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>>> Okay. Good morning. I'm going call to order the meeting of the board of administration for the police and fire retirement plan. I'll start off with a roll call. The chair is present, advice chair Taylor is present. Trustee Sean bill is present. Michael Flaherman is present. Trustee Sean Kalder is presents. Drew Lanza is present. Trustee Vincent Sunzeri is present. And trustee Richard Santos is present. A couple of requests. The mics have been taped down to try to get them closer to you, because I guess there has been a problem with the volume of our voices. So if you can try and speak into the mic and speak loudly, it will help whoever is listening be able to hear us. Okay. Also, under orders of the day, item 6.2A in the minutes, and it says via teleconference for the chair for last month's meeting. And I was out sick. And so it's actually supposed to say noticed for via teleconference, because that was the plan. But I did not participate via teleconference. So just in front of via teleconference the word ônoticeö goes on there for the minutes. Okay. Item number 4.1D, Thomas Correa, the effective date should show May 14th, 2011 with 26.67 years of service. Okay. Next item under orders of the day. 4.2B. Police officer mark Freitas application, there is a request for deferment until September. Okay. And then I haveùI'm told this is under orders of the day. We have three items that were not available for posting. In the required time. You have four items. Okay. I only got word of three. Okay. We have four items, and there's two ways to handle this. To defer it, because the items weren't posted in time. Or a motion and a second and a vote to waive the sunshine rules is the other option. I understand. And legal counsel, am I saying it correctly?

>> Yeah, that's just with respect to the written material. And you probably want to say what the items are. You canùthe items are properly agendized.

>> Yeah, they were agendized, but they don't meet the sunshine because the actual handout material wasn't available within the required. And the four items that we're speaking of is item 1.2, the staff presentation on the plan's fixed income structure. Item 2.5. And that is the discussion regarding recommendation from the subcommittee on disability determination. Item 3.2, discussion and action concerning legal analysis of the impact on current board members of government code section 751.395.

>> Which was an update. We had a previous version. This is an updated version.

>> Yeah, there was an updated version. And then item 6.2A. And that is the approval of the minutes.

>> So just to be clear on the sunshine requirement, for the staff presentation, you don't need to waive sunshine on that. It's just a presentation. It's the action items that you would need to waive sunshine on.

>> Okay. [Inaudible]

>> I second the motion. One is an update, one is the minutes and one is a letter that we drafted two days ago. And, you know, the contents are a letter that occurred openly.

>> Okay. I have a motion and a second to waive the sunshine requirement. Any further discussion on the motion? Hearing no further discussion, all in favor? All opposed? The motion carries. Thank you. Okay. If there's no other orders of the day, we'll move on to item number 1, investments. 1.1, the quarterly performance report as of March 31st, 2011.

>> Thank you. Good morning. Page 2 of the presentation. Just a little bit about the market environment overview. The quarter ending March 31st, obviously, the equity and real asset segments continued their strong performance, and by far outperformed fixed income. Although broadly. Even fixed income had very, very strong returns. One thing that I want to convey is, as you know, the pension planùthe board took the decision when the asset allocation was done about a year-and-a-half ago. Given that we were underweight to three segments of the alternative. We were underweight to real estate. We were underweight to the opportunistic investments, and we basically have not made any allocation to the absolute return phase. The approximately 15% that was supposed to go into those allocations, the board made the decision to basically allocate to fixed income. And the point that I wanted to convey is that decision did not hurt the plan over the last quarter or over the last year. Just a quick peek at fixed income returns at large. The plan's fixed income composite earned approximately 9.5%. And clearly, the equity market had even stronger returns, but the hedge fund returnùthe most common hedge fund index, the HFRI conservative only earned 1.5% over the last quarter. And the opportunistic return, which is benchmarked to 90 day T bills plus 3% would have earned just 3.2% over the last year. And aboutá.7 over the

last quarter. So basically, that decision which we're going to discuss later on the agenda, basically was neutral to the plan. So from here, I'll take you to page 8. What you see in front of you is fundamentally in the first bar, it's the actual target asset allocation, as approved by the board. The second bar is the actual asset allocation, and this specifically one quarter lag, so this would be as of December 30th. And the third and bottom bar is the average asset allocation for public funds greater with assets greater than $1 billion. The reason I'mùthe note that I want to make here is that clearly, this was a quarter where the equity performance was absolutely stellar. So pension plans that had a high allocation to the equity markets did quite well. The average allocations of public funds with assets greater than $1 billion to equities was 47.7. Our fund benchmark is basically 40% allocation to equity. So clearly, this will drive the performance of the plan. Before we actually look at the performance, I just want to convey why our asset allocation is what it is. And why that our asset allocations is such a surprise from the average pension plan. With that, I'll take you to page 10, I believe. The key component is the board aimed to diversify, not just by asset class, but the board tried to diversify the asset allocation by risk factor. Fundamentally, pension plans that have an allocation in the range of 50 to 60% to equities will typically have 80 to 90% of their risk driven by equities. Meaning when the equity market does well, they do really well, but when the equity markets tank, they do quite poorly. So the allocation that the board adopted tried to diversify away from equity into alternatives. And typically, on page 10, basically theùthis shows the pension plan's return per unit of risk. Typically, you want to be in that left quadrant, which fundamentally suggests you have a high return for a low risk. And as you can see from the table on the right side, the funds actually was in the 14th percentile, meaning the top quartile for sharp ratio and standard deviation for risk. So this is really the measure that we are trying to maximize. We want to earn as much return per unit of risk. And that we continue to do well on. During the last presentation when we talked about return per unit of risk, the board made the comment that there wereùyou can see two dots on that left upper quadrant, two pension plans that had even higher return than we did for an even lower risk. And the question that staff got was what are these pension plans doing? Because obviously, they're managing to do better than we are. We asked APC that question, and they replied that from the two, one was not their client. So they didn't have access to information. But one of the two was actually a client. And so they provided the name and the asset allocation. So that plan is San Bernadino. Their asset allocation is actually quite unique. Their investment team has been together for ten years. Their equity allocation is 22%. Split evenly between U.S. and international. Their fixed income, excluding credit allocation, is 16%. With U.S. fixed income being 6%. NonU.S. fixed income, including emerging, being 10%. Credit accounted for 19% of the allocation, with U.S. credit being 13%, and non-U.S. credit being 6. And then alternative accounted for 43% of the allocation. Real estate was 9%. Private equity is 16. Real assets accounted for 9%. Absolute return, 7%. And cash was 2%. I'm also aware from prior discussions with San Bernadino, actually about a year-and-a-half ago, Dr. Amire and myself went and visited San Bernadino, and we were aware that at the time they had a tactical asset allocation. So they had a plan to actually shift allocations tactically. They also had a portable alpha program, and for a period of time, they also had an option writing program. So this isùthis is kind of the answer. And you can clearly see that what they're trying to do is very much what we're trying to do. In that they're trying to diversify the risk factors as much as possible. And they've actually taken an evenùquite a few steps from our asset allocation.

>> Is this something new they're doing, or have they been doing it for five years?

>> They've been doing it, I would say, for two, two-and-a-half, since the credit market started basically kind of returns that we currently see. Two-and-a-half years ago. They moved away from equities. At that time they probably had a 40, 45% allocation to equity. And they basically decided that credit was a better investment than equity. So they movedùroughly half their equity allocation into credits.

>> So the ones performing exceptionally well in the following pages in three year and five-year probably isn't San Bernadino?

>> I know that they are over long periods of time in the upper quartile. So they might be there, too.

>> Thank you.

>> Now, with that, we'll take you back to page 9? So the return of the plan over the last three months was 3.1%, both the actual return and the fund policy benchmark ranked in the fourth and third quartile respectively. Over the last three months, the following detracted from the fund's performance. The following managers, Brandon and

William Blair detracted 20 basis points from the fund's performance relative to its policy benchmark. Alliance company in the emerging space detracted five basis points relative to the policy benchmark. Real estate detracted 20 basis points. Clearly, you're aware that currently our real estateùthe plan's real estate investments are physical properties, and we're in the process of transitioning a portion into the fund, and telling another portion very simply the properties don't offer the diversification or the risk adjusted return that the funds need. And the last was the commodity allocation, which detracted 15 basis points relative to the policy benchmark. And the reason was, clearly, we're invested in a swap, which would suggest that relative to the policy benchmark, there should be no detracted value. At credit Suisse, the first two managers mandated that on the first of the month, they wanted to receive cash. Typically, managers will let you buy into the funds on the 1st, and will allow you to pay for it a day or two days later. What that allows you to do is, it allows you to stay invested in your instrument, and when you sell, you actually buy into the managers. And two days later, when your original investment settles, you can transfer the cash to the manager. In this case, the manager's mandate is to receive the cash on the 1st, at the same time that we actually bought into their commingled fund. This meant we had to get out of the commodity swap one or two days early, and unfortunately, in those two days, the commodity market went up 1.8%. So this had had a significantùin general, any time when a manager does that, because markets tend to go up more often than they go down, it has a cost to the plan. The staff has not really developed a hard and fast rule on this, meaningùgiven the amount of due diligence, this normally takes us to get to the managers, we have not backed away. When managers have put this issue forward or this condition, clearly this needs to be a topic of further discussion. If we look at the last year, the fundùactual performance ranks in the second quartile with a return of 14.5%. And the actual policy benchmark is actually very close to the top quartile with a 15% return. Are there any questions?

>> I have some questions onùdetracting from performance. The data here shows, for example, that with alliance Bernstein on the emerging markets, we have had them as a manager since 2001. They have been on hold since 2007. Or on probation, if you will. That's a long time. That's four years they have been on probation.How longùand I think we talked about this in a prior meeting. How long of a leash do we give these managers before we look at replacing them?

>> Part of the reason why staff hasn't moved in the direction of replacing them is we are moving towards global mandates. So none of the really four managers that are there on international and emerging would fit into the new structure. Fundamentally, you're going to see Brandys William Blair, alliance, and the Boston company being removed in that fashion. Clearly, if the board wished to do something even sooner, then we can restructure the equity components even before the ALM. And proceed along that road. So it can be expedited. If it you feel that there's a need to do that.

>> Well, we might want to consider if we want to go to a passive approach while we're doing this search. I think in a prior packet we also had information that was an extended contract with Brandys which is in conflict to what we might be looking at.

>> Typically, we extend the manager's contract because we have a clause that says with 30-day notice we can basically stop any manager. So there's no really restriction on eliminating a manager or restructuring. So it doesn't really tie our hands in any way. That's part of the reason why we typically automatically just renew the contracts for a normal length, which I believe is three years.

>> Okay.

>> And that question has come up before. The fact that we have that easy termination clause that sometimes we're in the process of removing the manager, and we'll have a contract renewal that'sùthe process isùthat's to keep things flowing, but we can terminate them whenever we're ready.

>> Okay.

>> Sean?

>> Yeah, a few things. Brandisáit looks like they have underperformed the last month, are the last three months, the last year, the last two years, versus a passive index. While we're considering moving to global mandates, it seems that putting money in more of a passiveù

>> Makes sense.

>> Would make more sense.

>> We'll bring forward next month a new structure for theùfor the equity components. And that will allow us to put in place passive mandate on the appropriate. So we'll bring those forward next month.

>> A couple other quick questions. If I look at our performance, we haven't been receiving the monthly asset totals like we used to receive the last two months, right? We talked about improving the format of that. But we haven't been getting anything for February, March.

>> Staff's view on the asset total is it's very misleading. When the asset total goes up, you don't know why it went up. Did it go up because of investment performance, did it go up because the city made its annual contribution? Same when the assets come down, you don't know whether there was additional benefits than usual. So it's a little bit misleading in that you know what the asset value is, but it doesn't tell you why it went in that direction. So part of theùour rationale is that to the extent that the board feels they would like to have something monthly, then it's better to actually do internally a performance calculation, and transmit that. Because at least then we would be conveying how the investment program did. I'm just not sure how the asset total really conveys any message. It simply doesn't allow you to take any action.

>> Can we do a monthly performance in our packet?

>> We canùit's probably going to take a while to set up. But we canùto the extent the board feels a monthly performance number is something they would like to have, we can start working on that.

>> I would see the benefit to it. I'm not going to seeùbe the sole person to say that. If I look at this quarter, we slipped quite a bit versus where we would want to be in terms of our quartile, in terms of our percentage ranking. If I look at CalPERS, they're over 4%, we're 3%. It's not the end of the world in one quarter, but it's being able to detect these things as soon as possible. I'm glad you identified some of the key things that contributed.

>> I think the key reason why typically pension fund don't produce monthly performance calculation is because one, you don't have the universe comparison. So you're not going to be able to know what CalPERS did. You're also not going to know if you're in the third or second quartile. So you're just going get an absolute number. Whichùif we had given you after two months that we were up by 2%, notùknowing the rest of the picture, you probably would have thought that that's pretty good. So from that context, the monthly information, even if we were to set it up, would not include any benchmark comparisons, and so you would get just an absolute number.

>> We don't have our benchmarks available on a monthly basis?

>> We do. Our indices, absolutely.

>> How are we doing against our targets? I know CalPERS issues monthly results. So at least those two. I get we won't have all of the quartile and all that.

>> And you might not have at the first go, it might be just a total funds performance. We won't have the manager performance. But then we can drill down, just given a bit more time to set things up. We can drill down to the manager level.

>> At some point quarterly, fine for that level of detail. But what's going on with the endù

>> At the total? Okay. Yeah, that we can actually get done fairly quickly, doing a monthly calculation.

>> I would just add, I wouldn't make too much of CalPERS having monthly numbers. I know from my own experience, they have a much larger portion of their assets in illiquid structures than we do. They're only getting reporting quarterly, and so it's a fiction in the meantime. And you know, they publish it, but itùbut it'sùit's distorted to some extent.

>> Okay. Sean? [Inaudible]

>> If we could start moving more in that direction. Updating and whatever. But, you know, you can get pretty similar return in credit as you can to equities with half the volatility and that's what they're demonstrating here. And that carries over in the emorninging governments. It carries over in high yield rate, et cetera. And then also being a little more proactive in terms of taking the hand cuffs off the managers and finding managerses that can be more proactive and move quicker and can play both sides of the market. So that's my main take-away from looking at this report, is, you know, we're moving in the right direction. I think we have a very interesting allocation, and I think it's just a matter of maybe updating some of our managers to kind of take advantage of our allocation, and then maybe also just taking the handcuffs off a little bit.

>> Any other comments? Okay. Carmen?

>> So if there are no further questions on the performance, we will move to the next item.

>> Okay. The next item is 1.2, the staff presentation on the plan's fixed income structure.

>> And with that, I will move the presentation toù[Inaudible]

>>> Good morning. The topic of today's discussion is going to be fixed income market. And one of the things that has happened since 2008, a lot of attention has been put into the equity part of the asset allocation. But I think it's time to sit down and look at what's going on in the fixed income market. And I'm going to focus much

more on the traditional fixed income market, which is treasury, and high credit corporate structure. So with that introduction, I'm going to go through a little bit of historical context of where we are in the fixed income market. Talk about what can be possible scenarios of what's going on with the fixed income market. And Carmen will talk about the interest rate risk in the pension plan against liabilities. And at the end, we'll discuss some proposing structures in terms of different types of scenarios we think will be valuable. I believe the future meetings will have hedge funds and real assets and more of a GPA flavor to it. But today I want to start with this chart, which is taking us back to 1960. And if you can look at the chart, it's a very interesting chart to me, because since 1960, we have gone through this huge mountain in terms of the interest rate yield on the ten-year treasury from close to 3% to up to 15%. And now we are back below that level. The last 30 years since 1980, we have a declining interest rate in the United States. It's been very beneficial, both in terms of the asset returns and in terms of the economy. The next chart is similar in context. It's a little bit longer duration, going back to 1920. And this is the corporate bond, rather than the treasury bond. And you can see that if you just look at the 1960 period, very much similarly pattern of the ten-year treasury with two exceptions, which one exception being around 1930, which we had a depression, and the more recent, in 2008, when the spread widened quite drastically. These are important distinctions, because this rare spread between the corporate bonds and the treasury occurs very rarely. And was a very opportunistic time if you were in the credit market. The following chart is really just making that corporate chart and making it a little bit bigger. And you can see that at the end of 2008, the interest rates for a high-yield index was around 2,000 basis points. Around 20% more than what you were getting in the treasury. So people talk about equity markets, because that's what you hear, that's what you see in the newspaper. But the real damage was done on the fixed income market. The fixed income market completely shut down, and the whole market got devastated. But the interesting part is how quickly that spread has shrunk back to the historical low. If you look at it, we are at the level of 2006, 2007, which was probably the best of time in the fixed income market. So I think we can take away a couple things. Post World War II, we had the baby boomers, the growth in the economy, the interest rates went up, up to 1980. And that was the period that a lot of people are familiar with, the '70s, the '80s, the inflationary period that we had. And since 1980, we basically had reverse of that. That the interest rate started to decrease, and has really contributed to the fixed income market, and the fixed income portion of portfolio. So if you listened to the Barkley act in the last 30 years, it generated a positive return almost every year since 1980. It's been a great run.The question is that can this trend continue? If it you just simply extend that chart of the ten-year treasury, in order for that trend to continue, we have to go to interest rates of zero on the ten-year treasury. It has never happened in the United States. It has never happened anywhere in the world, for that matter. So there is a pause here to sit down and think about, okay, what has been the driver, and what can be the different type of scenario that we could expect going forward? And I'm just throwing in four general possible scenarios. These are not all the scenarios that could happen, but these are just really big-picture, wide brush, what can happen in the next five to ten years. Not in five to ten months. Five to ten years. We could have huge global deflation like we had in the 1930s. Things go in a hand basket, unemployment goes to 25%. You know, basically what we had in 1930s. The other case would be more softer, local deflation. I will talk a little bit about that. Third one would be we see inflation is coming back. Actually, we see what we saw in the beginning of 1960, that the inflation is coming back first in the foods and oil, and then it goes to other type of inflation. And then finally, which I think is very important thing, is the sovereign credit quality of the United States. Which has beenùnever been contemplated, but it's possible.

>> Do you have any feeling for probabilities on each of these scenarios?

