTE --

>> Councilmember Liccardo: Julie I'm sorry to interrupt. I'm trying to be more specific onsite sale of produce from community gardens those very specific steps are we likely to see a memorandum that's supportive, or not, of those objectives that Fred described?

>> Julie Edmonds-Mares: Okay I was trying to detail the agreement that the Parks, Recreation, and Neighborhood Services had entered into with the health trust, those four elements, I was naming the two and then getting down to the fourth. In terms of community gardens themselves, what we've been partnering with the health trust to do and you're familiar with this, is create a community mayor and council has a lot of priorities. And challenges, fiscal challenges light now and so we're trying to develop a model and we're piloting two different areas for that model so that there would be no impact on the General Fund to expand community gardens in the city. The two models are the Vegolution model, very effective at Prusch, communal gardens where at Prusch we've gone from one acre to now six acres with Vegolution. The partnership we're working on the Communiversity, smtion. Which would have no create a model pilot it at these two sites and then create a framework so that we could expand gardens but in a fiscally responsible way in the future.

>> Councilmember Liccardo: Okay. You know, I know I'm going to be in the weeds on this one. Because I really have specific questions about these four points and perhaps we can take it off line. And that would probably be appropriate so I think we'll move on and hopefully in the coming days we'll all get to a result we can strongly support.

>> The only other thing I would say Councilmember Liccardo is that we understand at the health trust that once these four things are done, in other words we get the templates we get the glieps implementation steps that are going to be taken by PRNS also planning. Staffing charges again coming up and the health trust is willing to look at that and that's why we need to continue to move forward. We don't look at this as something that is going to cost the city. We understand that it's kind of a parameter that we've been looking at all this work with but we need this.

>> Councilmember Liccardo: Thank you from whoop appreciate your initiative and we also appreciate your money too.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. Joe, Julie, the comments, there seems like there's a slight disconnect, this is what we need to get done, this is what we have completed so far, this is what we're trying to do, and what the council voted on and how much are completed. Couple of questions. There are initiatives to flip implement on the remaining actions are those fully funded for staff time?

>> Julie Edmonds-Mares: In terms of the planning components, what's funded, Parks, Recreation, and Neighborhood Services received a grant for \$25,000 in addition to the planning grant of \$23,000. And so what's funded are the additional steps that we have outlined earlier. But as Fred mentioned in order to actually execute additional implementation components, those are not funded. We would have to come back through the budget process which would be our intent to do so. In terms of community gardens, that would also not just be the operating budget but it would be the capital budget as well.

>> Joe Horwedel: And from planning standpoint we do have a grant remaining with the health trust for the green cart program so we're looking to see if we could finish the ordinances before the end of September around that piece of it. And I guess as kind of an ancillary note not tied to what they have been funding but the goals, is looking at private development, the opportunities for community gardens in new residential projects, of how to actually allow, as you heard from some of the speakers that are living in multifamily housing have opportunities for community gardens right within the residential area or development.

>> Councilmember Oliverio: And moving towards the September 12th date as staff strives to do that are you putting something else off to the side where you cleared based on the original council priority?

>> Joe Horwedel: That was a discussion we were having internal this morning of whether we could go through and hit that date for the green cart, or without disrupting something else, or we just let it pass and deal with at some point in the future.

>> Councilmember Oliverio: I clearly support this. I know it's going to be a unanimous vote, all the good accolades people brought out but I just want to be cognizant that we don't disrupt something that could be a wrch generating item. Thank you are thank you so much for your time.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: You know, I think Joe you did mention one of the things I wanted to remind you of. And that is, in the memo it did -- you know we did give direction that if you need to come back for budgetary action, that you know, that's the direction we certainly want you to take. But I also want to remind you that there are a lot of community gardens in existence right now in this city, where to me, it doesn't seem like it would take that much to implement some of the recommendations that were -- that were given by the health trust. I think we need to stop tripping over ourselves, and if something's easy, let's do it. Those are quick wins. And it's not -- we shouldn't even look at them as wins but it's something that our community is starving for. Sorry for the pun. But we really should you know take action, as soon as we can. So thank you.

>> Mayor Reed: I think that concludes the council discussion. We have a motion, as has been modified. On the motion, all in favor? Opposed? None opposed, motion is approved. Our next item would be 6.1, report on bids and award of contract for 5519-Montague expressway widening project.

>> Councilmember Chu: Motion to approve.

>> Second.

>> Mayor Reed: Motion by Councilmember Chu to proof the staff recommendation. No comments from the public. Councilmember Campos.

>> Councilmember Campos: We've had a lot of discussion about a competitive bidding process. Again a Southern California contractor won out. And we really need to look at how we award points as folks are bidding. Because those tax dollars that could be recycled here, are going to Southern California. Those are my comments. Thank you.

>> Mayor Reed: We have a motion. On that motion, all in favor? Opposed? None opposed, motion is approved. Item 7.1, priorities agreement to provide temporary staffing at the water pollution control plant. Kerrie Romanow.

>> Kerrie Romanow: Good afternoon, Kerrie Romanow, acting director of environment services. To delegate authority to the City Manager to negotiate with other firms to procure temporary staffing for plant operators and mechanics. Any agreement for these temporary services would be brought to staff for approval. We know there are larger issues to plant staffing and these will be discussed as part of audit discussions in the next few weeks. We are bringing this item on temporary staffing ahead of those to address our current staffing needs. This is part of a contingency plan and is no way to be a path to outsourcing city and typically do pay a premium for those sflts. So with that I'll answer any questions you may have.

>> Mayor Reed: We have some requests from the public to speak. At this point don't havefully questions for you. So let's take the public testimony at this time. David Wall. Jeff Kirby, Dan Rodriguez.

>> Before we get going I would like to give special accolade to the office of the City Auditor and all the auditors that work for Sharon Erickson for an outstanding audit of the environmental services department as well as for the Mercury News for running a story that should shock everybody about the substandard performance at the environmental services department that has resulted in the action you are forced and compelled to act today. From my point of view, managers in the city structure have an affirmative duty to know their jobs. And

succession planning from my perspective is so simplistic as to not require much thought. But then again, I have to remember, that I'm a little bit different than the people in positions of responsibility around here. So then we look at the situation that you are in today. You're looking for a maximum of \$3 million appropriation for these nine positions. When in reality, it's \$2,059,560, for fiscal year 2012-2013, and \$2,246,400 for fiscal year 2013-2014. Now, the fund balances are there because of another egregious substandard management practice and that was raising sewer rates for your capital improvement project, and sitting on them. Finally, you can use these rates to transfer to operational benefits, and that's what's happening today. I'm very dissatisfied with this. I think our City Manager owes apology to the taxpayers, because this is \$4 million that we shouldn't have to pay. And I think that there's some people at ESD should lose their jobs very quickly, thank you.

>> Mayor Reed: Jeff Kirby, Dan Rodriguez.

>> Good afternoon, members of the San José city council. I'm a 30 years. Behind me stands a man named Dan Rodriguez. He's a business manager business agent for our local. I personally have worked at the sewage treatment plant as a -- well what's called a memorandum of understanding. Local 332 mass -- is in a position to provide members to working members electricians and even other classifications to your city. In fact I've worked there twice, both Ken Korpi one of your foremen and a great guy, AC worthy, helping keep your plant running. It's a beautiful plant in its way. I know most people don't think of treatment plants as a beautiful places but that's the smell of money. \$3 million, I don't know money. That's an enormous amount of funds. But I do know this, that the reason you guys can't keep staff there is you won't pay the kind of money that other places pay. That for a construction electrician we get our jobs out of the union haul but for maintenance electrician they shop actually a city staffer to take me out from take me from the union hall to actually negotiate site agreements and to me it looks like all it amounts to is a way of low balling guys. suspect it ends up in some business's profit margin, be it Telstar or anyone else. We have got guys building a power plant out there me I'm about average but these guys the knowledge in their hands is incredible. We've also put together one heck of an instrumentation program. There is a gentleman by the name of Mike Goram who has been working on this for years. In my pocket is an A card that qualifies me B level cards these guys while they're not engineers they can take it's going to be technical here but can loop tune and do some things that keep a plant rubbing.