>> We'll talk about it when I go through one by one. The first case is global deflation. 1930s. You know, if the bond market interest rates go to zero, or maybe go to negative like it did in 1930s for a couple months, shut down, equity market goes back to 400, I don't know, maybe 200. I mean, the whole system shuts down. In that case, the long bond market should do well. Because you are still going from 2% to 0. But it's going to be, as they say, it's the best-looking horse in the glue factory. Everything else you're just getting killed on. This will give you a little bit of a return. Okay. I don't think that's going to happen. The probability of that is very low. The fed walked in at the end of 2008, and kind of stopped that level of decline in a global environment. And kind of smoothed it up. Now, is that a possibility? Yes. Would it be something that I would bet my money on? Probably not. I think both Federal Reserve in the United States and globally came in and said that we will print as much money as we can to stop that process. So I think that's a possibility, but the probability is very low. The second case would be, what I call a soft deflation. And Japan is a very good example of it. And what has happened in Japan is that in 1990, they had a great economy, everything was going gangbuster. And starting in 1990--- they had amazing real estate returns, you know, if you remember, there was a case that the emperor's castle was worth more than

the whole state of California back in 1990. And now the whole thing unwound. What has happened is that even though their Federal Reserve, the bank of Japan, has poured in a lot of money into the system, and brought inflation down and brought the interest rates down, you really haven't been able to increase the economic activities. So if you look at it, in the next chart, their GDP took a huge dive, has been meandering around 1% since 1990. Took a dive like the rest of the world. But the interest rates, which is the following chart, hasn't been doing anything. So that's a ten-year Japanese bond. And if you look at the ten-year Japanese bond, you know, they start declining. But since 1997, which is what they're on, 13, 14 years by now, it's been flat. Hasn't done anything. Hasn't gone up, hasn't gone down. And whatever the interest rates the bank of Japan do, the long end of the bond hasn't really generated much activity. Now, can this happen in the United States? There is distinct differences between the United States and Japan. I mean, the United States is a much younger growing economy. We have positive population growth, we have younger and much more consumer oriented society versus Japanese. And that's been pretty powerful driver, at least in the last couple of years. People are shopping and the economy is coming back. On the other hand, the Japanese government put a lot of money to fiscal policy. Building roads, building airports, building infrastructure. And United States, because of high level of debt, doesn't have that level of flexibility to be able to reinvest in the economy. And generate the kickstart of the economy. I think there are a lot of economies who think this is going to happen in the United States. Not exactly what has happened in Japan, but some version of it will happen in the United States. If that happens, your fixed income part of your portfolio is not going to move much. Its the ten-year treasury or Barkley act goes to 2.5, 3.5%. Someone should look like heroes, someone should look like fool, but overall, not getting much of a return. And if you're looking at the 7, 7.5% rate of return for your pension, it's not going to contribute drastically to that. The other scenario would be inflation. There is good argument, very valid argument, that, you know, the feds stop the deflation, global economy is picking upùexcuse me, the Chinese, the Indians, the Brazilions are doing really great, demand is high. Inflation overseas is very high in some countries, double digits, 14, 15% in India. And that inflationnary way in the emerging market will come to our shores. If that happens, the interest rate in the United States will goùstart going back up. That is a highly likely possibility. I will say that's probably a more likely possibility than anything else. In that case, what happens is that the interest rates are going to go up. We didn't discuss it here, but generally, as the interest rates go up, the value of the bond decreases. So you are actually going to lose money on your fixed income allocation. So that's not a good scenario for your fixed income part of your portfolio.

>> We're all waiting for the good scenario.

>> Unfortunately, I don't have much of a good scenario. The global deflation was the good scenario. Last but not least, and this is getting some attention, especially these days, these sovereign credit swaps. The United States, as you have read in the newspaper, has a very high level of debt. And there has been some noise about does the United States have the capability to keep the AAA rating, and stay in that low level of interest rate and high level of quality? I don't think anybody even in their wildest dream will come close to what's happening in Ireland or Greece or anything like that. But it is true that there is a problem there. And what will happen is going to be anybody's guess at this point. Especially what's going on with the budget and level of debt level of the United States. In this case, the interest rate will definitely rise. Because people will not trust the United States government as much as they have done in the last 150 years. And in that case, neither your normal bond nor your tips will help you. Because this is trusting the united government, rather than just interest rate issue. All of these scenarios which are very bleak tells you that you really need to look at your fixed income, traditional fixed income allocation. The one that is Barkley act. And step back and say, it was a great run for the last 30 years. We need to change direction. I'm not saying tomorrow, I'm not saying next month, but you slowly need to divest yourself of that, because in the best of situation, we are not getting much return, and in the worst of the situation, we are going to lose our shirt. So we need to divest on that. So this is the partial conclusion. I think I'm going to pass the baton to Carmen, and she can talk about it.

>> The purpose of this section was actually initiated by a question from a federated trustee. His question was, given basically the likely scenarios that Dr. Amire just discussed, why don't we move the duration of the fixed income allocation down from where it currently is, which is around five years, to something much of shorter, like a three-month or a four-month, in an attempt to try and preserve capital if interest rates start going up. So the goal of this section was, in fact, to convey two messages. One is to say that any pension plan, what you need to do is manage surplus. And managing surplus really means that you want the sensitivity of your assets to be relatively

close to the sensitivity of your liability. The sensitivity of our liabilities, based on the work that staff has done, is approximately in the range of 3.5 to 4 years. So really, investments with a duration of five is in fact too long. Would like to bring it down to the level of the liability. However, clearly, a 09-day or a 6-month investment is inappropriate. Because this actually increases the risk of the plan, and decreases the return. So basically, the fundamental message from the section is the current core investment, which is bench mark versus the Lehman act which has a duration of five years, is too long for this pension plan much. And so when we restructure our portfolio, we're very much thinking about the possible scenarios we have discussed, but we really are also thinking of cutting down the duration, which really is just the sensitivity of our assets to interest rates. Down to somewhere in the range of 3.5 to 4 years.

>> I have a question.

>> Sure.

>> I'm not in favor of lengthening our duration. But how can we have a liability that short, when we have retirement lives that can last 15 or 20 years?

>> That's a very good question. I guess the answer is, where are you trying to minimize the risk? I mean, are we trying to minimize the risk of our return as reported in the financial statement and hence the city's contribution? Given the fact that on the actuarial sideùI'm going to look at any one year. On the actuarial side, on surplus that exists is amortized and the city starts paying contribution. So if you're trying to minimize the volatility of the city's contributions, you actually need to focus on managing the risk that are in the financial statements, which are, what is the actuary going to take into account when an interest rate really increases? So he's going to lookùbasically, the way he takes it straight into consideration is through the discount rate. And through the discount rate, if you have an allocation of 20% to fixed income, this really implies the durationùthe sensitivity of your liabilities to interest rates is very low. So typically, what you want to do is have the impact of interest rates be almost identical on the asssets and on the liability, so that if interest rates move up and down, you don'tùyou don't particularly care. You're not impacted. Both the assets and liabilities will move hopefully in the same direction and by

approximately the same amount. So that the deficit doesn’t increase. Or that’s the whole goal of basically this analysis. So yes, it is a short-term view than one would consider, but this is really kind of a result of the current actuarial methodology.

>> So philosophically, should we be focused on that short of a duration, or should we be focused on the longer duration of the beneficiaries of the plan?

>> That’s a very good question. It’s hard not to focus on the immediate impact on the city. I mean, very seriously, if you don’t focus on the shorter term, there might not be a long-term. So it is very much a good point that in reality, if you really need to look at the long-term impact too, but you cannot associate from what’s happening in the short-term. Otherwise, you might not have a long-term to consider.

>> It seems like one of the challenges we have now also is thatùand this is my impression, that historically, there was at least a reasonable relationship between the discount rate and prevailing interest rate. And now we’re in this sort of never-never land where there is a large disconnect there. So a rise in interest rates actually gets those more linked rather thanùrather than actually causing them to actually be synchronous.

>> The idea is to go shorter than the liabilities and hope that the interest rates go up.

>> Right.

>> Which would definitely be a beneficial situation. But that’s very much our message, we need to go shorter.

>> So there are a couple things that jumpout at me. One of the things we need to be careful about in terms of a real short duration is one of the best ways of generating a return in fixed income is rolling down the curve. If you look at page 49, you’re going to see that the sweet spot in terms of the steepness of this curve is between two to four years and that rolldown can develop about a third of a year return in fixed income. Soùand your duration there would fit into Carmen’s bucket of probably 2.8 for a 5-year, so a short duration. But one of the things that

we might want to consider is maybe, you know, changing the mandate to where you go into, you know, forùsay, three or five-year high yield or three to five-year emerging debts where you're getting actually better balance sheets than the sovereign debt out there. And corporate America. And in the emerging space. You still have a nice spread pickup. And you roll down the curve. So I think thatùthat would be one thing I would say. The other thing is, if you want to adjust the duration down quickly, the easy answer is just asùon page 34, is selling the long bonds, getting rid of that allocation. And then the other point that I think is interesting here is, we talked about the tips allocation before. And I think our view on this is kind of evolving a little bit. That if there is a deflationary scenario, like Ali mentions, with Japan, then you will actually lose the callback on any accrual there, which could be a significant part of the return. And if will is actually an inflation, how much does the CPI capture and are we better served to have this with commodities oriented investments rather than tips. We have all seen the CPI seems to understate inflation a little bit. It might be another thing to look at.

>> We agree with all of these comments. So with that said, I'm going toù

>> I guess a couple of questions related to that. Is there any kind of explicit linkage in the benefit to inflation?

>> No. I mean, yes and no. The benefits specifically after retirement is indexed at 3%. So it's not indexed to inflation. Howeverù

>> So butùI would call thatùI would say. [Inaudible]

>> Exactly, yeah. That's from inflation more or less expectation.

>> But it'sùit's a predetermined amount, it's notùit's not CPI.

>> Yeah. The stronger link of the benefits really to inflation is the fact that salaries, which obviously since this is an average benefit, since salarieses typically inflate, inflation plusá.5 for merits and so forth, that's where the linkage is very strong. And basically, what I didn't cover in that section is the fundamental driver pension plan

should have an allocation to real assets in the order of magnitude of 15 to 20%. It's because of that link to inflation. Meaning in a high inflationary scenarioùtypicallyùthe typical plan would actually lose money, whereas the abilities in a high inflationary scenario would increase very significantly. The reason is salaries will typically follow inflation. And so by having a significant allocation to real assets, what you're trying to do is making sure in a high inflationary environment that the assets will hopefully increase by roughly the same magnitude as your liability.

>> Right. And then if you just step one step further back to think about the impact on the city, because we need to keep the patient aliveùso in a high-inflation environment, the city's payroll cost goes up very significantly, as you say. I guess I personally think that it's unlikely that they would be faced with payroll cost increases that would run well ahead of published inflation. I think they would beùI think it would beùthey would be successful in keeping people's wage growth linked to public inflation, rather than shadow inflation. That's my hypothesis. And then when you talk about their taxing ability. So if itùif shadow inflation were high he than published inflation, they would benefit on the sales tax side. But they would get killed on property tax, because that's capped.

>> Yeah. Well, I can speak about the history of this pension plan. This pension plan has had historically salary increases that are significantly above both the CPI and even the actuarial assumptions. One of the big things in the last round when we did the study, the biggest risk of this plan has is salary increase. Historicallyù

>> They haven't been inflation driven.

>> Well, I mean, you always look at how much you're paying above inflation. And this plan has been able to capture a significantùI mean, the typical assumption is somewhere in the order of magnitude of 50 basis points to 75 basis points, in excess of CPI. This plan has had significantly higher than that.

>> Have you ever compared that to real estate inflation in the Silicon Valley over the last 20 years? Because this area inflates at a different rate, obviously. Has over the last couple decades. Is it higher than Silicon Valley? Real easy to track.

>> Yeah.

>> The problem, though, is that you'reùyour house inflates in price, but prop 13 keeps the property tax from going up more than aù

>> Right. We have to pay people more, but we're not bringing in anymore in revenue, because a lot of stuff we sell, we sell across the world.

>> To a level. But there is a high level of residential turnover, as well, too. That wipes that out.

>> Any other questions?

>> One other question.

>> Go ahead.

>> So what do we need to do to actually start to change our fixed income allocation?

>> Well, that's going to be discussed next page.

>> All right.

>> Ali is going to go overù

>> Do we need to vote to kind of move forward with moving and adjusting our fixed income, orù

>> Ali is going to discuss our thoughts on where weùwhere we're heading with the structure. And the next step would be to do the asset liability study. That'sùthen the questions come back to just staffing. That's one of the issues that we're going to talk tonight in 2.4. Because securing Mr. Moehle's time to work on the ALM has actually been a huge challenge. And so it's just a matter of doing the ALM. I think given the fact that there is a desire to do the equity structure fairly quickly, I mean, realistically, we're better off doing the ALM, and then moving forward with the structure.

>> I have a couple things.

>> Just continuing on theùwhat we think we should do with the fixed income allocation that we have discussed allùwith these scenarios is, maybe it's a good idea to look at what we already have. And if you look at the top part of this asset class that we own, we have around 10% in tips, 5% in core government, 5% in long bonds, and 5% in the high yield credit opportunity. And next chart, kind of a table breaks it down a little bit better in terms of the actual allocation. And I'm going to talk very briefly about each of these blocks. Starting from long bonds, this is just a mandate of long bond. I think the duration is around ten years or so. So it's a very long bond. U.S. government agency. If the inflation starts rising, that's probably the first asset that we are going to start losing money on. Much more sensitive in terms of the rate of return. To rising interest rates. So that's something that, you know, rising interest rates, we should definitely get rid. The middle three boxes are not traditional fixed income, but they have very much correlation with what's going to happen. The first one is a bank loan, which tends to be a floating rate. And they are protected from rising interest rates. They actually will do well in a rising interest rate, because the interest rate will get adjusted. This spread, which was phenomenal when we invested in them, had come down. So the up side is kind of muted. But it's still, I thinkùbecause of the nature of floating rates, good investment. The second box, which is a high yield, it's not a floating rate. And we invested in that asset class, just because the spreads were so high and the investment was so attractive in the end of 2008, that we felt compelled to invest with them. That spread has come down. The markets actually going Gaga over this kind of asset. And there is no upside personally, I think, in that asset class. It still gives you a 3 or 4% rate of return, but the up side is muted and if you have another double dip, you're going to start losing money on that.

>> Sir, our targetùwhat's our actual investment in that category? What's our actual holdings, and what percent of our portfolio is actually in that category? [Inaudible]

>> 1.5.

>> 1.5.

>> It's around $50 million.

>> This is theùthis is proposed? Structure?

>> No, no, our current holding.

>> This is our current holdings?

>> Our current structure.

>> Current structure.

>> Target, or where our money actually is?

>> Current target.

>> Target. Thank you.

>> But the last but not least is PIMCO is opportunistic, and they have been good at moving up and down the curve and picking up different bonds. The next box is 5% Barkley act. And that's really the center of my discussion has been today. And this is the type of assets class that has been really good investment for us. And

they are actually good managers. They beat their benchmark almost every year, in my memory serves me right. They're very good. But the asset class, which is very much tied to interest rates, seems to have reached a maximum potential. Unless we think the rate couldn't go lower. So in terms of the readjustment of allocation, the core government bond and long bonds are the two primary buckets that I would take a serious look at. Tips, as Sean mentioned, have some weaknesses. A., they very much depend on the government CPI and what the government says the CPIs are. And rather than shadow CPI. So their returns are different. The second is that if you look at the treasuryùexcuse me, tips, the 30-year, the real year yields on them are negative right now. So we're actually paying the United States government money for owning this asset class. It just doesn't feel good to have a negative return asset class in our portfolio. So I would look at that reduction of 14-year tips to much more reasonable duration.

>> So just briefly, you identified core government bonds and tips and our targets. Target for tips is 10%?

>> Yes.

>> Our target for core government bonds is 5%. From your earlier presentation, actual holdings, it appears tips is 13%?

>> That's correct. But that's because of the board's decision toùthe money that should have been invested in absolute return, the underweight to real estate, and it's actually in fixed income temporarily.

>> Understood. Same with core government bonds. Instead of 5%, it's 8.5%. So is I'm saying all these issues you're identifying we're more exposed to, because we don't have any money in the alternatives.

>> Yeah.

>> Thank you.

>> And just a point about the tips, we invested in 5, 10 and 15 last year, and we're letting them roll down the curve. So they're now one yearùone-and-a-half year shorter than the initial investment.

>> So where we go from now.

>> I think the question before we move on. The bank loan fund. Is that fund self-levered? Many of these funds are actually levered within the funds.

>> No.

>> No, we actually had a constraint on our mandates, which basically had no leverage. Either to Sykes orù

>> And actually, anùadditional point is that both are self liquidating funds. Which means that as the bonds mature or they paid coupons, we took the money out and paid for the benefit. So actually, it's been a really good cash cow for us in the last two years, because they are just throwing a lot of cash in the last couple years. So I think our al althoughùour investment with them is around 49.50, which was our original location, we took another 30 on in the last year-and-a-half, paid for the benefits. Thisùthese recommendations really are just the top points. I would not give them that much weight. I think it's something that we should think about, and what we want to do. The problem with shorter duration is that the interest rate and the shortening of the curve is zero. You're basically getting at the five years, 1%. Getting no money coming in the treasury market. And going to Barkleys or going to even theùthe investment grade bonds, we are not going to get that extra rate of return. So shortening your duration is not necessarily the solution that you're looking for. You're not going it meet your actual recommendation. What thatùthat's something you can do. The other decision would be B., which kind of looking outside the normal locations to the bonds, looking at long/short managers who do a lot of credits trading, relative value, fixed income, some managers have a very unique strategy. There are segments of the fixed income market in the loan market that are very attractive. Just because what has happened in the banking system, the loan markets are still very attractive and you can look into the allocations. So the opportunities are in some parts of the fixed income market. There are opportunities in the emerging market debt, which is very attractive also,

and has been investingùa lot of people have been investing in it. But the opportunity in the traditional fixed income market seems to have evaporated. So my recommendation, if there is really one sentence, is that we need to get out of the traditional fixed income allocation and look at more opportunistic allocations that exist. Either emerging markets or within the credit market in the United States. That would be the take-away I would like the board to take. Any questions?

>> Questions? All right. I actually have some observations that I wanted to share, and then some thoughts. Would you mind going to page 40? So this may not be exactly where in the end we're going to want to go.

>> Yeah.

>> Page 40.

>> 40? Okay.