>> Mayor Reed: Sorry, your time is up. Hear from Dan Rodriguez next.

>> Good afternoon, Mr. Mayor and city council. My name is Dan Roghtsdz I'm first of all a citizen of San José and secondly a business representative for the electrician who work in San José. And another 2,000 members or so who work in Santa Clara County, as industrial commercial electricians. I'd like to say a few words regarding this issue. First, I think I'm totally against the motion. I mean \$130 an hour for electrician for a contractor to pay an electrician? Where is the outrage on that? We're outraged raged we're paying our people this the \$40 an hour range. You don't have any problem paying \$130 an hour, \$260,000 a year for an electrician to a contractor and that money is going where? Not in San José but to Concord. We -- we are taking the money from the electricians here, sending it to Concord. And this is just the beginning. First it was the inspectors, you lost them you can't get any of those guys back. Now you're cutting the wages of all the skilled employees. You're going to have a hard time getting them back. The electricians who left the City of San José are not coming back. They were some of your best most skilled workers out there, you chose to cut their wages by 10%. Now you're saying we're underpaying them by 10% who would have thought? We just cut their wages by that much. This -- these cuts that you made for the electricians is what cost -- causes this problem. It's good to know that the electricians who work there at the plant are worth over \$100 an hour. You might want to let them know by giving them that much money and looking to retain. If you are looking to hire electricians that Jeff Kirby said before I was here, I do represent over 2,000 commercial and industrial electricians. Many of them built the plant. Many of them work there now who came from our organizations who are now working for the city.

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

>> Mayor Reed members of the council. From the perspective of taxpayer, this contract is a fiscal monstrosity. And the tragedy is that it was completely predictable. This is exactly what happens when you put a political agenda ahead of everything. Politics ahead of public safety. Politics ahead of city services. Politics ahead of fiscal responsibility. \$270,000 a year, for electrical work. And that's the best case. That's the best case. We don't know if Telstar is going to deliver. We just had the experience in United Kingdom of the government having

to call in the army to provide security for the Olympics, because a private firm made commitments and couldn't keep them. And members of the city council, I guarantee you, Tommy Atkins is not marching into San José to operate your sewage treatment plant if this firm fails to deliver. Again this is the result of a strategy, a political strategy of scapegoating skilled experienced talented and dedicated public employees. Now you don't have them anymore and politics can't investigate a homicide, can't prevent a burglary and can't operate a technical facility. I hope you at least have the decency when you vote for this to hang your heads in shame.

>> Mayor Reed: That concludes the public testimony. Any additional staff presentation or comments? Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Just a quick question about the challenges of -- and limits to our ability to alter compensation for employees within bargaining units who work at the water pollution control plant, and those impacts on the broader bargaining unit. Could you or anybody on the team I guess, explain to me? I recognize the short term solution and we often short term solutions always cost more than long term solutions. I think we all recognize that. But in terms of the impacts of boosting the pay of those positions within the water pollution control plant that could attract qualified employees. Are there positions outside of water pollution control plant that would impact the General Fund? That would be affected if we were to be targeting pay really for these highly technical positions?

>> Mayor Reed: City Manager wants to answer that.

>> Debra Figone: Let me start councilmember and then Alex can jump in. First and foremost as Kerrie said, we are aware of this problem at the plant. We have actually been making some changes along the way to try to mitigate the impacts and clearly we need to do more. Alex can speak to the bargaining unit issues. But whatever it is, we feel that we need to bring forward to the council in order to affect pay of some units and not others or some classifications and not others within a bargaining unit, is clearly subject to meet-and-confer, which we can get through those processes. But regardless of source we're first going to look at the service delivery needs. And right now that service delivery need is out at the plant. So for example, one of the areas that the staff could speak to is

the high voltage electrician electrical work which will be different possibly than the other electrical work that goes on in the city. And so there will be a distinction. There will be, likely, its own funding source which would not affect the General Fund. But a key question as we move forward through the meet-and-confer process is will we get agreement or not? And ultimately, will the council be faced with having to impose changes?

>> Councilmember Liccardo: Yeah, I mean let me try to clarify the rationale for my question I think you can anticipate which is I think we have considerably more flexibility in fee-supported programs at water pollution control plant for being able to I think offer a competitive wages than we do within the General Fund which we know is really strapped. And I'm just trying to understand clearly, what our limitations are if any around offering higher pay in those positions. How -- does that affect, the second order of effects when you look across bargaining groups does any of that ultimately come out of General Fund?

>> Alex Gurza: Councilmember, Alex Gurza, assistant City Manager. the plant employees are represented by multiple bargaining units throughout the city. It is unlike for example some bargaining units which represent the entire all of their members in one department. The San José POA for example represents only members within the police department, same with fire. In the case of the plant the largest bargaining unit that represents members there is operating engineers what we call the plant operators. Also electricians, you heard about the IBEW represent electricians. Some of the classifications they represent are plant specific and some are more general. As the City Manager indicated right now electrician, the classification of electrician is used both at the plant, this Public Works, Department of Transportation. We are in the process of City Manager indicated of creating an industrial electrician classification that is specifically for the special skill needs at the time plant. In terms of compensation, even providing increases to a set of employees whether all employees in a bargain unit or a subset are subject to negotiations. So given direction from the council, we could negotiate, approach a bargaining unit, and make a proposal that could give an increase to every employee in the bargaining unit or only certain classifications. In the past when the city was in a financial state to give increases there were times when certain classifications would be provided what we term special adjustments and that could have been for a variety of reasons, market driven or other reasons. So given the issue of sufficient funds and council direction to negotiate that we can do that. In the past though city has not negotiated pay based on fund, funding source. For

example police officers are all General Fund. People who work the library again are General Fund. So we generally don't distinguish and give increases to a special funded employee versus a General Funded employee. If you did provide increases to a classification that was special fund then that would not affect the General Fund.

>> Councilmember Liccardo: Okay what I think I hear you saying Alex and correct me if I'm wrong, we have some work to do influence negotiation process. -- through negotiation process. And to the extent we are able to create plant specific classifications and through the meet-and-confer process that works out to be kosher, we can supplement longer term solution here on the particular positions that we have great concerns about.

>> Alex Gurza: Yes and given council direction we currently do not have council direction to give pay increases. But given council direction we could then approach a bargaining unit and provide increases. Again whether to specific classifications or everyone in the bargaining unit.

>> Councilmember Liccardo: I appreciate that would come through closed session as part of the bargain process.

>> Alex Gurza: That's correct.

>> Councilmember Liccardo: Thank you. I think we all recognize that it is never ideal to take short-term solutions like this. We're in the situation for lots of factors. As a result of many factors. And not least of which is the fact that we've had to grapple with a very serious budget deficit and that's affected how we've addressed pay and compensation across the city. I'd like to make a motion to approve this with a recommendation that we return, in future week, to closed session to consider just the issue that Alex described.

>> Councilmember Herrera: Second.

>> Mayor Reed: Okay we have a motion to approve with referral to staff. Councilmember Herrera.

>> Councilmember Herrera: So I just wanted to go back a little bit the history in terms of what was mentioned about the 10% reduction for everyone. We know that even before this plant, we had some issues with recruiting and retention at the plant, is that right? How many years does that go back?

>> Alex Gurza: For quite some time there were certain classifications that are harder to fill because of their specialized nature and the plant is one of those where they are hard to fill positions because of the technical nature, they have to be certified to operate a plant. Clearly, the issue has -- the challenge has increased recently. But we are not alone in the need to or the difficulty in hiring qualified people at our plant and other plants.

>> Councilmember Herrera: Just exevet statewide?

>> Alex Gurza: It is exesk for classifications like electrician like plant operators and there are others that are the harder to fill simply because of the small size of qualified pool we get many, many applicants for the trainee positions. But not a sufficient number for those who are already certified and qualified to be for example plant operators.

>> Councilmember Herrera: And it takes years I expect for persons to get to those positions that would meet those qualifications?