>> But clearly here, we have existed high yield, we have increased or adding emerging market debt. Our fixed income allocation is considerably lower here, 13.5% versus our target of 25. And now we have added emerging market debt as a large percentage of our fixed income allocation. So just some observations and some historical information. I think it's important to understand when we look at some of these asset classes, what's caused them to perform so well? And emerging markets is an area that's done extremely well, institutions are moving money there. However, in the last ten years, we have had the dollar drop significantly. Which has helped anything that's foreign. We had an Asian crisis in 1998, which meant yields were high e they cleaned up their balance sheets so returns have been superior to a lot of other fixed income investments. I think we have to be a little careful of coming in late. One observation. Second observation is that from a global perspective, talking about fixed income, talking about the actuarial rate of return, our fixed income portfolio to give us that actuarial return. It will give us part of the return. That's why we add equities and alternatives to get closer to that number. So we have to be careful. I don't think we can expect income 7á╜, 7á╛ return. The scenarios you laid out are all plausible scenarios. One scenario that isn't addressed, however, is we don't have deflation. We don't have

inflation. But maybe we just have a reinflationary environment. We have had had massive fed intervention for two years now. And just simply them backing away this quantitative easing program doesn't necessarily mean that inflation is going to come roaring back. It may mean that rates drift higher, but then the returns become a bit more attractive. So I think we have to be a little careful of that. We don't have anything here that looks at in general, global fixed income. So while interest rates are lower here in the U.S., they may be higher outside the U.S., and it doesn't necessarily mean it has to be just emerging market debt.

>> Absolutely. Actually, we didn't specify, but our intent is to look at fixed income very globally. Meaning our investments will not be U.S.-centric. Neither will the benchmark.

>> Okay.

>> So that's absolutely right.

>> And while yields have come down considerably for high yields, the spreads aren't way out of line with historical norms. The spreads historically are about a 6% express. Spread. Right now 5á╝. So I would be a little reluctant for us to completely abandon high yield. That's an area that still can give us a better return within the fixed income markets. So I think it's something we should still consider keeping in the portfolio to some extent.

>> I think you raise three really good points. And let me address them. I think in terms of emerging market debt, you're right. There has been overwhelming flow of assets into that market. And the spreads have shrunk, they're really on a historical level. And I think that should give you pause in terms of going to that asset class. So I don't disagree with that. But there are two other issues that you raise that I think is important. Was thatùone is that do we expect a fixed income to give us the rate of actual rate of return? No, I don't. But the lower the expected rate of return or my fixed income s the higher my expected rate of return of my equities and my other asset classes. So if I think my tenure is going to be 2%, my equity, just simple math is going to give me 13%. Nobody in this roomùI don't think anybody in the investment business thinks the equity is going to be 13% in the next five years. I don't know. I guess it could happen, but realistically, it justùextraordinary. So when I talk about fixed income

asset class that we need to be concerned about, it's not that I expect my fixed income will give me 7%. But it needs to carry its own weight. I should be at least getting 4 to 5% out of my fixed income, so I'm not relying too much on my equity or commodities to give me that 13, 14% rate of return. So I have a much more balanced rateùsources of return. If I'm worried about my fixed income not generating that rate of return, it puts a lot more burden on the rest of the asset class. And I think that should be something that we should think about. That's one issue. The second issue regarding the issue of reinflation. And when I talked about inflation coming back up, I wasn't expecting, you know, double digit CPI. Or, you know, growthùwhat we had in the '70s. But evenùbecause you don't have a coupon cushion that historically you had on the fixed income, even a 1% rise in your ten-year treasury is going to wipe up all your returns. So if the rates of returnùexcuse me. Ten-year treasury goes from 2.5% to 3.5%, so it's not a huge inflation. I mean, nobody isùI'm not talking, you know, '70s. That's going to wipe up all of your coupons and more. So even a reversal of the deflationary trend we had in the last 30 years is going to be painful. Not WYMER republic, but just going from 2.5% to 4%, you're going lose money. And you're going to lose money substantially your fixed income. And that's going to be a problem.

>> I would add just a couple of comments. Historically, fixed income has been a lower return, lower volatility asset class. And so you allocate to fixed income, because, A., you need to diversify your portfolio. B., you want to bring the volatility of the portfolio as a whole down. And I guess one thing that we want to bring to your attention is, given the potential future economic scenarios, fixed income is a segment that could potentially lose fairly significantly. Or in the best of scenarios, just stay flat. So given that view, it doesn't serve the goal that normally leads pension plans to allocate significant portions of their asset class. So really, that's kind of our thought on fixed income.

>> And I completely agree with the risk component has changed for fixed income. And looking at spread, because not all fixed income is created equal, right? We're talking about the impact with interest rates changing to the price of that fixed income. Typically, that's treasuries. Other fixed income vehicles would respond differently. We do have a real estate component. I think we're looking at REITs. So that would be one alternative. The fact that you're looking at emerging is a sign that you're going to want to have global fixed income, which is good. High yield tends to react more like the equity markets than the fixed income markets.

And does give us a spread above treasuries. So that isn't as much of an anchor as a treasury would be. We might want to even consider MLPs in the portfolio, which offer very high yields. That's another instrument. The only concern that I have if we get our fixed income allocation too low is another black swan event.

>> What we call credit opportunities is really a opportunistic allocation. Meaning we don't need to prespecify what will actually do really well in the future. We have a box that'sùwe can, to the extent that, for example, a specific segment of fixed income does really well, then staff is going to pick up on it, and we're going to come forward with an allocation in that opportunistic allocation. So we have labeled it probably inappropriately credit, because right now that's what we have put inùbut the reality is, it's an opportunistic allocation, and you know, if in six months a specific segment of the fixed income market does phenomenally well, we're going to come back to you, and we're going to suggest an allocation be made. And the whole intent of having an opportunistic allocation, we really have opportunistic allocations across every segment. We have one in the equity component, and so far we have put in convertible bonds in that equity segment. We have a segment in fixed income, and we have a third segment in alternatives. So wherever we see the opportunities, staff is going to respond, and come back and try to make allocations within those opportunisticù

>> Okay. And the only other thing I would conclude with is that as we're looking at the shifts, it would be important to have data that supports sort of a stress test. So as we're changing our allocation, we're also changing the risk profile of the portfolio. How was that impacting us? Because in the event that we do have another crisis, although we didn't want to own treasuries in hindsight, we're going to want to have owned treasuries.

>> Yeah. And that's part of the reason why I suggested that we would want to restructure as part of the asset liability studies. Because it is at that point in time, where you typically look at how your liabilities would behave, you would model the assets and stress that under different scenarios. So that the board can take an appropriate decision. Restructuring equities is a simpler task. Because we're not changing the amount of equities. So really, the risk coming from equities to the extent that the allocation doesn't change, you know, you could restructure it without impacting the risk of the plan. But on fixed income, we actually need to do both. Change the allocation

and restructure. And that you cannot do without the full-blown ALM. That'sùactually, one further comment relating to leverage on the credit. Although Sykes and Mcdie shields are not levered, Sim co disco is. So one of our three investments.

>> Yeah, I actually wanted to comment onùfurther on the whole leverage loan piece of the portfolio, and especially since you're talking about continuing to focus on opportunistic allocations where loans are often a part of that. The leverage loan market is an area that I've actually been spending a lot of time personally looking at recently, and I just want to raise a couple cautions about it, because I do think there is an element of it which has a bit of of a too good to be true effect in terms of how well it has performed. And continues to perform. There are twoùyou know, there are two risks in the market that I think are significant that are not much talked about. One of them, I think, is fairly obvious, if you're thinking about it. Which is that there is theùyou know, picking up nickles in front of a steam roller element to this strategy in the sense that you are collecting a very high coupon from some very mediocre credit in terms of credit worthiness. Companies who will pay you even higher coupons if interest rates go up, up to the point that it kills the companies.

>> Right.

>> So, know, that's the scenario where you get wiped out. It gets better and better and then it dies.

>> Yes.

>> So that's one thing I worry about. And the second point is, I think an also very important one. It's very, very subtle. Which is that it is the position of the leveraged loan industry, as I would call it, that leveraged loans are not securities. And the reason why that's especially important is because what that suggests, if that's correct, and that'sùyou know, debatable, actually, in my opinion. Is that those instruments are not subject to the anti fraud position of the security clause. So, you know, I actually think that along with everybody, actually, in terms of end buyers, leverage loan funds, thinks they're getting a fund that looks like any other fund that, you know, ultimately has the S.E.C. policing it [Inaudible]Or at least, you knowùat least the sponsors of the fund are at leastùhave

some reasonable fear of that. That to check their behavior. But it's not the case in the leveraged loan market. And it's something I think that anybody who invests in the market really needs to be aware of. And I think that if you do anything in the future, you should definitely have that conversation with the manager.

>> We actually have very similar thoughts on the topic, which is why when we structure the hikes and Mcdie shields, not only did we not allow leverage, but we alsoùcompared to the benchmark, they're significantly better credit. Meaning we limited their exposure to the lower rated portion of the market, very significantly. And that's part of the reason why you see theùboth managers really underperforming the broad benchmark. It's not because the managers are underperforming. It's because what's really driving the return of the indices is the lower credit portion. And is we basically told the managers we weren't interested in doing business in that space. So definitely, the issues you've raised are things that we typically would consider when we're building a mandate. And that's why you need to be cautious about the overall amount of credit that you have. Not just under things labeled as credit, but, you know, emerging markets tends to be linked to credit. And when the equity market tanks , fundamentally that has an impact on credit. So it's really more or less one risk. So absolutely. Weùwe're very aware of that.

>> So it seemsùwe could certainly talk aboutùor take action on changing our investment within the bond area before we talk about moving from a 33% actual or 25% target down to a 13% target. We need to do theùwe need to come back to us, I guess, with the stress testing of this, and what it would mean. Because I would like to put all our money in things that are expected to get better than our target return. But this is kind of our security instability in different market scenarios.

>> Yeah, I think what needs to happen is we need to redo the asset liability study. Decide how much we want to put in our three buckets, equity, fixed income and alternatives. And we will simultaneously redo the structure.

>> Okay.

>> And I think it's really important toùbecause what really drives the risk of the plan is very much the amounts you put in each of those three. So I would say the first thing is to redo those, and simultaneously redo the structure. And we absolutely agree that equity, fixed income, we need to revisit the structures across the entire spectrum. And so that would be our recommendation.

>>. [Inaudible]

>> What is your plan for returning with the asset liability studies?

>> That will be discussed in item 2.4. Reallyùone of the biggest sticking issues that drove this agenda item is actually the fact that we're trying to get some ofùI'm trying to get some of my own resourcesùmy time, Mr. Moehle's time is tied up. I don't want to address it at this time. But in order for us to move quickly on this, we kind of need to have a further discussion on item 2.4. So I guess I will answer the questionù

>> So we'll get to that when we get to that item, I think.

>> Yeah.

>> Yeah.

>> I've gotten that message.

>> There's no time frame right now.

>> I think the whole thing will be discussed when we get to that particular item. Okay. Any other questions? Okay. Next item. Item 1.3. Discussion and actions on NEPC's recommendation regarding short term investment of the alternative developmental location.

>> Just a quick introduction. I think it has been a topic of discussion at almost every board meeting over the past three months. Currently, our actuality active allocation is just over 20%. And our target is obviously significantly higher. It's at 35%. That underweightùtwo alternativesùclearly, the way you buildùthe reason it is so is because in the alternative space, you need to take time and build your exposure gradually. Even as you find managers and you place them, they take a fair bit of time to actually draw in the money. And so you simply can't move very quickly on thatùand fund the whole component. So we're currently underweight by approximately 13%. The question is, how do we invest those 13%. What the board decided over a year-and-a-half ago at the time of the asset liability study, as I have mentioned, is to invest them in fixed income. This has actually beenùhas not been detrimental decision. However, given some of the thoughts that you've heard on fixed income today and given sort of the views on the asset class, the big question is, does it make sense to diversify that allocation and rather than have it entirely housed in fixed income, allocate it as per our long-term asset mix, which would put a portion of it in equities, a portion of it in fixed income, a portion in real assets. Clearly, we can only spread it on the liquid piece of the asset allocation. So this isùthe discussion point that we wanted to bring forward to the board today.

>> So are you saying that, for example, you wouldùin order to get to the real estate allocation in one fell swoop, you would just invest it in a series of REITs as a way of doing it on a liquid basis?

>> Weùreally, the reason weùlet me answer the direct question, and then I'll kind of talk more about what it is I'm talking. We're not really considering real estate as a liquid asset class. And the main reason is, as you know, REITs has had a huge run-up. So far. So putting more money in at this point in time doesn't make a lot of sense. And REITs are very volatile. Also, as aùas a pension plan, the main reason you invest in real estate is because of the low correlation to theùand the diversification benefit of that asset class. And unfortunately, as you invest in real estate through REITs, the beneficial correlation, really, a lot of that impact goes away. That's part of the reason why the board, although we implemented, we tried to implement all the other asset allocation decisions pretty much on the spot. If we couldn't do them actively, we recommended passive approaches. This was one area that we did notùthe staff recommended to the board that we hold off implementation until we find appropriate opportunities. So this recommendation is not really addressing that piece. The recommendation is really

fundamentally suggesting, rather than have targets of 40% in equity, 25% in fixed income, and 35% in alternatives, and the 13% are currently allocated almost entirely into fixed income. It's to spread that 13% across equity, fixed income, and real assets. So we're not touching, really, real estate. At some point in time, we're going to have to go out and find managers and fill the target allocation. But until we do so, investingùfilling up the target allocation through REITs, it's something we can bring for discussion, if you would like to discuss it further. But so far, staff thought that we would rather stay pat and not implement. Of.

>> Yeah, I wasn't advocating it. I guess to me the question is around doing it through REITs. It's not so much a question of where are REITs values today, but more how well do they actually replicate the exposure ofù

>> Real estate.

>> Of real estate. And I know that has really jumped around a lot. And if you're saying that your opinion is it hasn't really replicated it very well, then to me that'sùthat's a strong argument.

>> Yes.

>> Against that.

>> I think that's really the main thing you want from all of the alternatives, is the fact thatùit's a local relation investment. Because ultimately, you can't focus on return. You just don't know what the return is going to be. But if the asset class can give you a diversification benefits, then it's a worthwhile investment. And REITs significantly lowers diversification.

>> So I'm looking at the numbers here on the actual asset allocation, and we've actually had niceùone of the benefits of diversification, caught a nice move here in fixed income, seen the ten-year at 295 now. So when I look at the allocation, we have 32% roughly in fixed income. And we have zero in our absolute return bucket. It might make sense for us to consider, you know, going back down to our 5% target for core fixed income in tips, which

have had nice runs. And move that into our absolute return bucket and start to fill that out. You know, you would have 5% right there, just by making the adjustment on those two, you know, just reel baaing. One of the things thatùto take advantage of diversification, you need to rebalance and lock in those gains that we have had here under fixed income. Sean?

>> Yeah, I would be totally open to coming back. I feel like we're heavily weighted in this debt right now, because we said let's put this money in there temporarily. We have put 100% into debt. And if you look at the nonalternative investment in our portfolio, it's about 60% equity and 40% debt. So the simplest thing would be to say hey, let's put that money into those other two areas in some similar type way. Another way is to say, along the lines of what he is saying, look, our inflation link commodities were about where we plan to be, but opportunistic investments or absolute return were way low. What would be most like those, are those more of a debt type investment or an equity type investment and look for those opportunities to move things around. So I'mùI'm totally supportive if you came back with some clear recommendations where to move things. Are you looking forùthat direction for us here today?

>> Oh, as far as proxies are concerned, there aren't really good proxies for absolute return. Really, the best thing you can do is fix the managers and fill the allocation, and trying to select a proxy is very difficult. And at best, isn't necessarily going to get you something close to what that asset class is going to bring.

>> So are you looking for just direction toùinstead of putting it all in debt, to be able to split it into equity at some ratio?

>> Equity, relapse and fixed income across the three liquid components. We're all for filling the absolute return allocation. And staff is actually starting to have meetings with different consultants. We do feel that potentially having a consultant guide us through the process. Because there are thousands of hedge funds, and I think adding to the team a specialized consultant, basically would be beneficial. So we're really working on that by first trying to line upùtrying to see the resources that all bring to the table through the database, through the risk system. And kind of working on that frame first before we put in theùbecause what's clear is before we give our

first allocation, we need to make sure that we're comfortable that we can actually manage the risks. At the moment, we can manage the risk, then we can go out and start filling the mandate. So we would like to fill it. This is really what we would consider our top priority, filling the absolute return bucket. So that's kind of our first and foremostù

>> Is there also a way that we could reallocate thoseùlet's just talk about absolute return, that lack of money going in absolute return. Could that be put in other alternative investments that are liquid enough that it could be put there? Overweightùthat are overweight other areas?

>> Not that I'm aware.

>> Okay. [Inaudible]

>> So may I have a few questions?

>> Sure.

>> Pretty short.Number one, we currently have 21% in alternative. How long did it take us to get there? Is this a process of years?

>> Oh, years.

>> Okay. So then secondly, with that, how long do we think it's going to take us to get to our target of 35%?

>> I would say given that the opportunistic allocationùthey've already drawn in about three months approximately 1%. That the remaining 4% should be drawn within the next year. On the absolute return, really, I think it will take probablyùbefore the full allocation is made, probably about a year, as well. The real estate would probably

come afterùfrom a staffing perspective, you know, knocking one after the other is the likely thing to happen. So you're probably looking at one to two years.

>> Okay. So with that kind of information, I think the appropriate question is, what kind of risk are we taking by having this spread out? Since it's not in the appropriate asset class? Versus the lost opportunity of keeping it liquid and not taking risk with the money? Should we be weighing that?

>> Well, if the environment for fixed income is the traditionalùagain, environment where fixed income is protecting capital, I would say yeah, absolutely, let's keep it. Just from a point of viewùthe investment is short-term, and so capital preservation should be our foremostùof foremost importance. And I believe this was the reason why the board a year-and-a-half ago decided to put the money in fixed income. But ultimately, given the scenarios that could happen in fixed income, it's not necessarily a great place to preserve capital.

>> So with that kind of information here, NEPC is suggesting we spread it out between equity, fixed incomeù

>> And real assets.

>> And real assets. And that may not, in fact, be the best thing to do.

>> You can never predict what's going to happen. So ultimately, trying to predictùespecially over a short-term horizon. Every time I attempt [Inaudible]They try to get all of the, you know, basically big names in the investment industry to forecast what's going to happen over the next years. And what's amazing is to hear how wrong they are. They come back a year later and tell you what these people forecasted, and typically, they're totally off the mark.

>> Correct.

>> Over a short-term horizon, it really isn't possible to try and tell what's going to happen to the market.

>> So I think at the board level, we need to feel comfortable about if we follow this recommendation, that we may be increasing the riskùwell, we will be increasing the risk. Will the return commensurate with that over a one or two-year per period, versus we have a lost opportunity cost. But it may be a safer bet.