>> For operator in training it takes two years to get that certification for them to with work independently. And the challenge we have today is they don't stay very long .

>> Councilmember Herrera: We knew when we asked for 10% compensation reduction for all employees in the city that we already had trouble, we had trouble recruiting at the plant, we already knew that, it wasn't something we didn't know.

>> Alex Gurza: When the council made the decision to seek that 10% across the board every level in the city it wasn't a market based decision.

>> Councilmember Herrera: We asked every excluded the plant members for that in asking for that knowing that that was a particularly difficult ask, because we may have -- we knew that they would be undermarket in terms of salary? Severely?

>> Alex Gurza: Well, if the council would have given us that direction, in other words, to go and seek a 10% reduction for everyone except for, for example --

>> Councilmember Herrera: What would have been the consequences of that? I mean it's my understanding that would have impacted every other.

>> Mollie Dent: -- all the other bargaining units.

>> Alex Gurza: Well, it definitely would create challenges. I think what the city council asked us to do is spread the sacrifice across the organization, and again when you have issues of some people taking the reduction and not others, you've got maybe supervisors or management that may have taken the 10% and others below them not, and so that would have created this situation. But again the council's decision to seek a 10% was to minimize layoffs of the employees and it really again was not a market-based decision where we went out and said we can reduce compensation by 10%. It was really based on the City's fiscal situation.

>> Councilmember Herrera: Did we avoid laying off more employees based on that system wide reduction?

>> Alex Gurza: I would have to go back we had that number.

>> Councilmember Herrera: Hundreds, right?

>> Alex Gurza: Quite a large number. In the General Fund only, we're not talking about the General Fund, it saved almost \$60 million on an ongoing basis for the 10% reduction. So that's a significant number of positions, equivalent positions that would have been saved. Now again that's a General Fund number.

>> Councilmember Herrera: Okay it wouldn't have been that easy to -- it's my understanding there would have been me too clause that may have come into effect as well?

>> Alex Gurza: Yes.

>> Councilmember Herrera: Had we others?

>> Alex Gurza: That's correct, Councilmember Herrera. There were everyone was going to partake in the 10 first. And so there were some bargain units that asked for me too clauses that indicated that if the city did not end up doing that, asking everyone to take the 10% then those bargaining units would be able to get that for lesser increase or whatever applied. So that would have been one of the challenges we would have had to avoid.

>> Councilmember Herrera: So certainly as one of those who voted for that reluctantly, the idea was to retain services and to avoid laying off een more people and clearly we accomplished that, although we have these problems to overcome and it is not a perfect -- we certainly would not have wanted to do that if we had the deficits wouldn't have do that. So I'm supporting this necessary step here on a temporary basis with hope that we can rectify this in the long term and be able to work with our bargaining units to get some decisions that would allow us to pay people more and recognize these mark up forces with these key employees that we absolutely need to run the plant.

>> Mayor Reed: City Manager.

>> Debra Figone: Yes, just another thought to add to the mix. And clearly you know, we know that we're -- council's actions administration's Monday morning quash but the line of questioning, you just went through as

councilmember is a really good one. Because the context for the moment in time we're in is very important to keep in mind, in terms of the across the board nature of the decisions that had to be made. If you begin to isolate certain groups, there are MEF workers at the plant also. What do you do about the clerical workers at the plant who are also clerical workers in the General Fund department. So that context is very important. The other one because I heard this argument many times and we knew we were going to be facing not necessarily an acceleration, but the baby boomers are moving through, with something the plant had been working on is Kerrie's memo described. Unfortunately there's been some acceleration of that. But the other thing that I would hear is you know why do we have to take these cuts? We have a funding source. And the thinking I had to go through, in making my recommendations to you, was that the ratepayers are the ones who are responsible for providing for that funding source. And the escalating cost that you were trying to control at a moment in time had to be considered in that broader context. So yes, we're being faced with a difficult situation right now. We're going to have to drill down on the service level issues. And grapple with them. But I do want us to remember the context and all of the things in play that we were dealing with, when ultimately unfortunately, the council had to make the decisions that you had to make.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. To use the words of David Wall, this is an unmitigated disaster, what we're seeing here today. And -- but not one that wasn't foreseen. And I think that it was certainly down played beforehand, you know, the concern about retention, that many of us repeated time and again. And we repeatedly used a sledgehammer time and again as opposed to looking at the budget, looking at serving the community. And now what we're seeing is certainly what many of us anticipated, and we're going to see it and feel it the most, and more quickly, in areas of public safety. This is one of those examples. This is an area of public safety where you have skilled workers, and we're losing them. We lost 43% of the plant workforce in the past three years. Ordinarily we'd have an opportunity to fill that up by hiring people but no one wants to work for the City of San José. This is happening in every department in our city but is going to be felt most profoundly in Public Safety. We'll see it, last not this weekend but the weekend before seven police officers, you know, got injured, on the job in one weekend. Yesterday three shootings, looks like at least two homicides and the other one

we pray for him but it doesn't look too good. And you know, we're patching everything together. With SAFR grants and doing squads everything we can do to keep everything going. When if we had just been more thoughtful, less political, in our approach, we could have not only anticipated but prevented a lot of what we see happening today and it breaks my heart. I'd like to ask about the RFQ process. It looks like Telstar was celebrated and there are one or two others that didn't qualify for one reason or another, is that correct?

>> Kerrie Romanow: Yes.

>> Councilmember Kalra: I'm just curious, obviously want to get as competitive a price as we can get especially in as competitive an item as this.

>> Alex Gurza: Mark Giovanetti is the best qualify to answer your question.

>> Councilmember, were.

>> Councilmember Kalra: Satisfy the requirements so is that something you can delve into in great detail or any general comment you have on that?

>> Absolutely. The proposals that they submitted are milk. If you would like to see them we can certainly disclose them. Two of the proposers submitted very generic responses. They couldn't really represent that they could provide these resources or provide these resources. Viola was somewhat of a misrepresentation to be frank. They submitted in their written presence they could bait and swish to be frank. They really wanted to propose an outsource type of a situation which had been presented as an alternative solution in their written proposal so we dismissed them.

>> Councilmember Kalra: You have Telstar and Telstar complied with the requirements. And clearly it's a complicated type of contract because the jobs that you're asking are more complex jocks -- jobs has been indicated. These are specialized employees. And so, looking at the rate that we're paying, it appears, and there's

a couple numbers, and if I quote couple numbers, a couple that I just got from the newspaper article as well, so if any of it is not accurate please let me know. But it appears we're paying about 30% higher for instrument control technicians than the City's total cost and about 46% higher for the electricians, is that roughly accurate?

>> Kerrie Romanow: Councilmember Kalra if you look at the splent that we issued today, the range is 15% for instrument control techs and about 30% for the electrician series but recall we're also looking at creating a new industrial electrician job specification.

>> Councilmember Kalra: Okay. The -- this is something that I read in the newspaper, in regards to today's item. I just want to check it because it's pretty alarming where it indicates that the pay rates and benefit costs for the technicians are lower. So in other words, Telstar pays their employees actually lower than we do. However, they have an overhead and profit markup of 285% compared to a 40% overhead markup for the city. And that's just you know, I guess if you only have one qualified applicant, you know, that's what ends up happening. But that -- I mean that seems like we're just being, the screws are being turned on us and we're just being hammered because of the situation that we allowed ourselves to get into. And we're paying an enormous amount of money that, if -- you know even if we hadn't taken the 10% away clearly it wouldn't be the same amount of money we're paying now. And one of the problems is, there's no -- I understand that this is temporary in nature because we need to have a safe plant and we can't sacrifice that safety. However, you know, what's the -- there is no prospect that we'll be -- these positions seem like they're extraordinarily competitive. There is no prospect that we'll be able to fill them going forward. So we begin to talk about creating special classifications and what have you. But there will be something else the them time and I think it demonstrates the error in how we approach this whole mess. And so I have a great trouble in paying a private company to take profit, not to go -- not even go to their employees but for them to take profit at taxpayer expense as a way to maintain Public Safety in our community. Is there any other options? I'm looking at the alternatives and it appears that hiring full time employees obviously is the best case scenario that we would actually get people hired on. But is there any scenario? We have -- you have the union here that has qualified folks that may or may not be looking for work or may be underemployed because of the way the economy has been, we do see things picking up, I do realize this is the hey do you have people that qualify for this, and bring them in, even if it's for a temporary basis?

>> Kerrie Romanow: We've been looking at a variety of options. As we work you are our way through the auditor's recommendations we that is really something we're committed to making an impact on. However in the short term, I need the certainty that I'll be able to have staff operating at the plant. So if more staff leave, I need this stopgap ability to reach out, pull in resources. Our intent is not to have these staff here two or three years from now or you know hopefully a year in now. The contract is asking for one year with the potential for four one-year extensions and we're looking at it as a contingency plan so I'm not left without anyone to perform critical functions while we work out the solution to hiring full time staff.

>> Councilmember Kalra: And how short are we right now in terms of -- shall we have at least a basic bear minimum just to make sure we have a qualified staff 24-7 at the plant?

>> Kerrie Romanow: Right now the plant has a little bit more than 20% vacancy rate. And that has been stable for the last couple months. But if you look back at 2009, we had a 5% vacancy rate. So it's escalated very quickly. And I believe we need to have some contingency plans to ensure that we are able to continue to safely treat wastewater.

>> Councilmember Kalra: I get it. 5% you can work around, work with, 20% and the prospect of getting worse I can imagine it keeps you up at night, thinking about that. Was there -- have there been discussions at all Alex with the bargaining unit in terms of okay, there's been some mention of okay can we go see if there's something we can do? There's a different classification of some type of way of enhancing the pay or benefits? Has that discussion actually happened at all given the fact that this has become an urgent situation?

>> Alex Gurza: Speaking of plant series we made a change in the series. To allow people to more easily promote and hopefully, as a retention idea, so we provided notification to operating engineers local 3 about that. We also provided notice and had a meeting with IBEW on the industrial electrician and that classification has already been created. It will be coming to a council meeting. We've discussed those ideas. The issues of across the board general wage increases is something we have not yet discussed because we do not have direction

from the city council to do so and that's something as Councilmember Liccardo indicated we need to discuss with the council which group of council would you authorize us to give pay increases for? Only the plant? What other areas, and discuss the fiscal implication of those. For those reasons we haven't ganged in those types of discussions.

>> Councilmember Kalra: And Kerrie you say it has been stable, how long it been stable for since --

>> Kerrie Romanow: I would say every since January, it can go from anywhere from 18 to 24%.

>> Councilmember Kalra: If it wasn't wage increase, something continue to work speaking with the union, figuring out ways to how to get people in, you know, how much time -- I imagine you're worried now. But how much time would you be comfortable waiting to see if we can come up with some other alternative than this?

>> I think collectively we're all ready to move very quickly to really start to figure out what is that right solution. And to work together to complement it. So I think we've already got the wheels moving on that and I think the auditor's done a nice job really describing what the issue is.

>> Councilmember Kalra: All right. So I definitely would encourage those discussions I know Alex you'll come to us and see what else we can give you authority to do to give us -- to give you are as much nebility as possible in this real -- the challenge to try to recruit new people or at the very least, keep people from leaving. I'm glad it's been stable through most of this calendar year at least. We need to at more people, we need to recruit more people as well. I look forward to a discussion where we can do that. I'm not going to be supportive of an enormous profit aggressive in helping you keep people we have and bring in new people. At a much lower rate.

>> Mayor Reed: City Manager.

>> Kerrie Romanow: I'm sorry, when I say it's been stable, the vacancy level has been stable. We're still losing people.

>> Councilmember Kalra: I understand that. On previous occasions you've made clear that it's of concern to you.

>> Mayor Reed: City Manager.

>> Debra Figone: I also want to state that contributing to the stability in loyal plant employees that Kerrie has been successful in keeping engaged. We've had retirees come back and it's no small feat but we do need to acknowledge the fact that there are people out there at the plant who really do care about the plant and care about the city and keeping this plant in operation .

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. A few questions. Some of them have already been answered. I've not had the liberty of looking through the auditors report yet. I was looking at other things to prepare myself for this council meeting, forgive me if some mention this contract is for a one year contract with how many renewals or options to renew?

>> Kerrie Romanow: Four 1-year extensions.

>> Councilmember Rocha: It is at the option of the City Manager to make those extensions, no council approval?

>> Councilmember. Mark Giovanetti frps recommendation is written.

>> Okay.

>> Councilmember Rocha: Some of the comments in terms of reminding the council of context and circumstances how we got to where we got to and the point made that we knew this for some time, and begin all

that, I don't disagree with any of that. But I don't feel any comfort that we're where we are today, because looking at this, and I'm trying to read as much of this as I can and look for that long term solution, I'm not really seeing the long term solution here. And maybe, that's just me missing this. This is a short term solution and it's necessary and I'm comfortable doing that. But given that we knew this for some time, and I don't really see a long term solution here, I'm still looking for this long term solution. And so I think in my interest, I'd much rather see the motion or this recommendation go forward, with a requirement to come back to council before an extension. Because I'd like to hear that long term solution. I don't want to continue like this. I know you don't. And I know the City Manager doesn't, I'm sure this council doesn't, to Councilmember Kalra's point, not addressing this sometime ago when we knew this was happening has cost the taxpayers dollars. To your point, these are not our dollars, these are expected fund dollars. Going on and on here. Maybe there's a long term solution I've missed or you've spoken to or that's what the audit touches on. But again to the mayor's point I'd rather have this come back to council for their renewal so we could have a discussion on the solution or any other kind of look likes you want to talk to that and I didn't want to keep going on if you did.

>> Kerrie Romanow: Thank you. The long term solution is addressing compensation. We need to find what that right dollar amount is and then how to make that happen.

>> Councilmember Rocha: And we did make some adjustment but again then, we just had a conversation about referring to closed session. Additional discussions. So in my mind that should have happened a year and a half ago. And again this isn't within your purview and I recognize that. It's incumbent upon the council and myself to do that but I assume when we made these small changes some time ago that was the first step. And absent hearing anything other from city administration that that wasn't working and we're getting to a point where this was really serious you know I just took faith in that staff was working on this and that we were going in the right direction already. But now this item's in front of us I don't feel that we were going in the right direction and that we still had more work to do. Again if I'm seeing this incorrectly please correct me. City Manager.

>> Debra Figone: No, no, you're not seeing it incorrectly. It's just the immediate steps that we took initially were the immediate steps that were needed. They were easy, the first steps for mitigating combining the classes I think

it was and lower the entry level so that we could incentivize people to get into the system. Because I really think there's a couple of things going on and you're absolutely right, we need more of a total holistic plan here. I think what we know what the parts are. But a part that I'm still questioning whether or not it's in our control is the labor pool that we have to draw from. So San José can you know, adjust pay, we can adjust pay and the classes that are important to us. We can get creative in our own system but we are moving through an era in our society where industrial workers, to draw upon, are a smaller pool. That is something I have learned through this process and I think the council has, also. So I think you know we'll have the stopgap, we'll have the mid term and the long term. But a question I think for the unions in particular unions outside of the city is do we need our own theater program to the degree we stay in the process of operating our own plant because which is something everybody would like to do because it is in our control. It is part of a broader question as part of the toll package not in our immediate control but one I do think we need to think really clearly about.

>> Councilmember Rocha: That's helpful, thank you, that helps me understand a little bit more about your approach. Again then it brings up another question. Is it the labor pool that's not there for us? And then, my next question is what are we going to do if that is the case and that goes on to the long term solution that I'm master plan or the renovation we're going to do at the plant and maybe different technologies that don't require this technical work and more automated again and you're the expert here and here.