>> So I was going to say, you know, I think that if we do allùI think we have them scheduled for mid June, and they have been approved for funding, as I understand. So really just kind of waiting to make sure they're the ones we want to go with. And we don't meet in July, correct?

>> Correct.

>> So maybe by August, you know, you guys could come back with an idea of if we take Auburn on to fill in that absolute return bucket. And then we could, you know, kind of correct our overweighting and fixed income easily by filling that bucket. And then as they draw more into the opportunistic, you know, you're going to be killing down the fixed income, and then you can make the decision of whether you want to go below that 25 or whatever percent.

>> Okay.

>> So am I hearing that the board does not want to make a motion to follow NEPC's recommendation?

>> What's staff's recommendation?

>> I mean, ultimately, from a typically theoretical point of view, you're absolutely correct that if youùif you have an allocation to equity, fixed income and real assets, especially over a short horizon of, you know, approximately a year, this is a significantly riskier investment than just putting it in fixed income. The advantage, the reason why you would want the to consider doing that is just the possibility in the year-and-a-half that real assets, fixed

income and equities will all dive together. It's probably a less likely occurrence than the possibility of potentially something happening in the fixed income space.

>> Okay. So bottom line, what's your recommendation? There's not a recommendation memo here from staff. It's only from NEPC. What would your recommendation be?

>> We would move towards the three-pronged approach, just because we do view the fixed income space as being fairly risky. Meaning, we're allocating fixed income to try and preserve capital. And over the next year-and-a-half, we don't think necessarily that that will actuallyùI mean, we don't think that fixed income space is necessarily going to do that.

>> Okay, great. That's the question.

>> Mr. Chair, I'm going to make a motion that we accept NEPC's recommendation.

>> Okay. I have a motion and I have a second. Is there further discussion on the motion?

>> My question would be, if we make these reallocations, are we going to have to turn it around in three months and sell these investments and them then come back into these alternatives? Are we just creating more transaction fees, more, you know, movement where we might be better served by being patient and getting it into ourùfilling some of these buckets that are not currently filled?

>> Okay.

>> The actual amounts that would move, just because the investments into equities have had a huge run-up, if theùthe decision of the board is to actually reallocate between equities, fixed income and commodities, we would sell 2.1% of the fixed income component, allocate 1.7% of that into equities, andá.4% into commodities. So this is the amount of money that we're kind of thinking of moving.

>> Okay. Any further discussion on the motion? Hearing no further discussion, all in favor. All opposed? The motion carries.

>> For the chair?

>> Yes.

>> We have a time certain 10:30 when we move on to the disabilities discussion.

>> I was going to call for a break before then, so everybody could stretch their legs.

>> Are we going to return to these other items after the disabilities discussion?

>> Yes.

>> Okay. If everyone is okay with it, I would ask we hear 3.4, the discussion of quorum rules before the disabilities, because we're down to seven board members here again. And as I understand, there's aùthere's a question of whether it takes five people to pass something or four people or a majority of the people here today. And it would impactùit might impact things we have going on.

>> Mr. Chair, I would also support that, because I have got information here that needs to be reviewed, and we never got to that before this last meeting when you were going. We didn't get to that. So would like to have that discussion.

>> If the board concurs, we'll go to item 3.4 so we can keep our time certain part of the agenda on item 4, the retirements. So with that, let's goù

>> Thank you.

>> Okay. Item it 3.4, discuss quorum rules. And this was deferred. And I've seen conflicting statements on what the quorum for an item to pass and what a quorum to hold a meeting.

>> So the section that governses the quorums for the board is in. I didn't bring it with me. But it's the general section for all boards and commissions. When the governance ordinance was redone, we took out the section that provided specific requirements for this board that was eliminated in the governance ordinance. So this board is now governed by the same rule inùin chapter 2 of the code that all boards and commissions are governed by, and it's a majority of the members of the commission. So it takes five to take action. The only action that can be taken by less than five people is an adjournment.

>> Okay.

>> Mr. Chair, I would like to have an opinion on this. It's not clear the board members' quorum voting assigned by mayor Reid back inù8-19-10. So I would like to have an interpretation from Mr.ù[Inaudible]CHBTS you've got to go louder, because my hearing isù

>> Sure. Is that loud enough? The section that weùthat's part of our plan, 3.36.330 defines the quorum, andùbut related to that is the point, I think, that Mollie was just getting at, which is the number of votes necessary to take action. And that's in the separate section that unfortunately I don't have, a sectionùI guess it'sù[Inaudible]Related to boards and commissions in general.

>> If you want to take your ten-minute break, I'll get someone to bring the code section down and you can take a look at it.

>> I think I might have it here, Mollie, for you to look at if you like. It's jut the interpretation. I understand majority. And when a meeting starts, you have to have a quorum. And if someone leaves, is it a quorum of that group being able to vote?

>> No, the code section specifically says that it takes a quorum of the board to take action other than adjournment. It'sùand it's in chapter 2 of the code. Soù

>> Iù

>> A question or two before we take a break. So the rules of order for the board, are theyùis there a body that enumerates the complete set of rules of order or is it Robert's Rules of Order, as accepted by various city government provision?

>> Well, there are certain provisions that govern this board that are in the municipal code that the council has adopted. So the board has to follow those rules that the council has adopted for the board, because the council established the board. So the extent that the code would be silent on a procedural matter, the board's rules resolution says the board follows Robert's Rules of Order.

>> I see. Because I mean, to kind of play Robert Byrd as a parcel mentarian, as I understand it, under Roberts rules, that the quorum issue actually is onlyùis onlyùonly actually bites when actually thereùsomebody calls for a quorum call. And then the issue of how many votes actually were cast as a technical matter under Roberts rules only matters if you actually have a roll call vote and the votes are actually counted. And so the question is, under city law, is it your job to actually stand up and say there were not five votes cast? Who is the one who is to say that?

>>El with, Iùit would be obviously whether or not five votes were cast.

>> Well, not necessarily. Actual. Because you could have seven people here but only four of them actually, you know, say aye or NAY.

>> Well, yeah, we can doùthe votes can be taken byùby roll call, if you need to. So if there is any question, then you go around the table and ask. But we just found the code section. It says, unless otherwise specifically provided in this chapter, a majority of the total number of seats filled or vacant shall be necessary to constitute a quorum of the board or commission to take action. Although a lesser number may adjourn from time to time. So for all city boards and commissions, it takes the quorum to take action. The only action you can take if you don't have five votes is to adjourn.

>> So today we haveùchair, we have seven members.

>> We have a quorum. And a quorum can then take a vote to take action. The majority of the quorumù

>> So that's 4-7.

>> No, it's five. The majority of the seats. So it will take five to take action today. It always takes five to take action. You've got a quorum. You have seven people, but it takes a quorum, five people, to take action.

>> I hate toùmuddy the waters.

>> No, go ahead.

>> In matters here. But I'm more used to situations where the two issues are distinct. First there's a question of a quorum. What's a quorum? You know, and then the board can't really convene unless there's a quorum. Okay. Fine. Then we also have the residual point on the quorum that board member ClaireMON you talked about. In my mind, what I'm used to in other situations, is the number of votes necessary to pass a matter. And that can

vary across, you know, various options there. It could be the case that to take action, a majorityùyou have to have a majority of votes of all the seats, and in our case, we have nine.

>> And it seems to meù

>> That specifically addresses.

>> No, in my mind, it’s ambiguous. It should just say, to take action, you need a majority of the votes representing a majority. Something like that. Because the other common approach for these kind of votes is a majority of the quorum present. Now, you don’t have to do it that way. But that is also very common. And it would justùmaybe there’s another sectionùmaybe there’s an interpretation.

>> We have done numerous legal opinions on that section for all of the city boards and commissions. And I will tell you that it is the opinion of the city attorney’s office and the council is aware of the opinion, and this board is aware of the opinion, because I did an opinion for this board about two years ago, the that pointed out that that was the rule for most boards and commissions. So it’sùit has been consistently our opinion that the words ôto take actionö in that section mean that it takes five votes on this board for you to take action.

>> Okay. I understand that you’re very clear on that. What I didn’t find clear was, Russ, your answer. How do you interpret that section that Mollie is pointing out in the municipal code?

>> I think the section which, again, I’ve just seen at this moment, so I lookedùbut I think it’s relativelyùI think there’s an ambiguity in the section. It says you need a quorum to take action, right? That’s what it says. But, of course, you always need a quorum to take action. That tells us, in my mind, the threshold issue. The threshold issue, is there a quorum, right? That’s the first question that has to be decided. Only then can the board convene and consider anything. There’s logically a second step. That second step is, okay, once you have a quorum, how many votes does it take of that board to take action? Those things are analytically distinct. Now, I can understandùI don’t recall Mollie’s decision, and the board may ask her opinion on this issue. And the board

mayùsome of the new board members probably have never seen it. So the board may be interested in seeing it. And could find it persuasive. But I'm more used to situations where those two analytically separate distinct topics are treated separately. I just find that a more comfortable way. And I have some recollection, not very helpful to you today, that the actual prior versions of the relevant municipally code sections for this board have that distinction in it between those two topics. But as I said here, I don't really remember what that was. So that is the confusion I find. It just says, you know, words to the effect of quorum to take action. Now, perhaps it's reasonable to interpret that in the way Mollie has indicated. But notice, under the way lùthe alternate way, which is a common way for these rules to be adopted, that anlytic decision, distinction, makes sense under the language of the code. Yes, of course, you have to have a quorum to make action. But that is only step one and there is still two of the number of votes that have to be voted in favor of a motion to have that motion pass. That'sù

>> Mr. Chair, what I don't understand, I sit on the board right now, and the majority rules. So if you haveùthere's seven members. Five show up, and you have a meeting, it's 3-2.

>> Well, that sounds Lao logical to me, too, but I'm not an attorney.

>> Yeahù

>> Five votes to take action, just to clarify. What that means. That means there would be five votes on the prevailing side.

>> Correct.

>> Not five votes cast.

>> Right. Five votes on the prevailing side. And the reasonùthere is separate treatment. The quorum requirement for this board is in chapter 3 of the code. The vote required is in chapter 2 of the code. And we have issued legal opinions from our office interpreting that requirement for all of the city boards and commissions. And

I do have to say that the opinion of the cityùand they're public opinions. The opinion of the city attorney's office is treated like an attorney general's opinion for the purpose of interpretation of the code. So I would really strongly caution the board toùagainst taking a contrary interpretation of the code in terms of a vote, because it would call into question the vote that you have taken. So we have hadùand we have had this with federated board. It happened with federated boards, where they have actually not been able to getùtheirs is not five, because there's seven members. But they have not been able to get four members to support a motion andùeither way, and it's had to come back on the next agenda when they had enough people toù

>> Just a quick follow-up. Mollie, the people that wrote this code, what happens at council? Is it six votes, no matter how many people are there?

>> The council votes no matter how many show up. [Inaudible]

>> So for me trying to weigh which is the correct legal opinion here, I mean, the people that wrote it imposed this on themselves. And they wrote the code that dictates what this board does. So I see the conflict here. I see the confusion. Poorly written document, maybe. I'm not sure. Its justùyou know, it is confusing to me. I think this board relies on legal opinion of how to perform.

>> My only suggestion. I wasn't asserting that theùthat the position of the city attorney's office was unreasonable or inappropriate. And I also think there is a case authority for the proposition that a city attorney acting with respect to a municipal code stands in the same place as an attorney general, and therefore, its decisions are subject to great weight. All that is true. My only point was, this is a very important decision for this board, and there's new board members on it. We need clarity on it. I think Mollie providedùindicated she provided an opinion to two years ago. I think it would be appropriate for the board to just request a copy of it, perhaps today, just assume five is required. Because that's the maximum. And review this. You need to be comfortable with the decision, and just a comment from Mollie today or a comment from me today on an issue of this importance, I don't think it should be seen as satisfactory to the board. The board essentially just asked for what has already been produced on this issue. .

>> Okay. John, you're next. I just wanted to say, maybe we could take action today, and it won't become an issue. But if it does, maybe the item will have to be postponed until next meeting. But I think I will work with staff to make sure this comes back with the historical background, and then this board can make a decision what they want to recommend if there'sùthere's aùyou know, maybe there's a reason to amend the municipal code and we can make a recommendation to council. However, if nothing else, just for clayty clarity of language.

>> I'll be glad to provide, not just the opinions that our office has given this board, but the opinions that we have given generally on the issue. Soùand also to provide the historical background concerning forum requirements for this board.

>> Sean?

>> That would be really helpful. I mean, we're in a new board, a new size. And the previous version of this section 336.330 said affirmative vote of not less than three members should be shall necessary for the adoption of any resolution or motion. So it used to be clearly specified.

>> Yeah, it's funny. The three-member thing never got corrected. The whenùwhen the board went from five to seven members, the three-member vote requirement was supposed to have been corrected. But it wasn't. So the code section was very, very out-of-date. And certainly, you wouldn't want to go back to three members now with a nine-member board.

>> No, that's the concern. It was three members out of seven used to be the requirement. Now the question is, why is itùyou know, why is a greater majority out of the seven?

>> It was actually a clerical error for it to be three out of seven, because that went back to a time when there were only five members on the board.

>> But this is why we're having the history and the interpretation and the opinion would be very helpful.

>> But stepping back a bit, notice, that is the section I was alluding to earlier, that I had a recollection of that didn't have the language. Notice, it says there's a distinction as indicated in that section between quorum and between number of votes, affirmative votes necessary to pass a matter. And I just thinkùand that has the clarity that I don't think is clear here, because quorum and number of votes necessary to pass a matter are analytically distinct, and the prior code section very properly made that distinction to make it clear to us. And if theùand ifùif a actual ordinance amendment would be helpful, I personally think it would be, that's up to the board to consider.

>> Obviously not clear. That's why we're having this discussion.

>> I will point out that when the governance ordinance was adopted to increase the board to nine members, the memo pointed out that this would be the new requirement.

>> It says we'll follow the standard policy.

>> Right.

>> The question is, what's the standard policy? Because it's new for us.

>> Yeah.

>> So you'll bring back information?

>> I'll bring back more information.

>> Mr. Chair, does that mean Mr. Mar KWET Marquette is going to bring back something contrary? I understand both points of view. And [Inaudible]

>> For point of clarification. When the board was five members, was it three votes toù

>> Take action, yeah. That’s what the code said.

>> To me it implies that it would be five votes for a nine member board.

>> Yeah.

>> It was a clerical error. That was never updated to reflect the change of the board.

>> It was so long ago, most people are looking at this thing 3-7. If it’s an error, we justù

>> I’ll getù

>> The original intent. If it’s 3 out of 5, it’sùthat’s kind of giving you what the original intent was.

>> I’ll give a little more historical background. My previous experience on the board, different city attorney gave a different opinion. Soù

>> Yeah, when it wasùwhen the board had seven members on it, I know the board was operating at that point under the assumption that it took 4 out of 7. Because they thought the code had been updated. It was only when we did the governance ordinance that I went back and found that the original three-member requirement had never been updated, because I think those of you that were on board, when there was seven members, were operating under the four out of seven requirement.

>> Okay. If there’s no further discussion on this, we’ll take aùand we had a time certain item, five minutes ago. So can we take ten minutes and be back here at a quarter till so we can do the time certain issues at 10:45.

>>> Okay. I'm going to call this meeting back to order. And on the time certain, item number 4, retirements, we are going to start off with item 4.1. And I will read all the service retirements and then entertain a motion to grant the service retirements with one motion. Item 4.1A, Scott Castruita, 27.7 years of service. 4.1B, deputy chief David Cavallaro, 29.1 years of service. Kevin Clark, 25.1 years of service with reciprocity. Item 4.1D police officer Thomas Correa, effective May 14th, 26.67 years of service with reciprocity. 4.1E, fire engineer Allan Gerbino, effective May 28th, 26.8 years of service, service disability application pending. 4.1 F, police lieutenant Glenn Harper, 26.22 years of service. Mitchell Kim, effective June 25th, 2011, 21.32 years of service. 4.1H, police captain Gary Kirby, June 25th, 2011, 25.5 years of service. 4.1I, fire captain Oscar Martinez, effective June 30th, 2011, 27.00 years of service. Stewart McGehee, effective June 25th, 2011, 30.12 years of service. 4.1K, police sergeant Brett Muncy, effective June 11th, 2011, 26.17 years of service. Police sergeant Mike Pomeroy, effective June 30th, 2011, 27.64 years of service. Fire captain John Pierre Santos, effective June 25th, 2011, 28.07 years of service. 4.1N is fire captain Edward Scanlon, effective June 26th, 2011 with 30.11 years of service. 4.1O, police officer Robert Sepulveda, 25.77 years of service, with reciprocity, and disability pending. And police sergeant remained shields, June 25th, 2011 with 26.25 years of service.

>> Motion to approve.

>> Second.

>> I have a motion and a second. Any further discussion? Hearing no further discussion, all in favor. All opposed? The motion carries unanimously.

>> Mr. Chair?

>> Go ahead, Dick.

>> And to all the millions of police officers and firefighters I have worked with here, some I haven't, but have known, we really appreciate your dedication to our community, and the great job for the city of San José. Thank you so much.

>> Thank you, Dick. Just would like to comment, in his 3 or 400 years worth of service, retiring in this one motion, there's a lot of great people that put in a lot of years of good city service. And they'll sorely be missed. Thank you very much for your dedication. Next 4.2, service connected disabilities. 4.2A, police lieutenant Wayne FARQUHAR with 24.36 years of service. This was deferred from May 5th. I think that was supposed to be deferred from April 7th. Okay. And for the record, lieutenant FARQUHAR is in the audience and represented. Tony. Do you have something for us?

>> Yes. Police lieutenant Wayne FARQUHAR is applying for a service connected disability based on his left shoulder. He is 50 years old with 24.36 years of service.Medical records are listed in the packet. His work restriction is he should avoid over shoulder work with his left arm. His current work status, he is off on disability and he was also on disability at the time of his application. There is no modifiedùno permanent modified duty available for him.

>> Thank you, TONI. Dr. Dos, did you have anything additional to add?

>> No.

>> Thank you.