>> Kerrie Romanow: We're making a lot of adjustments that we rebuild of the plant and for example looking at picking one type of pump rather than having 20 different types, it makes training a lot easier, it makes parts management a lot simpler. Looking at rebuilding things we're looking at additional standards on how we operate that. We have been an active participants in the Bay Area clean water association that's a group in the trail opportunities for operators to address that shortage. Right now we're still continuing to engage in that even though no one else is experiencing the losses we are today. They know that they're on the horizon. So we're all working together to say how can we create partnerships with local ecologists, so gathering colleges as well as that we have hands-on training programs with could San José be a training center. We're looking at lots of those long term options so that all the facilities that are in every city continue to operate.

>> Councilmember Rocha: Thank you very much and thank you for your work. I know a moocialght of this if not all of this is something you have walked in to in terms of being a director. I think you have done a fantastic job please say hello to Max for me. I would ask the maker of the motion to soling my recommendation or suggestion as a friendly amendment, to.

>> Councilmember Liccardo: I'd be willing to, I would like to ask a question of staff, does it create any disruptions in terms of uncertainty in staffing, if we are required to come back to council? I assume we can come back to council with sufficient advance time so that you guys don't have to be thinking are we going to have somebody next week or know not?

>> Kerrie Romanow: No that's fine to come back.

>> Councilmember Liccardo: I'm happy to adopt it.

>> Mayor Reed: The seconder has got so we have a friendly amendment to the motion. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I heard this or read this in the paper before I read that in the packet. I was absolutely blown away. Especially in light of the fact that in 2008 there was a study done by PLS consulting, you may have seen it, I don't know how long you've been on Kerrie but I know the former director had seen it PLS consulting which said they expected 46% of the plant to be eligible for retirement by 2013 so six months earlier than that these people are retiring. So this is absolutely not something that was unexpected. Is this -- this had to do with some kind of age longevity thing in reference to the age of the employees and about when we would expect retirement. I'm not quite sure what that was outside of to give us an indicator of how many people we were going to have to be replacing. Or at least thinking about it.

>> Kerrie Romanow: I've been with the city since October 2006.

>> Councilmember Pyle: Oh my gosh did you nature --

>> Kerrie Romanow: It is something succession planning is something we've had on our radar for quite some time and we looked at many angles to get at it's not that we have had a higher percentage of staff that have left per se it's more trouble back filling. So when we did our succession planning it was assumed that we would be able to replace and we'd have to do a little bit more training but we didn't expect to not have a healthy pool of candidates.

>> Councilmember Pyle: Right. In the meantime in order to make up for those who have left the people that are there are working harder longer hours that are technically very unhealthy and I'm not sure the compensation was there. I'm not sure you were given authority to make for a healthy compensation for those that have been working so hard. So some of this, I'll ask you the question is some of this due to burnout?

>> Kerrie Romanow: I'm sorry are people leaving because they're burnt out? You know I don't know that I could answer that.

>> Councilmember Pyle: Very quick cursory figures tell me that, if you go by what the figure they're talking about it was at least 65 hours a week that had to be done in overtime. Now I don't know if that was the collective number of people that were working or if that was an individual.

>> Kerrie Romanow: We are very fortunate that the staff at the plant have been open and amenable to taking the overtime shifts. We have not had to mandate it. We have restricted vacation and we have done a lot closer scheduling of vacation and holidays, et cetera. But the staff is very committed and very talented. And they are going to do everything within their control to ensure that the facility continues to operate. So they've been very, very open to our requests and very flexible. However, it's not -- I don't believe something I can continue to expect for people to work these level of hours.

>> Councilmember Pyle: No, not at all, that would be unconscionable, that would certainly be anti-labor.

>> Kerrie Romanow: That is one of the reasons I brought this matter forward. I would like staff to take vacation if and when they would like to. I'm very appreciative that they continue to work but I also feel that they don't have an option, if they don't do it somebody else has to do it.

>> Councilmember Pyle: I call that burnout after a while they'll just give it up. So why am I bringing this up? Because either we need to come up with some kind of a hybrid in the meantime or we could, we could come up with a hybrid. But we've got to address the long term problems themselves. And I wanted to ask you, in reference to the two types of electricians, we have, let's see, we have the instrument control technicians and the industrial electrician. Could you tell me, does the City of San José have any other electrician in this capacity?

>> Alex Gurza: Well, the instrumentation control technician is a classification specific to the plant.

>> Councilmember Pyle: So the answer is no?

>> Alex Gurza: The answer is no. On topes electrician throughout the city.

>> Councilmember Pyle: And how many would that be?

>> Alex Gurza: Total electricians, I don't know -- we can double check on the current total number. But Councilmember Pyle what we are doing right now, the electrician at the plant are in the classification of electrician as I mentioned earlier, the same classification as in Public Works, Department of Transportation, et cetera. Because of the specialized need for -- at the plant in terms of the electrical work and the high voltage that they work on we are creating this industrial electrician classification and that would be a plant-specific classification. So only electricians at the plant would be hired into that industrial electrician classification. And we are proposing a pay rate that is higher than --

>> Councilmember Pyle: That part I got.

>> Alex Gurza: Than the others.

>> Councilmember Pyle: So the other thing is, have we brought the workers at the plant into the dialogue? In other words, do they have some suggestions, for what we might be able to do? They know the plant better than any of us. And you know we have one spillage in my district, that would be just a tiny little microcosm of what could happen in our city, if anything happens with that plant. Not a good picture at all. But have they been instrumental at all in offering suggestions or ideas or --

>> Kerrie Romanow: Definitely. We have an ongoing open lines of communication with plant staff. And they have a lot of ideas. But they've also -- they will be a part of the decision-making process when we bring temporary staff in. So what I've communicated to them is, they will be making the decisions about what type of work these folks do. And the assumption is that they would choose, our permanent staff would choose the work they would like to do and the balance of that would go to the temporary staff. So they have a role in where those temporaries work and where they don't work. To the extent that they want to have a say in that. And so that's something in the town hall meetings that I lead throughout staff in the department and in the water pollution control plant and we talk about where would you like your input there are some staff that would not like us to bring in temporary staff. However I do have to run the water pollution control plant. However I do have to do the overtime I still have to ensure the plat is operated. But we haven't gotten to that point where anybody has turned down work.

>> Councilmember Pyle: It makes me very, very happy that the employees are included in the decision process for this. I think that's very wise on your part Kerrie, thank you.

>> Kerrie Romanow: They are a great group.

>> Councilmember Pyle: You've said that repeatedly and I'm glad they are such a great group. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. You know, I'm really not surprised at all, with this item coming to us, and I'm hoping that my colleague here wasn't surprised at all. But what it really surprised me is the timing of this issue coming to us. We have the staffing problem, since the beginning of January. Or maybe sometime last year. Why did you wait so long to bring this item to us? I raise the question about any contingency plan when we had the heated discussion of measure B. And I think I heard from the staff, I remember seeing some nodding, yes, we do have some contingency plan. We know that it would demoralize our workers so we're ready we can address those problems. What really surprised me is the timing of those problems. Why didn't it come to us in the heated debate of measure B or earlier, or other way to ask the question, what changed today, from June or May or March? Earlier this year? What changed? Still, we still have -- 20%, shortage of staff. Since the beginning. So I guess another way to ask the question is can we wait another six months since we have been waiting for more than nine months to back staff?

>> Kerrie Romanow: We are very optimistic that the operator classification adjustments in February would have had a more positive impact than they did. It did have some impact. But it wasn't enough to make me comfortable. And as we continue to look at our ability to staff for the capital improvement program and execution of that, it became increasingly apparent that the trend we were on, we were not going to have the staff we needed to rebuild the plant. So we've been trying to make some adjustments. And it's just not creating meaningful enough results. And so we felt that we needed to have a -- more -- a stronger contingency plan. My intent is not to, again, is not to outsource the facility and not to have temporary staff there for a very long period of time. But if the trend continues with attrition, we will be in an uncomfortable position. We are in an uncomfortable position today so you know, we've talked about this in the past that I'm not comfortable with the staffing we have, the staffing levels we have. And this provides us with some outlet to get additional head count.

>> Councilmember Chu: Neither do I. I'm not comfortable with the staffing level you have, so I probably will support the motion. But then a question to City Manager or to Alex. You know, where -- this is just a water treatment plant, you know, it's a Public Safety related issue. Do we have contingency plan for other departments? Other maybe safety related or not safety related, I don't know, Joe Horwedel's department was understaffed for a period of time now, what's the staffing look like in his department?