>> Thank you, good morning. Lieutenant FARQUHAR has 26.3 years in the city of San José. And Sunnyvale police department. So he's three months shy of 30 years of service as a police officer. He was injured on January 20th, 2010 while in full uniform, and working patrol. He fell backwards while stepping out of his vehicle, caught himself with his left hand and injured his shoulder. He has been on disability since that time, January 20th, 2010. He has been receiving his disability until recently, when he was permanent and stationary and is now

using his sick time, and he has never returned to work. His shoulder was operated on, on February 23rd, 2010. That's on page 1920 and in your materials. On page 15, his treating and operating orthopedic surgeon, John rollANDS gave us the reasons for the restrictions. I would like to just recite those, no repetitive or forceful use of the left arm. No lifting more than 10 pounds with the left arm. No overhead use of the left arm. No street work untilùno street work until with potential encounters. And the reason for those restrictions are the recurrent episodes of severe pain in the bicep tendon that disables his left 140E8D shoulder and only partial response with repeated injections. He has had nine cortisone injections in his shoulder that have not improved his functioning. There is an additional report on 9A in the material from Dr. Rowlands with more explanation. And indicating that his restrictions are preclusionnary. On pages 4 to 7, Dr. Dos issued his report with his preclusion that he should avoid sustained repetitive overshoulder work with his left arm. Dr. Dos's supplemental on 2A confirms that restriction. On page 9, lieutenant mark BASTIOS indicates there is no restricted work for police lieutenant and that the department does not have a position for lieutenant FARQUHAR. In light of this, I would respectfully urge the board grant lieutenant FARQUHAR's application for a service-connected disability retirement.

>> Okay, thank you. Questions by the board. Or I'll entertain a motion.

>> Dr. Dos, maybe you can respond more on 2A regarding your discussion.Rather subjective symptoms without correlative pathology. Do you want to expand?

>> There's no evidence on the MRI of a tendon tear or any significant lesion that would be responsible for restriction and range of motion or strength. What we're relying on is exclusively the symptoms attributable to theùthe symptoms in the biceps tendon which have gotten better with the cortisone injection, which implies some type of tendinitis or capsuleitis, perhaps, as a source of his pain. And then there's some notes here, again, from you, Dr. Dos on P5, progress report. There's two on P8 I'll startùP6 I'll start with. That was dated March 16th, basically it says that pain, numbness is completely gone. And he should continue with physical therapy, and then on page P5 on August 8th, he indicated that physical therapy has been denied. I'm not sure I understand that. Denied by who?

>> Utilization reviewed that workers' compensation, what they do is, the physicians will submit a request for therapy, and workers compensation, we have a utilization review company. What they do is, they apply the medical guidelines, you call the medical treatment utilization schedule, that governs or provides recommendations for treatment and Workers' Compensation. And if the treatment does notùis not consistent with the guidelines, the physicians have to have an additional explanation as to why more treatment is needed or previous treatment isn't effective. And so what happens is apparently additional physical therapy was denied, probably because he hadn't responded to the prior therapy.

>> Meaning it wasn't effective? The prior therapy?

>> Perhaps. I don't have the fullùI didn't have the utilization review decision to look at that. But that would be the typicalùif youùwhat would happen is for a shoulder surgery, the guidelines may recommend up to 18 sessions of physical therapy or 24 sessions of physical therapy, and if the person continuesùthere's noùif there's no document of progress or no indication of why things are slow with the doctors, the utilization review doctors may decline, say this is noncertified and it's up to the physician that's describing the therapy to explain why this is why we need more therapy, and so I'm not sure what happened on appeal or if there was an appeal.

>> Okay. Other questions by the board?

>> Let me try a couple. The first thing I sawùit would be nice to understand. Because we have heard before where we have problems with Worker's Comp. And I don't know what the issue is. And so it's unexplained. But I would ask this. It's obvious what I've read here, the person cannot do the active jobùin other words, uniformùpatrol [Inaudible]Supervising personnel, is that correct?

>> According to his treating doctor, yes.

>> And then I see where he went to modified, and it says they don't have any modified duty or position, because he cannot meet the restrictions. I mean, his restrictions don't allow him to participate in modified duty.

>> That would be something for the police department or personnelù

>> That's what it says here.

>> Yeah.

>> Not much of a response. They didn't have any job for him, and they can't do the job.

>> Yeah, the lieutenant is here from the police department. Lieutenant?

>> We don't have any modified positions for the officer. We have programs for officersùlieutenant FARQUHAR is expected to work full duty in uniform. So there are no positions. That's stated in a letter to the board.

>> I'll go ahead and entertain a motion to support this service connected disability.

>> Okay. I have a motion. Do I have a second? I have a motion and a second. Further discussion? Mike.

>> A question for Dr. Dos or point of clarification. You said there wasn't any physical evidence supporting the ongoing injury. But he did have an injury originally which was evident in imaging, and he had surgeries as a result of that, is that right?

>> Yes.

>> So this is not the kind of injury where somebody injures themselves and there is never any supporting evidence. There was, and so the question is whether it was there fully ameliorated the injury, right?

>> What I rely on is what the treating physician included in his reports. The treating physician basically described the injuries to the biceps tendon, whereas he had a lab RAL repair, which is different. So it's a differentùyou know, in terms of whereùhis treating doctor says the problem is, it's a little bit different from where the surgery is itself.

>> Yeah, I mean, I would just offer my own, justùvery particular observation, which is I have chronic pain in my shoulder. And I could tell you today it hurts here, yesterday it hurt here. And the day before there. And that occurred here. So to me, it seems entirely plausible that somebody has an injury in their shoulder. But the pain could migrate to another part. Of that whole region, just based on my own personal experience.

>> The issue in terms of when you're talking about pain, I absolutely agree. The clear issue is whether there is a tissue pathology that supports a functional restriction. When you're talking about pain, you're absolutely correct.

>> Right. Yeah, I just wanted to point out that I understand you saying there is no tissue pathology that is evidence right now. But there was. Tissue agent pathology in a related area.

>> There was, correct. There was.

>> Right.

>> Okay. Go ahead, Sean.

>> Two frustrations I see in this case are ongoing treatment was denied. And that someone who is in a management position, we couldn't find a way to utilize their skills and experience and history in the organization and push them the only option available to them. They're being told they can't work. Their disability and being told there is nothing available for them to do in the department. Those are my frustrations. I would be supporting the motion.

>> The only other thing I would like to comment on, having worked with the police department for 33 years, almost 34, is thatùand as times get tougher on the police department they're less able to accommodate. At one point, we had over 60 people being accommodated with various disabilities that couldn't work out on the street. And when my major incidents occur, everybody needs toùthey need everybody they can out on the street. And especially true as the ranks go up, because there is fewer of them. There's fewer supervisors to supervise eight or ten officers. And there's fewer commanders to supervise, you know, six or eight supervisors. So it justùit's a no-win situation. It's unfortunate for lieutenant FARQUHAR who put in all that time they can't find something for him. But I also understand the police department's problem in trying to provide service to the citizens. And not being able to have somebody thatca county be out in the field and do every single thing. It's a tough thing.

>> I have a couple more things that I want to dig deeper into. One is, Dr. Dos, you're saying he should avoid sustained repetitive over the shoulder work. So not understanding exactly what that might be, maybeùelaborate a little bit on that. And then secondly, something that really stood out from the paperwork was the fact that the pain or the damage that he's experiencing could, in fact, put fellow officers at risk if he were in a particular situation. So I just want to clarify the distinctions between those. What type of activity he might be doing, what he wouldn't be able to do that would put his fellow officers at risk.

>> I'll speak to it for a moment and then lieutenant FARQUHAR can speak, as well. If he has to come back, if he has to fight with someone, he can't do that if he can't put his hand over his shoulder. It's not because he's fighting with someone necessarily standing up, but he could be on his knees, he could be on the ground. Whenever he has to use his shoulder, he can't use it in that manner.

>> And that would also include rescuing somebody. Police officers are called to rescue people and assist people. And could cause those same actions.

>> Is that enough of an answer?

>> I'm looking for clarification on sustained repetitive. How frequently are you in that situation? And Dr. Dos, maybe that's where you need to give us more clarification. If it's periodic, that's one thing. If it's continuous, it's another.

>> Can I say something first, though, please? It's my understanding that a police officer and a firefighter need to be able to respond as a police officer all during the time they're on duty. And if they can't do it one time, that preclusion keeps them from doing their duty. Whether they can do it three times or five times or two times, it doesn't seem to make any difference, he's giving a repetitive restriction. But the repetitiveness will come in the one contact where he is struggling with a suspect or trying to rescue a citizen. Is that what you're saying, Dr. Dos?

>> I think there's two issues that need to be addressed. One, you know, asùas someone who would be a treating physician and having someone come in as a patient who is a police officer, I absolutely agree that I would not want them if they're experiencing pain or something like that to put them in a situation or someone else in a situation where if they're timing is off or they're not able to respond appropriately, they would do something like that. No, I absolutely agree with Mr. Boyle. The issue comes down to when I'mùin my role as looking at disability. Not in terms of what can people do and what can't people do. And what's the reason why they can't do it. And that's the difference and the distinction between my restrictions that I provided for Mr. FARQUHAR where I'm looking at what's the mechanism of injury, what kind of tissue trauma was sustained, what was done to correct the tissue trauma? What is the imaging studies show? What does the doctorùphysical exam show, what kind of response have we had to treatment? And what are the physical exam findings been throughout the course? Have things been improved and then got worse, and why did they get worse? And so I look at all of those things when I cross the restriction. And so this one obviously means that I don't perceive that they're significant tissue pathology present. And so that's why I provided the restriction like that. Now, this is not something very specific for police work, obviously, because I don't think that they're in the situation where they would do something like this. This would be something more than a painter or somebody would be doing on a regular basis. Soùbut that kind of reflects where I think the problems would be for this particular individual. Now, if you want my personal preference as far as if someone is experiencing pain or somewhat compromised, irrespective of whether they're

here on the disability or coming to see me in the office, I would prefer they're not out there. Because I do perceiveùthe problem is, that's a little different than me having my disability evaluation hat in terms of why, and what's incapacitying.

>> I think ultimately, the incapacity test is a function of a determination by the department. Dr. Dos comes on the basis of medical information with a very precise restriction. But then that's really where Dr. Dos's role ends. And then the department has to review that and maybe ask questions of Dr. Dos if there is ambiguity. But they ultimately decide, whether, given those restrictions, that individual can meet the requirements of the job. And obviously, we have the department's express determination on that issue.

>> Yeah, I was going to suggest that you do have, I think on page 10, 11 and 12 of the packet, I think it's a statement from the applicant himself about the restrictions. And then I was also going to echo what Mr. RICCADO said about the department. If you have a question about whether or not this restriction effects the functioning of a police officer, that really would be for the department to answer. And you have the written answer, but you could ask more questions of the department if you wanted.

>> And Mollie's point is a really good one. I didn't mean to say that you have to just swallow the piece of paper from the department. You can drill down and ask questions if you don't think their determination is reasonable. But it is very difficult for retirement board to be in a position to ultimately second-guess what the department has decided on this issue. I think you can try to see where the department's view is, and how solid it is, because the department ultimately says they can't hire that person and bring that person back. That's a determination on the issue of incapacity.

>> I would ask that question of the department, if you could elaborate a little bit on this work restriction of the left shoulder. Is itùhe's not to be able to pump a shotgun when he has to or wrestle a suspect when he has to? Give us some examples of the types of things likeùI'm putting you on the spot, I realize.

>> No, that’s fine. It comes down to the department’s perspective. Full duty or not full duty. Full duty, he has to be able to respond. And I’ll use an example asùnot to get off track. But I’ve been sent back to patrol effective Sunday, and some of my experience as an example. And IùI [Inaudible]You roll by stops. You have to be able to effect and assist. One example. I stopped by a guy, there was an accident, I helped, I assisted. Had the guy, who was drunk, wanted to resist, I would have had to effectively assist that officer, or I’m endangering him, you know, being able to effect the arrest. That’s just one incident, one time. I also have to be able to man at his rankùexcuse me for pointing, lieutenant FARQUHAR’s rank, he has to be able to command a scene, full duty. Again, this week we had an individual decided to shoot at their wife. So we surrounded the house. He’s the on-scene commander, full duty. He has to be able to effect an arrest. He has to be able to use his firearm and lead his team in a dynamic rescue if it comes to that. That’s what we ask our full-duty commanders, sergeants and officers to do. So for us, there’s a pretty bright line. You’re either full duty or you’re not. When you’re full duty, you’re expected to have all of the functions of a police officer and the functions of an arrest. I don’t know if that helps.

>> Thank you.

>> Thank you.

>> Mr. Chair, as you know, police officers and firefighters don’t have some normal day where you come in and you don’t have to do this and you don’t have to do that. When that bell hits or the call comes in, you have to respond. If any one of us hesitates, it could cost someone else their life or endanger someone else. You can’t afford that. In this case here, I don’t know this man personally, but I know he can’t afford to hesitate because of some injury.

>> For himself or for other officers or for the citizens. There’s just, you know, too many people at risk.

>> There’s no routine days. You might be doing something fromùwhatever it may be. But there is no routine.

>> Thank you. Any further discussion, questions? Okay. We have a motion and a second to grant the application for a service connected disability. All those in favor say aye. All those opposed? Passes unanimously. Wayne, good luck to you in retirement. I know it's a little earlier than you had planned on. But hopefully you'll enjoy your retirement years.

>> Thank you. I appreciate it.

>> Mr. Chair? I think some of the questions asked by board membersùwe need those responses about the therapy and so on and Worker's Comp. If we can get some of those explanations, either from Dr. Dos's office, it helps board members formulate an opinion. Those things are needed.

>> Thank you. Maybe you can suggest something on future agenda items.

>> You're right. Will do.

>> Educational for everybody. Okay. Item number 4.2B. Mark FREITAS, deferred to November. And now 4.3A, change of status, fire engineer Charles Carter requested a change of status from a service retirement to a service connected disability retirement effective September 6th, 2008. 40.11 years of service. That's something to be beholden in and of itself. Lieutenant Carter is here, and represented.

>> Charles carter is applying for service connected disability based on lower back, right shoulder, left knee and right knee. He was 67 years old at the time of his retirement and had 40.11 years of service. Medical reports are inùsitting in the pact. His work restrictions are, he should avoid sustained squatting or kneeling. And he should avoid repetitive, very heavy lifting. He is currently on a service retirement, effective 9/6/2008, and at the time of his separation and application, he was on modified duty. There areùthe fire department has indicated that they do not have modified duty for him.

>> No permanent modified duty.

>> No permanent modified duty for him.

>> Thank you. Dr. Dos, do you have anything to add to your reports?

>> No, I don't.

>> Okay. Mr. Swift?

>> These on?

>> Yes.

>> Okay. Mr. Carter had four injuries in the last three or so years of his career. The first one on page 140. In March of '04. Injured his shoulder and his low back while shoveling debris, overhauling a kitchen area. Overhauling means after the fire is out or you think it's out, you have to go in and dig everything out of the structure to make sure there's no further burning elements. So you become a construction laborer in effect. And two months later, and I think this was the most significant incident--- 5/16/04, painful 541 of your packet, required to lift a 600 pound deceased victim and get that victim down from a second floor apartment building. Excuse me. That was followedùthat put his back in a weakened position. He was off for a period of time.

>> He went back to work on October 20th, 2005, page 142. Injured his low back again, at that time lifting a 5 gallon bucket of water which weighs approximately 40 pounds. He was off work for a while are he went back, he was trying to continue on. And then in September of '07, he injured his knees and his low back again. And was never able to return to the line thereafter. He did have low back surgery after the 2004 and 2005 low back injuries at the level of L-45 performed by Dr. Andrews in October of 2006, page 97 of your pact. He did attempt to return to work, and did so in April of 2007. But was offùonly was able to work another five months before the last injury, which finally put him off and he never returned to full duty. Before his next back surgery, he was seen by a KME,

a qualified medical examiner, appointed in his case by Dr. BernHart whose report is on pages 59 to 84 of your packet. He concluded that his low back had worsened after some initial improvement following surgery and he was going to need another low back surgery. And at that point, he precluded him from lifting more than 20 pounds, from bending, stooping, squatting, stairs, and limited him with regard to sitting and standing. He then had the second low back surgery by Dr. Andrews in 2008, on page 57 of your packet. This time it was at a different level. This time at L-34. He was finally declared permanent stationary by his treating doctor a year later, page 45. And at that point, his treating doctor precluded heavy lifting, bending, stooping, and prolonged standing. He was seen again by Dr. BernHart, an independent doctor appointed by the state. Who reported in July of 2010, page 17, and he found Mr. Carter to be permanently disabled from being a firefighter. That's with regard to his back. With regard to his left knee, he injured both knees in September of 2007. He was eventually seen by Dr. De more, an orthopedic surgeon who operated on his left knee in November of 2009. He was found to be permanent-stationary by his surgery in June of 2010, page 34, at which point, he was precluded from kneeling, squatting, prolonged crawling and was limited with regard to climbing stairs. With regard to his right knee, which was also injured on the same days in September of 2007, he was also seen by Dr. Demore. The MRI of the right knee, in your packet. A torn meniscus and the cartilage consistent with an injury. Dr. Demore did in fact suggest surgery. Mr. Carter declined, based on the bad outcome of the prior surgeries and back injury. Dr. Dos did find that he had work limitations with regard to his knees and his low back. And the department has issued a memo stating that it has no permanent or modified duty for Mr. Carter within those restrictions. On that basis, I would ask this application be granted.

>> Mr. Chair.

>> Thank you. Go ahead, Dick.

>> My motion is to grant Mr. Carter his service connected disability. And, you know, some of these examples, he basically is a doctor's dream. Because he's had enough operations here to last a lifetime. I wonder he hasn't been wheeled in here. But when you spend 41 years in the fire department, he was not an administrator. He was a workinging laborer. I know that for a fact, because I've worked with him. And I've been gone 11 years. He

loved his job. This guy didn't want to LEECHLT leave. I see all these operations. I don't know how he gets in here. But I hope we support this. One Hell of a firefighter. That's what he did for 41 years.

>> Thank you, Dick. I have a motion to grant the application. Do I have a second?

>> I'll second the motion. As I look at the case, I see an injury that was clearly at work, lifting a 600-pound deceased patient. And reaggravating multiple repeat injuries. I see documentation of an injury, including actual surgery taking place on several occasions, specifically to the back I'm talking about. I see this evolved into a disability confirmed by the medical examiners and Dr. Dos. And the fire department unable to offer any permanent modified duty positions. Makes him disability from the position. So I support the motion.

>> Thank you.

>> I have a question for Mr. Swift. This case came before the board in March, is that correct?

>> I think it was March.

>> March? Has there been any new information that we need toùthat needs to be pointed out to us? Because this case was notùdid not receive enough votes to pass, I believe, in March. So we're bringing it forward again. I imagine this procedural, not necessarily new SNEFD.

>> Well, actually, there is a report on pages 15 and 16 of your packet from Dr. McKREESH dated 2011 in which he essentially reiterates what he said previously, but the question of capacity. And he says specifically that Mr. Carter lost the capacity and is incapacitated from performing heavy lifting, repeated bending and stooping, as well as prolonged standing.

>> I think from my recollection of the March case, I think one of the challenges in this case was determining what portion of these injuries is from aging. And, you know, the natural getting older versus the actual role of the job.

And that's my biggest challenge. I think 40 years of service, you want to automatically grant disability, naturally. This is a very honorable career. But from a fiduciary standpoint, when I look at this, injuries versus tying them to the job, versus ageing in general, does the fire department not have a retirement age?

>> 70.

>> 70. 70 years old. Wow. That's my big struggle with this case.

>> Well, referring you to page 29 of Dr. BernHart's report, the independent doctor from the state of California, there's a portion underùdescribed as apportionment, which is the question you're asking. What portion of this disability is related to his work-related injuries, and what portion is related to some nonindustrial cause? And he basically says that thereùhe refers to no nonindustrial causes in that paragraph.

>> The other thing is, I can support the motion based onùI understand what you're talking about, Sean. But, you know, we can't all be 25-year-old police officers and firefighters. And as we get older in this line of work, we're more susceptible to injuries. Or we don'tùwhat's the old saying?We don't recover as fast? We don't bounce back as fast? And you can attribute that to the fact that somebody is 45 instead of 25. But the fact is, this injury occurred while performing the duties of a firefighter or police officer. And you are weaker, you may be weaker. At 45, and more susceptible to an injury. Or you may recover less. I mean, I think that's pretty much known. You just don't recover as fast. So based on that, and the evidence in the packet, I can support the motion as well.

>> Can I say one more thing? Maybe I glossed over that section of apportionment want too quickly. There's a reference in that section to labor code 46.63 and 46.46. And I just assumeded everybody knows what that means. Those two--- 46.46 basically says if the person has a prior award of a disability, then you need to apportion to that prior award. There's been no prior award here. So that's irrelevant. 46.63 says that the doctors charged with the responsibility of determining whether there has been any nonindustrial cause which has contributed to this condition. And he is saying that per labor code 4063, there are no such conditions. So it's a clear statement that 100% of this is work related.

>> Russ?

>> The board may be interested in looking at page 83, which isùstatements on apportionment by the same doctor, but a couple years earlier. And even though it does have some labor code section sites, unfortunately, it's perhaps more at length than the one on page 29.

>> That's where he says zero percent to other factors. Is long and overwhelming, twisting, turning and heaviest lifting category with no concurrent nonwork exposure establishes the existence of the aforementioned portion.

>> Okay. Sean?

>> Dr. Dos, as you reviewed this information in the application packet, would it be appropriate for to you comment on work cause and nonwork cause and how we should consider that?

>> If you're going by the medical literature, and medical opinions, as suggested, the medical literature does not show a strong relationship between hard and heavy work and degenerative changes in the lumbar spine. That's just what the medical literature says. I refer to it, and I have toùI'm not going to disagree with it based on my own opinion. If I were going to look at this from a causation standpoint exclusively, I would look to the knees. That's where you're trying to separate between the advanced arthritis, and you have lesions which are known to advance arthritis, which can cause problems. If you're going to look solely at the lumbar spine, the medical literature is not out there to support, irrespective of what doctor barnHart says. But if you look at the medical literature with respect to knee arthritis and the kind of injuries he's had to the knee with respect to meniscal tears that, can advance arthritis. So that to me is a causal link between work and his injuries, and the disability that he has.

>> So Dr. Dos, are you overlooking the lifting the 600-pound patient?

>> The traumatic injury.

>> The issue, when you're talking about cumulative trauma, whether there is zero percent apportionment and you have degenerative findings, the liftingùthe one specific lifting incident more recent did not cause those. And the literature also doesn't suggest it even aggravates it. The problem is, you've got muscles, you've got other things that can cause pain that are not insignificant. Just because it's not related to a disk or just because it's not related toùdoes not mean it's significant pain. I don't want to say that. I just say that that'sùwhen you're talking about two different things. And I think that's part of the problem. When we're trying to review some of these. But I think it's easier to look at the knees, because the medical literature supports that kind of pathology being related to a specific injury. And the restrictions that he has with the knees are much more consistent with that, whereas if you're trying to parse out what's age-related and what's related to cumulative trauma for the lumbar spine, I think it's froth with difficulty. And everyone can have opinions, and I'm not sure who necessarily would be correct. Because there isùit would be hard to be correct or hard to be wrong.

>> So that's in terms of the general degeneration. And then is there a factor that would be considered when you consider multiple back injuries? 79, 84, 81, all related to the back.

>> In terms ofùwhen you're talking about the back and back pain, absolutely. There's relationship to that in terms ofùin terms of whether you recover well. As we probably all know anecdotally, when you hurt your back the first time, it never seems to go away and seems to persist. The issue is, what is the course of the pain. And we in pain medicine call the pain generator. Since we have imaging studies and MRIs and X-rays, we like to look at things we can see, the bones and disks and like to point to those and say ah-ha, that's the reason. There's arthritis there. The problem, when we try to relate symptoms to the pathology, it's very difficult. And so when you look at a specific lifting incident, you have to look at what particular body parts are affected. You're looking at muscles, you're looking at ligaments, there are some joints there. But there hasn't been a de facto relationship between theùthe spurring or the degenerative changes and theùand particularly the disk. To these kinds of injuries. And that's why it'sùthe literature hasn't been able to show it.

>> Okay. So much more clear on the knees then.

>> Yes, much more clear on the knees.

>> I have a couple questions. On page 15, it refers to the surgeries that you had in 2006, 2008. Trying to understand why an injury back in 2004 would take that long to have surgery. In fact, those surgeries related to that incident. And, if so, why wasn't it happen more immediately?

>> I can't speak for Mr. Carter's rationale, but I can speak in terms of in general, what theùwhat the directùwhat the driving factors for surgery would be. One, when he had obvious pathology there, that could be corrected by surgery, it's just a matter of does he think the surgery is going to work, and is he able to tolerate his symptoms up until that point? Now, if there's a nerve deficit or nerve damage and the MULTS leak, there is a risk with having permanent weakness if you don't get surgical intervention sooner. So perhaps that wasn't a situation for Mr. Carter where he just had an obvious defect and he had some symptoms. But it wasn't significant enough to warrant immediate surgery. So then it would just be a matter of when did he feel he couldn't tolerate it anymore, and when did he give up? And obviously, he probably did not want to have surgery ifùif he could help it. Is my guess.

>> Is that something you care to address?

>> Well, there wasùthe lag between the injury in October of '05 was one year to the date of surgery. You're asking why didn't he have surgery sooner than the one year? The first surgery was in October 2006.

>> I'm looking here. This is May of 2004, where he was lifting 600 pounds.

>> Right. Then he went back to work and another injury on October 20th of 2005. And that's when he was off for a while, and then there'sùhe's contemplating surgery. But you also have to understand the utilization review process that takes place. If there are six steps that you need to take before you get to surgery, you have to

goùyou have to do A. Before you do B. Before before you do C., et cetera. If the doctor wants to do surgery right away, they're going to say no, because you didn't try more conservative methods. So the year between October of '05 and October of '06, the last injury and the first surgery, was a process of going through sequential treatments you have to do to satisfy the city. The surgeon may have known earlier, I need to operate. But Mr. Carter doesn't want to do it, and utilization review doesn't want to do it until you exhaust all other conservative measures. Do you want to speak to that?

>> Maybe I can answer that question for you. I was directed by the city to try different methods. One is epidural shots. I had 12 epidural shots. When I finally decided I need to do an operation. Because it wasn't working for me. I'm sure Mr. Santos can speak to that. Endo you recall shots. So I took the steps thatùto avoid having an operation. Not exactly the best thing I want to do for my body, an operation. So I tried the least evasive program. It did not work for me. And that's why the delay took place.

>> Okay.

>> And then I went back to work, thinking I could eventually close out my career at age 70. And, again, that didn't work out either soùany other questions? I'm happy to anticipates them.

>> The only other question, I don't understand details and timing on this. But it looks like your retirement was effective 2008? And why at that time did you not do a service connected disability for persons waiting until now?

>> They applied for it at the same time.

>> It took this long to getù

>> Yes, because you have to be permanent stationary, and because he had a back surgery and then he had another knee surgery, we couldn't get the forms by the treating doctor to Dr. Dos, and until you get the forms, you can't do Dr. DOSù[Inaudible]

>> Okay. Thank you.

>> Speaking of back injuries.

>> So I have a question, and you don't have to answer if you don't want to. How many guys are there out there over the age of 60 working as hard as you were working?

>> We just had one retire at 70.

>> Yes. We hadùhe was six months older than me. He retired at 70. He was forced out.

>> So it would seem clear to me, and if I insult you, a 68-year-old guy can't do what a 25-year-old guy can do, right?

>> No.

>> How do you deal with that in a fire department? You're hauling a 600 pound guy aroundù

>> Not myself, obviously.

>> You were 63 or 46 at the time. If someone asked me to haul a 600-year-old guy around, I would find some 25-year-old guy around and say, do you that. That's a recipe for disaster. So, again, I'm notùhow do you deal with that in the fire department? How do you sort of, you know, this is really a tough thing. I'm a little too old to do that? How does that happen on a day to bay basis?

>> Well, first of all, you love the job. And two, you try and keep yourself halfway in good shape. Bike ride, whatever. I had to stop running because of my knees, so I did bike riding for a while. And, just try to stay healthy. Eat well. And perform your job. But eventually, I had had to move to the airport because I couldn't do my job as a truckman. I was a truck firefighter for 32 years. And one station. And unable to get up on the roof. So I moved to the airport, thinking I don't have to get out of the cab as an engineer. But that didn't work out either. Soù

>> There's also a minimum standard everyone has to do. And there's people in their 20s just barely meeting the minimum standard, and people in their 60s who excel over it. So it's all meeting that minimum standard.

>> I'm solidly impressed. I hope I'm in as good of shape. I had plenty of injuries, too, by the way. And I didn't do anything half as much as you do.

>> The only other point, if you limited the department to the young, strong, ex football players, their lack of experience and wisdom in confronting emergency situations might not be the same as the gentlemen who have had 30 years.

>> Yeah, that's obviously what I was getting at. How do we take allùthis great experience, but people who obviously as they get older in the same physical capacity and take advantage of them for the city? I presume they would like to work if they could. And how do we create a system that allows guys to keep working in whatever capacity they can work, and benefit the city and guys already out in retirement? A selfish thing to say, but it's true.

>> Okay. Any other questions by the board? Okay. All in favor? All opposed? The motion carries unanimously.

>> Mr. Chair?

>> I wanted to ask a question. In all my years in the history I have known about the fire department, probably a handful of people have worked 41, 42 or 44 years. Probably five people I can think. So it's amazing. Mr. Carter, I don't think some of this description has done him justice. Because when I was working with him and opposite him, this guy wasùhe was on the roof, and the flames were coming and everybody else is leaving. This guy stayed. Charlie, great career. 41 years. We'll miss you. You did a great job. Thank you.

>> Thank you.

>> Okay. Next item. Item 4.4A. Deferredùan application for a deferred vested retirement benefit by police officer David Paulides with 16.5 years of service. A motion. I have a second. Any further discussion on the motion? Hearing no further discussion, all in favor. All opposed? The motion carries unanimously. Okay. We'll go back in order. Okay. Back to new business. Item 2.1, contributions rates and amounts for 2011-2012. A., adoption of resolution 3703 setting new city and contribution rates and amounts for police members to be effective June 26th, 2011. B., adoption of resolution 3704, setting new city and employee contribution rates and ants for fire members to be effective June 26th, 2011. C., memo from Michael Moehle regarding fiscal year 2011-2012 contributions dated May 24th, 2011. And D., memo from Mollie Dent, senior deputy city attorney regarding setting contribution rates dated May 25th, 2011.

>> Good morning, I will start with my memo. And a little bit of background. The board back in January took action to implement a funding policy that said city contributions would be the larger of the dollar amount in the actuary's valuation for the contribution rates multiplied by actual payroll. So whatever was larger. And at that time, the board asked the city attorney to draft amendments or make changes to the MUNI code to implement that change. Ourùthe two resolutions implement the board's funding policies. We chose the dollar amounts that are in the valuation reports. The two valuation reports. One for pension and one for OPEB. We also show the contribution rates. And in the meantime, the city manager has issued a memo that the city intends to prefund the dollar amounts. So the third section of each resolution shows what the dollar prefunding amounts are in it the situation. The city actually prefunds the dollar. So those are resolution 3703 and 3704. And our recommendation is to adopt the rates and the dollars and the rates there, which implement the board's stated

policy, which was the board took action on back in January. And I know Mollie has a memo which discusses what her view is on what's in the MUNI code currently. And I'll turn it over to Mollie.

>> It thank you, Mike. Mollie?

>> Sure. Well, you have the memo in front of you on what's in the MUNI code currently. And the only comment I would really have on the staff memo and the resolution, I'll be real brief with it. The staff memo indicates in the last sentence under recommendation that a true up will be required of actual city contributions less than the dollar contributions shown. That's not correct. A true up won't necessarily be required. It may be made. But it won't be required. Because the code doesn't require that currently. Actually, what the code provides for currently is only for a true up mechanism in the event of the prefund.If the contributions are being made on a payroll by payroll basis, there is no true up mechanism.

>> I'm sorry, this one comment that our statement there was not an interpretation of the MUNI code. It was simply stated, based on the board's funding policy, we believed there would be a true up required if those items were not made.

>> Right. And so I'm pointing out that's not true under the municipal code. And so theùbut the code could be amended before the end of the fiscal year, if that were counsel's determination to amend the code. And the second comment, though, that I would make in terms of the resolutions is if you read my memorandum, you'll see that there are elements of the contribution rates where the city can setùwhere the board has flexibility to set a dollar amount, specifically the UAAL and prior service components. And so I had suggested to staff thatùthat the resolution set these dollar amounts out separately instead of having them all sort of on the city side in just these buckets. I had suggested that the resolution have smaller buckets. So that ifùso that the city would know what the amount is for the contribution that theùthat the board can set. Iùbut that thatùthat probably notùI think it can be backed into, because the Segal memo as those numbers in it. The Segal memo has theùI'm going to try to find that one now. The Segalùyou can see that the Segal memo onù

>> Was funded and normal.

>> It has all the buckets. And I had just suggested to staff they actually bucket it the way Segal did, so it would be more clear. And it's my understanding that the city council, the city manager's office has paid the dollar amounts. It's my understanding the mayor's office has budget messageùsaid they're going to pay the dollar amounts. It also becomes sort of a nonissue if the city does prefund, because if the city prefunds, it obviously has to pay a dollar amount. But I do think it's important for the board to know that the prefund ordinance actually would requireùand will require credits to come back. And the decision not to move forward with an ordinance at this point was a joint decision between our office and the city manager's office. And so it was communicated to counsel that both the boards wanted this. And so I think the response from the mayor's office and the response from the manager's office with the proposed budget for that. Of course, counsel still in the middle of the budget, don't know what they're going to do. But you've got the dollar amounts here. The footnote at the bottom is theùthe asterisk at the bottom of the resolution, these are not the required dollar amounts. There'sùbut I think you can glean what the required dollar amounts are from the Segal report. So I think the city will be able to do that if it wants to. And may just take these dollar amounts, I don't know.

>> Notification. [Inaudible]Right?

>> Yes.

>> We believe under the boardùthe action the board took, those are the required amounts. Regardless of what the MUNI code says. I think there was an understanding at the time the board took that action that the MUNI code needed to be changed to implement the funding policy. But that's never happened. As Mollie indicated. The MUNI code has never been changed.

>> So our concern, we would like to to be a flat dollar rate so we can increase the cost of it, and every dollar saved costs $2 in the future.

>> And we understand the board and the staff would still like the MUNI code to be changed.

>> Been drafted.

>> It's really up to the counsel. It's a policy decision for the counsel. It's not really a legal issue. The code says what it says. It's not illegal what theùthe current code is not illegal. And it's a policy decision for the counsel, whether or not they want to amend the code. And the board's position has been communicated to the counsel. It may be that there will be a code amendment that will come forward in 2011, 2012. But it's really up to the counsel to take the board up on that. And in the meantime, the dollar amounts may well be paid. I would beùso that's really the way that it stands. The board couldùthe boardùthis board has had other occasions where they recommended code amendments that the council has not accepted.

>> Just would like to make sure that our recommendation has gone to counsel. Can you confirm that?

>> I will check. [Inaudible]

>> We understand and want to make sure. [Inaudible]

>> Yeah, I think that counsel has had two or three memos from the office of employee relations about the board actions on the board dollar amount. Just basically informing the council of the board's policy and I think that'sùmay be part of what led to theùthe way in which the proposed budget has been built and the way in which theùthe mayor's budget, too. [Inaudible]

>> As part of the budget adjustments, we're increasing our allocation for retirement contributions. Just so that we don't get in onù[Inaudible]So there has been a very clear, overt discussion about it. I think by the city manager. I can't say that we've actually made steps to get the MUNI code in alignment, but that I think willù[Inaudible]

>> Yeah, and I think the questionùthe issue is that the city doesn't need to amend the municipal code in order to do it. And there is a policy discussion to be had there about whether or not you want to actually require it in the MUNI code versus just do it.

>> I'm satisfied that, you know, everybody seems to be on the same page here.

>> Our only concern is that if the MUNI code is not changed, the city could change its decision in the future. Or, you know, and if the MUNI code is not changed at the end of the fiscal year, the city could ask for a refund, ifùif it's considered an overpayment by paying the dollar amount compared to what's currently in the MUNI code.

>> It's not actually a refund. What happens under the prefund ordinance, it's a credit.

>> It's a credit, yeah, not refunded.

>> And Iùand I don't know if there's going to be a credit this year or not. I mean, I think because payroll is probably declined last year, there may be a credit this year, too. And I don't know whether or not the budget is taking a credit or not.

>> Yeah, from the projected pay rolls I've seen, there would be a credit.

>> Yeah, because we assume 5% payroll increase, and instead we've had no pay increase, and some reduction of staffing.

>> And reductions in staff. So unless the MUNI code has changed, the city could come back at the end of the year, and say they're entitled to a credit.

>> I think it's a sound fiscal policy in general. Whether it's thisùcity council or the city council ten years from now, if it's in code, that's just the wayùthey can always vote to change it, but this seems like the right way to go about things.

>> Right.

>> Fund the plan like this.

>> And I think we could support staff's recommendation to go ahead and pass this. And then just reùask Pete to take it back to counsel. He said he's going to check into it. And we'll see where we are on it. Makes a lost sense. It's just with everything else going on, maybe it hasn't been addressed yet.