>> Alex Gurza: I don't know, Councilmember Chu, off the top of my head I don't know. On contingency plans it would rear within the department and within the department when it's not uncommon for the city in peak workload temporary assistants that does occur in the Planning, Building, and Code Enforcement they need to bring in staff. It really varies, the need workforce. I think as was indicated by IBEW when they were here, we actually have an agreement with IBEW, when we need additional electrician we call the hall, and to the extent they have them we hire them. OE 3 3 also. dfl just from my is because of competitiveness that we can really peg to our salaries. We all know, mayor and council, the decision you made to cut back pay, 10%, was not because any of you believed that the city staff were overpaid. It was a decision that was made to save jobs and to save services. To the degree now that is driving people to the door, we have some you know, areas of questioning, to explore why that's happening. You can always give everybody back the 10%. You know that's going to take funding. If it's in targeted areas as Alex and Kerrie have said as we all know we're going to have to make the difficult decision based on good information about what we do about that. That's a part of the issue. The contingency plan is going to be offering people overtime, going to retiree or rehirees and really it's going to be a case-by-case decision making process.

>> Councilmember Chu: I know, I was here when those decisions were made. So I'm not going backwards but I'm looking forward to see you know, what would happen if other department was running into the same problem as our OED, so sounds like the answer is that we just hire, we'll go to an agency to hire some temporary help, to backfill this position. That's pretty much the contingency plan. And then, my next question is okay, after this water treatment plant, what's what will be coming back to us next? Police department, fire department, PRNS, or.

>> Debra Figone: Actually I think there will be some priority areas that will shake out. You may have to decide or we have to decide missile that we have to run short in some areas. Because to the degree again it's about money, money on the pay line we're going to have to have that discussion in a budgetary context. So some things we'll have to bring to you on a one-off basis, we know that. We're going to try to limit that. And I really hope that we can have a more holistic policy discussion in a budgetary context and a service level context as we move forward. But

in the meantime, there will be areas where we cannot allow it to run short such as out at the plant. And so that's why this one is before you today.

>> Councilmember Chu: Right in that sense and so I guess just wanted to reconfirm what I have heard. I our pretty much contingency plan for today going forward is to have a temporary agency to hire some short term help.

>> Debra Figone: For the water pollution control plant and the technical area we're talking about yes. It will not be the solution in other areas.

>> Alex Gurza: But in other areas as the City Manager indicated it is a case-by-case. As the City Manager indicated we have a rehire retiree city employees or the a limited number of hours to help us. There could be overtime as a solution. There could be temporary assistance solution. Again for the area of the plant the options are more limited. So what options are available is really going to depend on the particular service, how easy is it for us to hire new employees and all of those issues are going to really vary.

>> Councilmember Chu: My last question is could you why there is some kind of early warning like this problem with the water treatment plant or actually that started early January, around we're now here to try to find out how can we fix the problem. So I will just like to have like an early red flag, okay, this department is having some staffing problem, that department is having some staffing problem. I would really appreciate that.

>> Alex Gurza: Completely understand Councilmember Chu. In fact we did do that when we brought the first solution earlier in the classification that allowed the employees to get promotions. The real whether it's going to work I think. What Kerrie indicated that didn't have the impact that we had hoped and so that's why we're back again with the contingency plan. But we're not before you today on a solution. You are going to be hearing about the audit coming up soon. In terms of early warning there are different council committees that do discuss various items. The plaiforts committee will for example hear from the police chief this Thursday related to staffing and

other operational issues so we will clearly keep that in mind to make hurry we inform the council of these issues as they arrive.

>> Councilmember Chu: Thank you for the reminder, thank you for the answer.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. The benefit of being last is, all the questions have been asked.

>> Mayor Reed: Oh, you're not last.

>> Councilmember Campos: Okay, well towards the end.

>> Mayor Reed: Just last of first round.

>> Councilmember Campos: I do have a couple of questions. Getting back to the contractor. So when we lose employees, to other, you know, they go off to other treatment plants, are they going to private industry? Or are they going to other jurisdictions? And then of those other jurisdictions, are those in California? Are they going out of state? Because again, I'm trying to understand, you know, what is it, what's -- what's wrong with our system that's pushing folks out? Because I tell you one thing that just does not make sense, you know, which is telling me that even you know and it seems like the direction the council's going to go is to contract this out temporarily. And if these folks you know with this company are obviously getting paid less than you know what we pay our people, because Councilmember Kalra is absolutely right. There's a huge -- there's overhead and there's a profit margin there. You know, are these folks at the same level that you know if they came applying, and it was competitive, would we be hiring them? Would we be hiring, you know some of these folks that are working for this company?

>> Kerrie Romanow: I'll start with your last question first. We have actually hired staff from Telstar. So we have had them temporarily at the staff and when we have had openings they have filled them most recently in the last year we have hired an employee or two from Telstar. They are very qualified.

>> Councilmember Campos: This is a weird year. It's almost okay legality me get someone with a pulse that has that kind of knowledge, right?

>> Kerrie Romanow: No. I would say our standards are much higher than that. You know I think for context, right now our vacancy is in electrician and instrument control techs we have six, 6 total FTE in those two job classes. So we're not looking to outsource the entire plant. We're not looking to do this in the long term. But because they're hard for us to hire, we don't want to get too low in our head count in those particular areas. Right now in our electricians, we have a 34% vacancy rate. Four is pretty high fewer. And I think I forgot your first question.

>> Councilmember Campos: Are our people leaving to other jurisdictions or are they going to companies like Telstar?

>> Kerrie Romanow: The majority of staff that have left the water pollution control plant are going to other publicly controlled works special districts or other cities .

>> Councilmember Campos: So I'm coming to a conclusion that that really, you know, if everything's equal, and we've got you know folks with the -- let's say we're poaching from another jurisdiction, we're probably going to choose and hire someone from, you know, another publicly owned treatment facility than go out and getting someone that you know maybe would love to land you know with a -- you know with a publicly owned company. But they're stuck with Telstar. I mean I'm coming to that conclusion that you know, we're actually not even contracting the most talented. It's -- you know obviously this company's set up to do this. So it's okay, this is what we got and we're the best available. That's the conclusion I'm coming to. And when I'm coming to that conclusion I feel the same way that Councilmember Kalra feels, why would we be doing this, when one, we're not

even coming close to really addressing our need? Especially because we've known that this was something we were going to need, that we had to take care of. And I understand you natured inherited this so you're there so excuse me.

>> Kerrie Romanow: One of the advantages of this contract vehicle is if the vendor gives us a staff that only has a pulse, we can send them back. We can say, that person is not working out for us, send us a we don't have any limitations to how many we turn away. So they really are incentivized and motivated to give us a solid candidate that has a long term ability to work at our facility. And our staff I believe would like some help and they would like a little bit of relief while we figure out our long term solution.

>> Councilmember Campos: But they probably would rather have a permanent team member.

>> Kerrie Romanow: Definitely. Definitely.

>> Councilmember Campos: That's what I'm stuck on. I would rather work on getting a permanent solution now. This also reminds me in a more expensive situation of you know, the graffiti program. You know you've got this contractor that is making you know I mean just an exorbitant amount of profit. And I see a contractor here doing the same thing and taking advantage of a weakness that we have. Thank you.