>> My personal feeling. [Inaudible]Councils come and go. And individual council members change over time. We need to make sure that our goal of this council is long-term stability. I think we needù[Inaudible]So I will follow up.

>> Great. I would recommend to follow staff's recommendation, and I'll entertain such a motion.

>> So moved.

>> And then just ask Pete if you could report back to us, our next meeting, what you found out for us. Okay. I have a motion. Do I have a second?

>> Second.

>> Okay. I have a second. Any further discussion on the motion?

>> I just have one question, Mollie. On your memo, the paragraph on the bottom of page 5, what the heck does that mean?

>> On the bottom of page 5.

>> Noted aboveùhas establishedùI think I know what it means. Kind of surprised me.

>> Yeah. That's a little anomaly that has come up. Weùwe don't know why 100% of the code of UAAL is being apportioned to the city.

>> And should I read that to mean 100% is being apportioned to the city and the three ofùthe three is coming in as well, right?

>> Right.

>> We're doing 8 of the 100% and another 3 is comingùso we're funding 130%?

>> No, no. So whatùwhat this is saying is that under the code, 811 should come from the city, and 311 should come from the employees.

>> Right.

>> But that isn't the way it's happening. What's happening is 1111 is coming from the city.

>> Right.

>> And we would have to look atùand that's beenùthat's been going on for a long time, as far as we can tell. So we did not have the historic information on why it's not matching.

>> A fairly significant amount of money we’re talking about, yeah?

>> I don’t know what amount of money.

>> My understanding of the MUNI codeùobviously, I’m not a lawyer, is that the employees share in the cost of providing the normal cost. So any unfunded liability relating to any portion is 100% paid for by theù

>> But that’s not what it says for the cola. It says unfunded liability sharedel SW. You’re rightùthe cola is inùthat’s when I quoted section 344.090. It’s in a different part of the code.

>> You’re going to keep trailing this, Mollie, until you get it sorted out? That’s a lot of money, I think.

>> We would like to take a look at what the basis is for current allocation. We’re not saying it’s wrong or right. It’s been done for a long time. It didn’t just happen this year.

>> Yeah.

>> So we would like to look at the basis for it, yeah.

>> Yeah, I would like toù

>> I’m not sure retirement services wouldùI think that some of this may be what the office of employee relationsù

>> Huge.

>> Okay.

>> Any further questions on the motion?

>> Did you hang up on that paragraph?

>> With regard to the motion? Only Mollieùokay. Let's go back to the motion. Any further questions, discussion on the motion? Hearing no further discussion on the motion, all in favor? All opposed? The motion carries unanimously.

>> I think you mightùthe board may want to add this to the pending action list or some manner, so that it doesn't disappear. This is going to be a very easy thing to lose track. Very complicated issue. Either the MUNI code needs to be changed to conform to practice or practice needs to conform to the MUNI code and this is sort of within your bailiwick.

>> Giving it to Donna, and we'll have an answer back on that. Okay. Item numberùstill under new business. Item number 2.2, discussion and action regarding Segal's June 30th, 2010 gas bee 4345 valuation report.

>> Yes, you have in front of you a reportùactually dated May 31st. This is the third and final report that Segal will issue for theùfor the current fiscal year, the first one was the pension valuation report. Which came in January. And last month, I believe it was, they followed up with the retiring medical funding or contribution report. This report is simply used to provide numbers for the city's coffer, and also for the plan's. It's really to comply with reporting requirements under governmental standards, 43 for the plan and 45 for the city. I could go through thisùif the board has any questions. But it's our recommendation to approve this report, and pass it on to the city so they can complete their work.

>> Great. Thank you. I'll entertain a motion.

>> Motion to accept the report.

>> Okay. And do I have a second? I have a second. Okay. Any discussion on the motion? Sean?

>> Just a quick question. Theùcan you give us a 10,000 foot view of the new GASB payments and the money the cops and firefighters are have put into the prefund. This is a liability, only 7% funded right now.

>> Yeah.

>> What's our vision in how long it will take to get it 100% funded with theùmaybe you haven't done all those numbers, but there is a ratcheting up where the cops and firefighters are putting 1.something percent.

>> To actually have the fund, 100% funded, it would take 30 years. Because underùthe police members started ratcheting up a couple years ago. They're at 28 years amortization. And the firefighters are at 30. So essentially it would take 30 years. Absentùyou know, if it'sùall assumptions work out, it would take 30 years.

>> So this is amortized over a 30-year?

>> This one is over 30 years.

>> And this was bargains in the MOAs. So this is as set forth in the MOAs. The two sides agree to a 30 year amortization.

>> And our regular plan is only 16 years.

>> That's correct.

>> Okay.

>> That's my question.

>> Okay. Item 2.3. Request San José city council to initiate amendment ordinance to amend section 3.66.0.80 of the San hoeùdid I miss one?

>> Motion and second. But no vote. Sorry. I was given a question.

>> I thought we did vote.

>> I move to accept the report.

>> Motion and second. Just need to vote.

>> Okay. So we didn't vote. My mistake. Okay. I have a motion and a second the report and forward it on to the city. Any further discussion on that motion? Hearing no further discussion. All in favor. All opposed? The motion carries. Unanimously. Sorry about that. Thank you for keeping me on track. Next item. Item 2.3, request to San José city council to initiate amendment ordinance to amend section 3.36.080 of San José municipal code regarding nonassignment for purposes of retiree association deuce. And there's a memo from Donna in your packet under 2.3, and it'sùdisability process, but it has to do with other issues. Go ahead, Donna.

>> This is basically to coverùto clarify in the municipal code that we would be allowed to deduct retiree association dues from the police and fire retirees. It had come to our attention when federated retirees association wanted to increase their dues, and I just checked with the city attorney's office to say do I have to get something in writing from everyone to change their dues, and we were advised that we don't even think you're allowed to take deuce out of their checks based on the nonassignment language. And it's just not really clear. We just wanted to put the exception in. And by doing that, we could also assist the retirees' association by keeping them updated with addresses, which we're not able to do now. And because we do not have a function in our system that allows people that we can say this is a retiree association member. I'm authorizing you to give

them my address, I'm authorizing you to update my dues. We did not have that function in our system right now. But we could add that function in the request where we can have people opt out of direct deposit. Which, you know, as we say, is about aùat least for this plan, maybe $12,000 a year for us to printout and mail out when information is available to them on their security website.

>> So it would really be justùI think what we want to do is to clarify that this kind of monthly deduction of dues for theseùthese named organizations would not be considered an assignment. It's not a matter of changing the code to say that people can do an assignment. It's a matter of clarifying that this kind of monthly deduction for these kind of dues is not an assignment. And I think that's consistent, because people can stop at any time they want to. They're not giving away years and years of future pensions. But I think staff also wanted something more explicit in the code authorizing them to do this. And with theseùonly these named organizations. So ifùso the way that this would be initiated to go forward to council, if the board approves it, would be for staff to, you know, do a memo to council recommending the ordinance.

>> Okay. The question I have for you, Mollie, is, on the front page of this, under this section, it says, and shall be unassignable, except as herein, specifically provided. And I think that's what we're trying to clarify, is that it'sùit's allowed to pull out the check for the retireesù

>> Yeah, I want to make itùI don't want to say that we're allowing this as an assignment. I want to say that we're calling this not an assignment. Because there's a nonsignability clause in federal tax law, too. We want to make it clear that this particular payment is not a prohibited assignment.

>> Okay. And why are we limiting itùmy question to just the one organization, rather than other legitimate organizations, both the police officerses and firefighters have signed up for?

>> Well, you would have toù

>> Am I mistaken?

>> That is correct, David. It is extra administrative work for us to take money out of people's checks and send to different places. We feltùand I guess the past practice of the administration had been if anyone asked us to do it, we would do it. And it starts to become burdensome, and some of the amounts are really minimal. Where we felt that we would take on the extra administrative expense, and work to do it, it made sense for us, the retireeses' association, because it benefits the department, benefits the retiree association to work in partnership with them. And they do have members that do elect representation on the board.

>> Is membership in that association mandatory, or is itù

>> Voluntary.

>> Voluntary.

>> Has that membership organization historically given money to political candidates? Are they able to give money to political candidates?

>> Yes. I actually think they do.

>> So this is not a pretax deduction. It's a post tax deduction. It'sùit's like, you know, otherùit'sùwe participated for a while in the combined giving program. That would stop, because it was reallyùthat was burdensome, and people weren't giving to it. I think it's really up to the board, but the staff's recommendation on just the one organization, I think, has to do with the administrative cost of doing this. And you couldùweùyou could tell them to discontinue it, if you want. It's reallyùthat's why it's being brought forward.

>> I would request this board to postpone until our next meeting. And the reason I would like to do that is, I personallyùnot sure about another police officer sitting at the table here, and I don't know the status of firefighters, but there's other legitimate organizations that we purposely have had deducted from our paychecks for 30-

something years, and we continue to belong to those organizations, and it's just a movement of going from an active duty firefighter or police officer to a retired. And admitting that there may be a little bit, you know, additional administration time to add, you know, a couple more organizations. I think chosing it down to just the retirees' organization, who I'm a member and supporter of, but I think closing it down just to them, I would like to have a little bit more time to look into this and see, you know, what the possibility was to maybe have a set, not an unlimited number, but a set number of organizations that would also fall into this. Now, only the retirees association can help offset some costs to this plan in the trade. But I think it would be in the best interests of the many retired firefighters and police officers that have put in their time with the city to have this taken out of their check, rather than having to write a check every month andùso I would just like more time to bring this back to the board and maybe a little work. [Inaudible]Back then, it was okay. Today you're totally right. We need to discuss it. Because very sensitive when it comes to the widows and obvious fans. Very sensitive area. I appreciate what you're doing. The motion would be to move it on to another time.

>> We just don't likeùtechnology has evolved in a way where a lot of automatic deductions come straight from your bank to those organizations that might not necessarily have to come from our checks. And that's basically where we were coming from on why.

>> With all due respect, there's some of us dinosaurs that still have a problem doing things automatically through our bank.

>> You had your hand up first.

>> I'm sorry.

>> No. This essentially would be a new cost to the plan. Is that right, Donna?

>> It wouldùwe're doing it now. The new cost would be to administer it where we could be able to update addresses and update amounts. Right now we can't do that in an audit automated way. So adding on additionalùwe can come back with more information.

>> But it'sùyou estimate about $12,000 for police and fire, and 35,000 on the federated side.

>> That is for the direct deposit advice. The tradeoff was going to be if we could add into direct deposits, opt out the direct deposit devicesùit would be a savings. And then we could add in the processes we with need to update, do the amounts and address it.

>> And I don't want to misrepresent it. That's the maximum savings. Because some people will not opt into this program.

>> That would be the maximum.

>> 50% off.

>> Okay.

>> I think the only issue, and this is a broader issue across our country. If we're spending money, that's going into some place for political contributions, we need to be clear about that process. So to the extent this is must be being given to anùwe to have a dialogue.

>> If the retiree association could represent that group of retirees and come up with a list and we stick to the list. My only concern would be we get AUN association. They're on there, why isn't this one on there. And then it becomes this big evolvingùif we say it's going to be five associations or five groups or ten retiree association would be the arbitrator of who is on there. It might be helpù

>> And that’s why we justified it by the retirees association have memberships set that have representation.

>> Yeah.

>> And then Donna, if could maybe add to drew’s point, just whatùwhich organizations are making political contributions. That might be helpful information, as well.

>> Okay. So with the consensus of the board, we’ll postpone this until our next meeting. And I’ll work with Donna as far as what I know and maybe Dick or Sean, you can relate it as far asù

>> If I can make a request also on drew’s pointùsomething I never thought about before. It would be helpful if the organizations that we’re talking about, there could be information provided next time about what their legal organization status is. Are they 501 C 3s, 501 C 4s. Because if they’re a C3, then as I understand it, they’re not really allowed to be involved in partisan politics. And that would be perhaps one way of finding a bright line that we could live by, is to say that we can do business with organizations that are organized one way and not another way. And that might cause the employee association or retiree associationùif they really thought it was important, they could set up a C3 for purposes of receiving contributions to do their nonpartisan activities and the partisan party to another. And to theùso I do think that’s an important issue.

>> I guess we should research when it’s an issue to give toùlegally. Because firefighters getùactive people get their money deducted. All union members get their money detected. It’s a paycheck deduction, not the pension funding something. Butù

>> I think the onlyùit notùit’s the individual pension that’s being reduced. I think the question, though, that’s being asked is the cost of administering it.

>> Totally understand that.

>> Okay.

>> Thank you.

>> 2.4, discussion and action on staffing and compensation issues. Carmen, you were going to address this.

>> Absolutely. Russell asked me to say a few words. Really want to bring this issue forward to have discussion on it. TheùI'm speaking specifically about my staff. We feel there is a resourcing issue. As you might already know, staff reports toù[Inaudible]Currently from a work load perspective, my unit, on average, we spend about half our time supporting the city. And various questions. The other half is spent on the matters of the two boards. So, for instance, this board fundamentally gets a quarter of my time, a quarterùapproximately, of Michael's time. A quarter of Dr. Amire's time. This is becoming more an issue, because we currently are looking to add two additionalù[Inaudible]For which investments need to be done. And as you might already know, Dr. Amire has resigned. We originally had three open VECHL investment officer positions. With those two resignations, we're moving to having five investment officer positions. So, for instance, doing the asset liability study is a two-month process. It kind of requires Mr. Moehle's time for a couple of months to have that done. And given his availability, you know, basically it's going to take many more months to get it done. So the first point we want to convey to the board, given the resourcing issue, currently, it will probably take a little while to get stuff done.

>> Carmen, question for you. Okay. Ifùsay the police and fire board are getting one quarter of your time, and federated is getting one quarter of your time. And the city is getting half of your time. Aren't we paying between the federated board and our board, aren't we paying 100% of your salary?

>> You're absolutely correct.

>> We're not getting reimbursed for that.

>> No.

>> So pension plan expenses, things charged to the pension plan are being usedùwhat type of things do you do for the city?

>> On the investment side, for example, in my absence, Dr. Amire relating to the pension obligation bonds, for example. Other things that we do for the city is all types of support for negotiations, which could be answering questions relating to the city coming forth and saying what about changing the pension design to X, or it could be sometimes questions from the union side saying we would likeù

>> So just right there. As actuaries, the city or the union are asking you to do work, and they're getting a free ack actuarial study that pension funds are paying for.

>> That's correct. [Inaudible]

>> No.

>> Of.

>> You're not helpingùmanage cash or something hike that.

>> No.

>> Investment strategies.

>> No. Soùone, we wanted to bring this issue forward. Because it has an impact on when can we get an absence liability study done and back to the board. The availability of staff time to tackle these issues for both boards is limited. The other issue is compensation. The reason we had three investment officer positions open,

and part of the reason behind the recent departure is that the compensation structure of the investment and actuarial folks is specifically below the market.

>> And I have spent a very significant amount of my time trying to recruit.And was unsuccessful in filling most of the positions. So we're treating the departures, obviously, with a little bitùit's a little bit troubling, because I know I cannot go to the markets and get additional resources.

>> Because?

>> Because the salary changes are significantly below the market.

>> Can you say what they are?

>> The investment officer position, I believe, is somewhere starts at the 100,000 and the high end would be 10% pay cut is 126, 127.

>> And what would the market bear for that position, for someone responsible for $3 billionùcombined funds, right?

>> It's combined funds of $5 billion.

>> $5 billion.

>> I think you're looking at something with a higher end, around $200,000.

>> So can't get the good talentù

>> Let's go in order here. Dick was first. And then Sean.

>> It sounded to me like this is. [Inaudible]I think we can incorporate that into the discussion. I think you have alluded to things we have heard before. We're paying for things we don't have control. Moneys that we're paying out of the system, and we're responsible for. So I guess again reiterating, we need to incorporate that into 3.5 and go from there.

>>> And 3.1.

>> That's kind of where I was going. I would say just from a general market perspective, the idea of trying to fill these position at 120,000 is just not going to happen. You know, typically the buy side which is probably more conservative in terms of the income, you're looking at probably a base salary of a minimum of probably 150 to 200. With a bonus that could be anywhere from 50% of your salary to, you know, 100%. If you are talking about hedge fund or any of that type of stuff or larger, even, you know, take the Canadian pension plans, you are talking about salaries that are probably at around 200, with bonus structures that can be many multiples of the salary. So I think that's why you're seeing that you cannot fill these open positions. EvenùI think Carmen you mentioned you've interviewed like 50 different people or something like that.

>> At least. Probably more.

>> So I think unless we're willing to move these salaries up to a market rate, it's really doing a huge tremendous disservice to the investment portfolio, which ultimately will cost the city more money in terms of the contributions they have to make. So I think, you know, we have to look at this cortex report in terms of our next steps.

>> Well, you two gentlemen are on the same topic. And just to quote a couple things from the cortex report, it took some big leaps forward in implementing some of the recommendations of the cortex report. And one of them is the city appoints a majority of the retirement board. Done. Okay? Another recommendation in here is that then the city should grant the retirement board theùthe retirement systems. This would include the ability to establish an operating budget, a point staffùset staff compensation, and appoint all necessary advisers and

service providers. This is in contrast to what's happening in San José, saying that the administrative authority is split between the board, city council, city manager, no one having full for the. We have a challenge here. And I guess we at some point have to say at the board level, are we going to continue down this avenue, or recommend the city continue with the next phase of implementing the cortex report, which might help resolve the problem, because then we would have broader authority to affect change. Right now, we don't have nearly any authority to affect that kind of change.

>> All in support of what they both raised. The cortex outlying this methodology of working together, and once established, the city should have a department that becomes masters at understanding the pension plan and advises the city about different strategies and techniques and runs actuarial studies. We understand, they rely on us to provide that. I think that all should be addressed in the cortex report, and along with the 3.1, they talked about board governor governance. I guess for this one, I guess I would make a motion that we shouldùthat staff should be directed toùto direct all of their efforts to meeting board required projects and time lines. And once that's complete, then whatever work needs to be done is handled in the current way and needs to beùand a secondary with a compensation study for these positions. And I don't know if August is too long to wait to hear back about that type of information. But then hearing that discrepancy between what the market should beùwhat the market would bear and what we're actually paying, it might feed into the cortex report or if there is more immediate action we can take to at least get something done to fill these positions. Is that the world's longest motion? Without all of the elabration, the board functions and then the time lines required by the two boards to then do additional work. And the second return to us as quickly as possible with a compensation study for the open investment position.