>> Kerrie Romanow: Well and I know through the audit process we will be coming back with progress and reports on how we're doing in implementing those recommendations. So it's certainly not something that's going to be outside of your view.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I just want to observe. I think there are two things we can all agree on. One is that we would all prefer to have staff in-house handling this situation. And secondly I think we can all agree that none of us is surprised. I mean the study I think that Councilmember Pyle referred to was contracted

by ESD staff in 2008. We all saw it, comment there was going to be a lot of retirements, statewide seeing a shortage in this labor pool and by the way we happen to have a budget crisis and we had to do the best we could. And so I guess what I'm puzzled by is the drum beat of I told you so, which in the long run seems pretty self serving and specious. I didn't hear minimize that we would have retention issues or that we'd have hiring issues or that there would be labor impacts as a result of having very tough cuts in pay. I also didn't hear any reasonable viable alternatives when we were facing a \$118 million deficit in fact many labor units agreed and that's why they agreed to budget sacrifice and I'm grateful for their willingness to recognize the city we were going influence an incredibly difficult storm and frankly we still are and occasionally in difficult storms it means you do the best you can and you pick up the broken pieces after the storm and try to do what can you to keep the ship moving. So I really appreciate your leadership. Kerrie in coming in when things were incredibly tough to try to pull things together and keep us moving forward and I look forward to working with you to continue doing that. I recognize this is nobody's idea of a best solution. Not even the second best solution. It's the second worst solution, the worst being doing nothing which we know is absolute disaster. Let's take the second worst solution when there's nothing better on the table.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I just wanted to ask a liberal about the contract we're talking about. In some ways I look at it, I'm looking at it kind of as a credit line. That you don't necessarily have to use all of it. But it is -- but it's an important contingency because as you've stated in some of these very critical positions and because of our great staff and their willingness to work overtime and do everything possible to keep the plant going, you're willing to keep the plant going but if people get sick or people need time off you're on such a thin line there that having this credit line, having this ability to add people to be able to staff to give you that sense of security and safety for the public is really important. But I don't see it as necessarily that you would have to use it all. And I'm going back to along while back in the conversation when Councilmember Kalra asked about using our bargaining groups, our union hall to get other folks that could supplement. That doesn't preclude you from doing that, right? Ee even though we have this sort of contract setup that we can automatically use these folks unked we get

a guaranty on that right that gives you a guarantee in our employees ability to take vacation but that doesn't mean you can work out some things with our labor unions, our local unions to get folks from there as well?

>> Kerrie Romanow: Exactly. This contract doesn't close any doors, it just opens another one.

>> Councilmember Herrera: Could, is there any possibility I don't warrant to add this to the motion I don't think but having it in place, are you -- is there going to be some effort then to look at that alternative? I know Councilmember Kalra sword of asked about that but percentage or have some sort of focus on doing that even though we know we have these folks that we can pull in right away. I'm not sure, help me ups if I'm seeing it the right way.

>> Alex Gurza: Councilmember we currently have that option available. As Kerrie indicated it is simply another option as she staffs the plant. So for example we still have the rehired retiree option, to the extent there are retirees that are available to do the work. There is the option to use the loam union halls, IBEW, to the extent they have available industrial electricians to send. That's still an option. This provides yet another option to the extent that the others are not available.

>> Councilmember Herrera: That's what I guess I'm trying to understand. So it is the final backup, after you exhausted these others, you will continue to do these other option et cetera so then you don't have to go to us and we give you the ability to do that.

>> Kerrie Romanow: Yes.

>> Councilmember Herrera: A credit line is that a good analogy?

>> Kerrie Romanow: Yes.

>> Councilmember Herrera: Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: A question on a separate item in terms of the zipper clause or I'm sorry the me too. Let's say hypothetically we do go through an increase and I'm looking at the last statement in the first one total compensation and the does that mean we're mandated to provide any increase or that we just have to and I believe up in higher up it says we will reopen and just have the meet and confer?

>> Alex Gurza: Councilmember you mentioned the zipper clause.

>> Councilmember Rocha: Sorry I misspoam it is the me too clause.

>> Alex Gurza: We do have the zipper clause and it's a requirement.

>> Councilmember Rocha: We have to open contracts and to another bargaining unit. We don't have to provide that increase to them?

>> Alex Gurza: No, the way that particular me too clause was structured, what you meet and confer about is how are they going to receive the difference?

>> Councilmember Rocha: We have to get that to them we don't know how. Alex Gurza, Deputy City Manager to the extent that we do something that implicates that me do clause, yes. For example if we went forward and had a bargaining unit agree to 10% and then another bargaining unit needed only a 5 away that me too clause indicates is that that bargaining unit is entitled to the other five, the five reduction and then we would meet and confer over how to provide that. As we go forward on these issues we'd have to analyze that me too clause to see if it's implicated depending on the direction the council wants to take.

>> Councilmember Rocha: Thank you. To my colleagues point about being surprised or I told you so, I don't think I've ever used those words with anybody but my kids. So I don't think if he's speaking to me about that or not.

>> Councilmember Liccardo: No I'm not I believe it was Councilmember Kalra that raised that issue.

>> Councilmember Rocha: Pain yourself as well that even the City Manager and some department heads when we started this process of compensation and the pension reform which was necessary that San José is a segregate place to work. We're not seeing this max exodus yet, San José is a segregate place to work, we are never going to be another issue, I know closed session I can't talk about. But I'll leave it at that. There's plenty of discussion on this item and I heard a number of times from my colleagues and from city staff, just comments. Not backed up by any empirical evidence but comments, that San José is a great place to work and we will always have a good crop of candidates.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Hi everyone. I just wanted to bring back my memories starting on the council since I was sen and John Stuffelbe earvetionn we had aging demographics at the plant because essentially working at a water pollution control plant was not a sexy item where parents told their children to pursue vocations. A lot of parents want their children to go to college instead these are technical jobs that don't require a college education, well paying, but require a trade skill that is technical and learned in a variety of ways. I think I'll always remember that. Careers ebb and flow based on what's career like this or another that has a high compensation and people realize it then over time they will flock to it but unfortunately flocking doesn't happen in weeks or months, it takes a lot longer. I brief part of problem when we did 10% total compensation reduction for all employees was that many people with the right seniority, were actually able to retire and net more on their paycheck retired than working. And if you bring that opportunity to anyone, saying you'll make more by not working, well, that's clearly an option that some people would consider. And you know what? That's just the way it is and again we didn't want to be here. I think I've heard you know some of the challenges we have of workforce with many different bargain

units and having to talk again and again how each step would be a meet-and-confer process. So we just don't really have the flexibility in an organization that employs many people with many job titles, to simply as you would do in other organizations, just simply raise the compensation by fiat. Instead, we must go through a process. And I -- again this is one of those reasons I think negotiations should be public, something so simple that would solve a problem for all of San José's residents. We should really get to yes much faster than I really hope the operating engineer union will just simply say we acknowledge we have listened today we are willing to identify that the water pollution control plant is a specific thing and allow us, there's no Brown Act here, a lot of people have been talking about giving raises to positions that are unique, and I think I hope we could get there. And you know open another way and I don't want to like come up with the idea and go to it or anything, but I imagine somewhere in the area between all the city jobs we have, someone has a contact with our you know veterans. There are so many veterans coming back from overseas. You know, there are a variety of positions that they may encounter, you know and I'm happy to take the task if someone wants to assign sign its to me to go find out the contact where things would go. I think that is one option because those people are obviously highly competent and highly brave I pay not apples agree with my colleaguesen whatever the case but in the end I will acknowledge differences of opinion and not have to do so in a terse manner. I just acknowledge that we view things differently but in the end we are here to serve these residents and vote on this item eventually. Thank you.

>> Mayor Reed: We are getting close to that eventuality I think pps combg.

>> Councilmember Kalra: Thank you very much mayor oop we have people retiring we can't hire new people because they don't want to work here. And we can try to pretend that's not the issue or we can pretend that everyone acknowledged this from the beginning I'd be happy to look at the tape and see how often so many people say we'll still be competitive people will still want to work here. Time and time again. Then we went to the measure B battle who's going to want to work here and put up with that if they have other options? And that's really what's happening in our departments and you can say that you know, you can insult me or say that I'm being self serving or whatever. I'm not going to stop talking about there because it's happening and it's happening before our eyes and there are people going to the hospital there are people that are getting injured on the job. And we have made things much more difficult not just for our employees but for our residents and our ability

to serve them because of the decisions that have been made by this council and we have to own them. And if we choose not to own them and pretend market forces and this and that just own the fact that we i'm not going to support it because I'd rather move much more aggressively in ways to retain and hire people each even if we our blows more tell them to come work for us directly. You know it would be cheaper than paying them their 240% profit marming.

>> Mayor Reed: All right I think we're about done. I'm going to see if I get the last word on this. 14 months ago the council approved a budget that closed a gap of more than \$100 million. We cut 400 positions out of our workforce and everybody took a 10% pay cut. So there are really two policy decisions that were made then that I think were the correct policy decisions and I dispil think are correct. First that everybody should share the pain. That everybody should take a 10% pay cut. Not just part of the people but everybody. And I still think that's the right approach to it. The second was, everybody should take a pay cut instead of eliminating another four or 500 jobs. Because we could have solved all of our problems with pay and compensation by just continuing to shrink the workforce. We could do it today, I suppose. Save up enough money to give everybody back their 10% by eliminating four or 500 jobs. Now I think that's the wrong policy decision. I don't want to eliminate another 100 police officers on top of the 66 we laid off in that budget decision. Those were tough decisions and the council was not evenly divided open that and certainly there were consequences. The demographics we've seen forces at play at the plant were certainly made worse when you take a 10% pay cut that doesn't exactly make anybody happy. It made us uncompetitive in certain career fields. But it was necessary. Necessary to close that gap. Without laying off another 400 people. So we are working to deal with that. I want to thank our staff for doing a good job of trying to cope with it. If we were a private sector enterprise maybe we could move more quickly but we're not. We have a lot of process and I know that we're working to deal with the problem. And there are obviously other things that council would like to do that staff is working on, just going to take us a quiem to get that. But I own that decision. I think it was the right decision. I stand by that decision and there are four or 500 people working for the City of San José today, delivering services to the people of San José including police officers that wouldn't be here if we hadn't chosen to take the very difficult route of a 10% pay cut. So with that, we have a motion on the floor. On the motion, all in favor? Opposed? One two, I count two opposed, Kalra and Campos opposed, motion carries. That completes the agenda with the exception of the

open forum. We'll move to the open forum at this time. Please come on down. David Wall. Helen Garza, Rich McCoy and Mark Trout.

>> I'm going to discuss the sewer service and use charge. Because for the last discussion, it is grossly apparent to me that very few of you or basically none of you know what that fund is. How it's used. And the material misrepresentations and lies to the public that have emanated from your mouths today. There was no amount of employees at water pollution control that would have lost their jobs or any affected city employees that would have lost their jobs, had their pay been left alone. That's because of the restrictions placed on the sewer service and use charge. It's governed by proposition 218. So when you pontificate that you saved jobs throughout the city, by enforcing this wraij cut and benefit cut which was more than 10%, it was more like 17% per year so it's 34%, so you compound your lie with another lie. And therefore, when I'm setting here hearing learned counsel say oh you're a great administrator, I like working with you, let's have a solution you people do not understand the desperate lack of hope you have. Because none of you understand what is looming at that plant. And it's called a spill. None of you have seen a spill. I've seen two of them. They were minor. If a big one happens, because of the structure of the sewer service and use charge, which is a 37-year-old formulation, predicated on a discriminatory aspect for single family homes you don't know the level of grief. Now you would be applying for \$5.1 million for workers comp analyst 2 because you fired five of them. You got to hire six more back. That's next week's agenda. So you see, the substandard management continues to flow from the top.

>> Mayor Reed: Sorry, your time is up. Helen Garza is our next speaker then Richard McCoy.

>> I'm Helen Garza. I often volunteer at History San José. Two years ago I volunteered the staff parking lot was full and I had to park on the back lot on Phelan avenue. A person was there collecting money for the parking. Een though I said I was a volunteer he said I had to pay the \$6. So I paid the \$6, no problem, it was a good cause. I was given strange and they must have run out of parking tickets and they made them up to give people a receipt. There was no number on the paper. On Saturday, August 4th, I volunteered at keep 45 alive. Again, the staff parking lot was full, so I parked in the back field. I paid the \$6 parking fee. They gave me this receipt and as you can see, there's no number on this receipt. I don't know how they keep track of how much money is taken in

each day. One cannot tell how many people parked in that parking lot, as people are always coming and going at different times all day long. The Senter road entrance is lch as bad, so how do they keep track of how many cars go in and out of that lot? It doesn't appear like they have any way to keep an accurate account of paid cars going through their gates, either. I encourage the San José city to install some type of kind of an electronic machine that prints out a number receipt that counts the cars and money paid in order to be accountable and help keep the wonderful history of San José park open. Otherwise, there could be \$6 for San José and \$6 for the tenant. \$6 for San José for the tenant, \$6 for San José, and \$6 for the tenant. Thank you.

>> Mayor Reed: Richard McCoy and then Mark Trout.

>> I was going to say good afternoon but I'll say good evening, mayor and councilmembers. I'm here today representing the United veterans council of Santa Clara County. The UVC was format in October of 1922. And is comprised of delegates from veterans organizations and their auxiliaries as chartered by the Congress of the United States and recognized by the oughts veterans. The UVC is a nonpolitical nonsecond fairn veterans their dependents, widows orphans and citizens for of the United States now sponsored by the UVC with support from the City of San José and the county of Santa Clara along with correction from individuals and private organizations this Veterans Day parade is one of the largest on the western United States. And honors all who have served and are now serving our country, in the United States. The opening ceremony for the parade begins on the 11th hour of the 11th day of the 11th month and honors a memorial that begins at the ceremony at the plaza de la Chavez or Market Street to honor all of the 1918 armistice in the war to end all wars. The parade steps off at 12:00 noon near the San José HP pavilion and travels East along Santa Clara to Market Street. The parade then moves plaza Cesar Chavez near the tech center in San Carlos. This is an annual parade and needs to raise \$45,000 in order to continue this year. Generous in their contributions to help maintain this parade as a public service. We're seeking additional support from the council and the mayor's office again this year and I know some of you have already contacted us with your support and we're hoping to gain the support of the rest of the councilmembers and the mayor's office to continue with this far aid. Hope you enjoy our presentation, thank you.

>> Mayor Reed: Mark Trout and then Ross Signorino.

>> Councilmember Kalra mentioned that we prayed for the people that were shot. And you know I can't help but think about you know last week we talked a little bit about the civil war and how our present president has the same last name of the southern president during the civil war. And whether this council knows it or not we're getting ready to take away guns from American citizens. And I sure hope that doesn't happen. Through this U.N. mandate you know, to strip the second amendment from citizens. I sure hope that doesn't happen. And I'm asking this mayor and this council to make a proclamation saying hey we support the right to keep and to bear arms. Can you imagine what's no way not in America, oh really? Alex Jones in info wars.com was talking about Hurricane Katrina, the sheriff was weeping, the Feds took over. The sheriff who has the authority couldn't even save his own mom. His mom died. They took away guns from citizens, United States citizens. They took away guns, isn't that something? It's terrible. That's what I'm asking you to do. We all remember, I don't have any bitter feelings, I'm almost glad I lost and didn't win for city council. We all swore uphold the U.S. constitution. That is the supreme law of the land you know it is and you do have that right. Now, in Russia and red China, now with what happened when they took away the guns? Hmm? They mowed the people down, okay? They mowed them down. The moody butchers of Beijing have away, a one child policy in choppy. Talking to this man from Russia, we don't have guns over there only the government has guns. Some people say that's for hunting. Can I have a little bit more time or --

>> Mayor Reed: .

>> Mayor Reed: Sorry, your time is up. Ross Signorino gets the microphone next.

>> Mr. Mayor, members of the council, let's do a little happier thing, okay? Last Sunday, the Olympics finished in England. It was wonderful seeing American athletes wrapping themselves in American flags. Especially the women, the young girls, they were outstanding. They pulled us through. In the end it was them. And they were beautiful. That is America. That is the most marvelous thing I have ever seen. Seeing the way these people acted at the Olympics being sport-like and so on. To see the American flag held up there, so prominently, and I'm

glad. I'm glad. In the Olympics, we were number 1. There. You can't beat that. There is nothing else. So the girls, the ladies, beside the men, pulled us through. My time is up.

>> Mayor Reed: That concludes the open forum, concludes our meeting. We're adjourned.