>> I'll second that.

>> I have a second. Pete?

>>. [Inaudible]

>> There's two issues at play here. One is the longer-term governance, which I know there is discussion by counsel, when they took their action, knew that this wasn't an end-all. That there were a series of things that were going to happen over a period of time. I think that is well-known. So we also have the short-term issue on staffing. Staff departures and the competition compensation levels. And that's where I should be used. And I had this discussion with Russell. The compensation structure of the city structure, while it is fixed, you have an investment or whatever they call it, in this range, we can create a new classification with a new title. The retirement board or whatever it comes up with with new recommended ranges. If that is something the board thinks is appropriate, given the circumstances in working with Carmen and Russell to come up with what that would be, that is something I could carry forward to have these classifications created to change the basis. So there are ways of doing that. And I'm available to help move those things through the system.

>> Part of Sean's motion was to have staff come back with a study of, you know, a compensation package study. And if that comes back, then you would be able to carry that back to the counsel on our behalf to make some changes as far as classification, so that the people that are dealing with the kind of funds and the responsibilities that our staff is doing are corresponded with what is as close as we can get to what the market is doing.

>> Right. So there's multiple paths for things to get to. Just want you to be aware that I am one of those paths that arguably my path is somewhat shorter than getting things through the system. And I'm willing to do that [Inaudible]I have had discussions with theù[Inaudible]

>> A couple of observations. I'm a little worried about the motion, because itùI'm somewhat disturbed to hear you think you're spending half your time on these broader activities. I find that more perplexing than anything. I don't feel that fundamentally the idea of being an honest broker in the midst of labor negotiations costing out what various retirement plan options would actually cost. I don't feel that's somehow inconsistent with the mission of this board or you as our staff or the trust. I think it's part of the broadùI think the things you described to me sound like part of the broader mission. And I would hate for you then to get boxed in, looking at aùan action of the board that passed that basically says you can't do anything for the city until you have eaten every last green bean on your plate, right. So I'm just a little bit worried aboutùabout that formulation. I guess I would be more

comfortable with just a general expression of theùof the board's position as we think that you should understand that serving theùthe direct mission of retirement system and the board is your highest priority or something like that. So that's my first point about the motion on the table. The second point about the pay structure. It worries me a little bit to just create a new civil service classification. I don't know anything about the civil service system is in the city of San José, but it's my experience that you can end up in kind of a box where you go down that road, you have the people who you're paying a lot of moneyùin an effort to replicate a private sector work deal, but then if the person is not performing you're discovering the deal is not what it is in the private sector, because the person can kind of stick around, right. And so my concern has been that you do the best way you need to think about what provisions of the civil service employment structure apply to the person. But then once you actually go down that path, then it gets a lot harder, right, in terms of how do youùhow do you peel off some versions of the civil structure so they don't apply to the civil levels. I don't know how that works.

>> So if I can just tell you that we have full classified and unclassified, civil service and noncivil service positions. That's a separate position. So I believe you guys are allùso they are noncivil service employees of the city.

>> Oh, is that right?

>> Yeah.

>> Well, I would be interested to know specifically from Carmen what she needs on a short-term basis to solve this problem. We're losing staff. Our pay scale is limited. What actions do you need that the board can help you with, or our liaison with help you with to expediteùsolve this problem, in an expeditious fashion. And secondly, looking at it from the bigger perspective of the cortex report, what do we need to do at the board level to work with our liaison to push forward the emphasis of trying to implement more of those recommendations.

>> I think it would beùjust the general direction to fundamentallyùI mean, the city is obviously going through a difficult period, and we all understand that. And we want to be supportive. But it's also important that when they come to staff to run, say, specific numbers or to consult staff that they have a pretty good idea what they're doing.

And that not every individual from the city comes forward with their plan and wants retirement services to run a specific set of numbers to support their plan. So what we would like to see really from the city is they need to discuss how to resolve the problem, and once they have a few options nailed down, only then come back to staff and say, what about these options, could you cost them for us? To kind of shrink the work that we're doing. Because we're just really very stretched. This would allow us to focus on the board'sùthe workùthe investment work that needs to be done. Get that through, and we can potentially continue to support the city, but in a narrower focus. So the ideal from the board is what it is we can do. I'm not sure on the compensation there's much more that could be done other than to do a study and to move that forward as quickly as possible. But justùI think theùthe awareness and kind of asking that if and when the city does try and use the resources, trust resource, they would be very focused in doing so.

>> Sounds like a motion might want to be adjusted a little bit.

>> Yeah. I wantùI think maybe you may want to think about the motion. Because inùstaff does work for the city manager's office so they don't want to get into a position. I think it's very, very important to communicate to the city that you are concerned about the staffing, and that you are concerned about the drawdown on the staff resources. I think that's fine to communicate that. But you don't want to putùyou don't want to put staff in an awkward situation, where they feel like they can't respond when they're asked by the city manager's office to do something. And so that's the only thing I would point out.

>> Just so you know, there's been a history of this in the past, and it puts our, you knowùpeople we're paying for our staff, even though they don't work for us, it puts them in an awkward position, because our director has been told flat out that he does not work for this board. He works for the city manager's office. Andù

>> And we're paying for it.

>> We're paying for them, but we don't have the say. He does. I believe that you and your staff are committed to what needs to happen on the board. And I guess my instinct is that you have important people coming to you

asking for time critical and mission criticalùnegotiations going on, all kinds of things that can happen in very short order. And they haveùa sincere need, and they're coming to you, and you feel that need and you're trying to respond to it. And I think the intent of my motion was to give you the clear ability to say I have to do these other things first. Because what I'm worried about in the plan is losing two investment people. We already have three openings, several major studies that need to be completed that you say are going to take a long time. Before we can adjust the portfolio that we know is way out of balance, and I'm wondering how many millions of dollars we're going to lose in plan returns in order to deal withùif we have to hire a consultant to help outùI mean, if we have to contract outùif they want to come to us with a study, we can go to Segal and say you know us, you know the plan, go do the study for and we'll deal with the costs. I'm worried about the plan and the need to get really good returns and things from a staffing perspective are getting worse rather than holding equal.

>> Carmen, after Ryan and Ollie leave, how many investment analysts will there be working on the plan?

>> There will be one investment officer, Heidi Poon. And we currently have Ron, Sierra and one other analyst at the analyst level.

>> So those three analysts really are not investment analysts in terms of doing research on investments?

>> That's correct.

>> So we have one analyst between these two plans. From a fiduciary standpoint, this is a major problem with the board, really. And the city.

>> Russ?

>> I think Sean reallyùit seems there's different classes of issues here we're confronting. And all of them have significant fiduciary overtones. There's the cortex governance issue. There's the longer-term working in the city to perhaps get clarification on job classes. All of which need to be pursued. But obviously, as Sean has just

indicated, there's at least the semblance of some sort of situation that could be deemed an emergency. But at this point, you haven't really gotten any indication, including in writing, from staff, about what the nature of the issues are. I assume investment officers perhaps do compliance. I don't know. Perhaps theyùI don't know the function of an investment officer here. Perhaps you do. But we don't know what is not being done yet. And staff can tell you what's not being done. And also, with respect to the asset liability study, which seems to go beyond an investment officer function, and instead is going to the broader issues you have been talking about for several meetings now and we find out this study is not going to be presented to you, again, for an uncertain period of time, but it looks like multimonths.

>> Yeah, I did ask Ali Amire if he could stick around and wanted to ask, what are the three big things thatùfrom the perspective of the board that we can do to try to make these positions more attractive to these people. And if Ali can tell us what the three priorities would be in his perspective and maybe your perspective on the role that you had, and why you're leaving.

>> Thank you.

>> I didn't mean to put you on the spot.

>> I think there's fundamentally -- oh. Sorry. Two major issues. One is, of course, the compensation, which is very below the market rate for people to experience. The other issue is the way that the managementùthe investment has been conducted. We are very limited in terms of our ability to contribute to the investment ideas. Partly because of the limitation that we have in terms of traveling and related issues. And that comes from the city. It is really hard for me, like, for example, we have four managers that were discussed earlier today. That in the emerging market and the international. And the placement. As you saw, the performance. I think their assumption is from the city that I can do that by sitting in my office. If anybody ever works on the buy side, you know that you need to be on the road. You need to interview 100 managers before you pick one. That you have any significance understanding of what the goal is. There's a lot of issues that need to be involved in going to the

conference, meeting with other pension plans, meeting with others, that availability of that opportunities are limited by the city.

>> Can you say whatùhow those limitations are put into effect?

>> I'll give you a very clear example. Their last year in October, I went to London for a meeting with a bunch of hedge fund managers. And the Osbourne consultants. And I came back, and I wasùactually, in the middle of my trip, they cancelled my travel expense. And I came back and I said, what happened? And he says, well, you didn't have approval for it. Well, certainly the director approves it. Both boards approve it. Apparently, they're traveling outside the city, and I didn't know that. That was my mistake. You need to go to the city council and the mayor to sign up. So for me, some other regulations. I don't want to get into detail. So if I am traveling, and I have to go to the mayor or any time I'm going to outside the United States, the issue is I have to fly from San José from San Francisco, which is fine. I don't care. But I live in Santa Cruz, so it's easier for me to go from San José. But there are bureaucratic, for lack of a better word, complications, that do not allow staff to really perform their job. And there's assumption that we are just basically, you know, paper pushers. And I don't feel confident I can do my job very well if I have to invest $5 billion in an effective way. And that's a problem. In addition to other issues.

>> Yeah. I mean, I would add to Ali's comments, that travel policies, which we are under, is made for the individual that goes once a year to a conference. So I mean, the investment officer's job is to be on the road almost constantly to be looking for new managers, and to be meeting managers. And especially when you are in the alternative state, hedge funds, most of the managers are based internationally, either out of Zurich or out of London. Soùand especially when such travel is authorized by the board, the city came around and basically issued a reprimand to Dr. Amire, because he within the on travelùan assess re, to meet hedge fund managers, approved by the board, approved by the director. So having the rules that are made for an individual that goes to conference once a year apply to you when your job is to actually travel constantly is very difficult. It was a big issueùI mean, just minor things. Like the amount of paperwork that you have to fill out if you lose one receipt while you're on travel is absolutely enormous. So just the day-to-day grind of having to fulfill the city rules on

travel by an investment that has to spend easily 75% of his time on the road is actually quite draining. So this is just further comment.

>> And I want to stay on the track. I'mùyou're off a little bit. Because we have an investment consultant we're taking a lot of money for. They're bringing investment managers to us. Are they not?

>> No.

>> Well, then what are we paying our consultants for?

>> Very good question.

>> We actually have the manager selection process is very muchùconsultants are used as staff. So when we are sitting there trying to decide whom should we meet in order to fill a specific position, we don't simply ask the consultant to bring his thoughts to three managers. They come forward with a list of their top five managers. We look on our database for who in that space is considered by some of the databases that we have to be kind of the top five. And then we go even to the investment consultants of the other plan. Typically we fill managers on both plans simultaneously, and we get them to bring forward their top five manager list. Then we have a phone conference through which we go every one of the three lists. We try to prioritize who are the top three managers. Once that is done, a representative from each consultant, as well as staff will go and interview on-site the managers. And then typically we comeùonce this is done, we come back, and we kind of have a discussion who is the top manager, who is the number two, and we try to form consensus. The idea is the more bright minds are involved in a decision on the manager, the better the decision is. And so consultants are used really as a member of staff, as a extra resource. We don't necessarily ask the consultants to go and come back with recommendations. And we have found that that brings the quality of the managers up very significantly.

>> Do you think we're using our consultants effectively? My experienceùyou hire a consultantùyou hire a consultant to do all of that filtering for you, to do the due diligence for you. It seems like maybe some of the work

is a little redundant. And either we don't have a qualified consultant, or we shouldn't be using consultants, and we should be doing it internally. I'm not sureù

>> Welsh I mean, what I've seen, and with my experience at Mercer investment consulting, if you just go on the recommendation of the consultant, typically you have a 50% chance of landing, just by sheer luck, a manager in that top 2 quartile. If you hire a consultant, they might be able to tip it up to 51%. So bottom line, what I'm conveying is, I don't believe that you really can consistently put in place topùtwo quartile managers if you just rely on the consultants.

>> I would add to that. One of the interesting things I'm learning about the consulting side from interfacing with these people a little bit, they work with a lot of plans, a lot of money, they tend to go for larger managers who can accommodate all of their clients. Ask one of the things I think we have potentially as a smaller plan, if we could, you know, set up a staff for it, is the idea of kind of breaking away from that, and maybe finding smaller managers that are adding more. And it would be an investment in the staff, but I think it would pay dividends that would be, you know, significant.

>> And I also think this is going to become a greater issue as we go into the alternative investment space, because it's even more challenging there.

>>. [Inaudible]

>> One of our current managers, I wanted to get rid of them. And the consultant says, no, this is my top approved top choice. So we are not going to recommend that. Kind of firing of the Boston company. So you areùthere is a development, relationship between a lot of money managers and consultants, and you have to be very aware of it.

>> Sure.

>> I'm not saying all managers are like that, but a lot of times, there is a relationship. And if you are going to the alternative investment, this becomes much, of bigger issue, because A., the competency level drops a little bit on the consultant side. And also, it would tend to go with the larger firm, because they have the marketing and they have the relationship, and they also have the capacity. The consultant can boost ten different funds, ten different plans into one manager. So it makes the job of the consultant a lot easier. So you have to be aware.

>> This might be extreme saying this, but I feel like from a management perspective of this plan, we're almost in crisis mode. We're very lean on staff. We're not in a position to get the data we need to change asset allocation, manager selection, respond to market conditions, yet we'reù[Inaudible]

>> To do that. So I guess I would turn this to council member Constant to address, if you would, the cortex report. Do you believe the intention is for the city to want to implement further those recommendations, and do we use this crisis environment to push for that?

>> Well, I don't think I can really talk to what the council would do as a whole. We're too unpredictable.

>> Well, fromù

>> We have a hard type figuring out simple stuff on a regular basis. So IùI think it's something that we should introduce that discussion. But I don't know if I can comfortably say where anybody is on that.

>> Well, can you talk about how you feel? You've sat on these boards. And you obviously must have felt the frustration of not controlling people that you're fiduciarily responsible for. I mean, have you approached other council members?

>> No, I have not talked with other council members specifically about that. I can tell you I have had conversations with the mayor and the city manager previously. And my personal feeling was that the cortex

report needs to be taken in STANLS stages with the board governance addressed first, and now it's time to move on and evaluate and address the others.

>> Would it may be sense to put a small working group together to try to help staff determine, you know, get something going in terms of HR and figuring out short-term or long term?

>> Do we need to approve for a study for them to go out and hire consultant and figure out?

>> On the agenda.

>> What I think makes sense, we have talked for a couple meetings now about having a board retreat. And I think we need to get a date on the calendar as soon as possible and deal with these issues from governance to cortex reports to staffing. And come out of that with specific objectives, and one of those objectives is how are we going to deal with this situation?

>> Might I suggest that we set a time line of either at the end of this month or in July, no later than July for this board retreat, and deal with this one specific item? And just plan on making a day of discussion of, you know, the problems with of the staffing, the problem with responsibility of work loads and things like that? We don't have a meeting in July. So maybe that will free up enough time that we could jump on this and at least have some open discussion and find out what we could do, what we can't do. What we can recommend. And kind of bring everybody up to the same level. Because there's some of us that have seen this frustration over the years. It was a two-year battle to get the conflictsùand there's conflicts. And you're starting to see some of it. And I think either Sean or Vinceùwe're in crisis mode. $5 billion and this is what's happened to our staff.

>> Right.

>> Soù

>> As a board, do we want to direct staff to set up this retreat?

>> So you're picking up agenda itemù

>> Well, it's going to include quite a few.

>> It is.

>> 2.1---

>> 3.1, 3.4.

>> 2.4.

>> 3.1 also and 3.7.

>> So it seems to meùI'm not sure, Sean, if you want to keep your motion, change your motion, but it almost sounds like we have two things we need to deal with here. One is, maybe Carmen coming back and saying specifically these are the issues that I need resolved to help from a staffing perspective on a very immediate to short-term basis. And then the second part, dealing with the retreat that's addressing all of these major topics. So a short term and long term. The long term is like one month out. I would withdraw my motion.

>> Okay.

>> Second.

>> Whoeverù

>> So I will submit a substitute motion.

>> Okay.

>> And we'll keep them in separate pieces. Just the short term immediate work load needs. Just the motion that, given the reduction in staff, all efforts should be directed to first address immediate board issues or immediate investment related issues, so there is no detriment to the plan. And then address other issues as time is available to do that. Just that motion. And then we can talk about a meeting and what we can discuss in the meeting.

>> I'll second that motion.

>> Okay. I have a motion and a second. The only thing I would like to comment on the motion, we can give this to our staff and recommend this to our staff, but they work for somebody else.

>> And advise usùandùI would add, to advise us immediately when you're unable to do that.

>> Right now.

>> Correct. What Iùwhat I don't want to do is giveùput out a motion here that we vote and supportùwe all support the idea. I don't want to put out a motion that Carmen says, well, I've been directed to do this. Well, I'm telling you to drop that and do this, so somebody can discipline here.

>> I was looking more specifically for quantifiable information from Carmen. That's provided to the board in written format, that we can then address. Which is staffing positions, compensation issues, time allocation. What we're talking about right now is not in any kind of format that we can present to counsel as our challenges that we're dealing with at the board level.

>> That's what with he we need to do.

>> We'll have a board retreat at which time staff should not just get a compensation study, but an actual position description, and we see council member Constant raise fit within the system and also address the idea the cortex report and all of the issues it raises in terms of dealing with these. And the idea of having an outside consultant coming in, looking at board governance saying hey, we don't have an audit committee, things raised in the cortex report. But we really should look at, compensation, management, and, again, giving you direction, and then your manager telling you you're going to get reprimanded if approximate you don't do what I tell you. It sets up an I am possible conflict. So we've got to keep the work of board going, because we're going to come back in August, and the answer will be the report is not done yet.

>> Okay. Would you read the motion back, please? [Inaudible]

>> Board issues that have a fiduciary impact and other issues as time allows.

>> Is thatù

>> Yeah, for both boards.

>> Okay. Second.

>> Or should it stay plan instead of boards? I don't want it to sound like a power play by us. The plan needs something.

>> Good. And the second degrees to that change to that plan? Okay. Discussion. Questions? All in favor? All opposed? Motion passes. Okay. Did you have a follow-up?

>> Sure. I can do the follow-on, which is that if we can propose we schedule a board retreat with the greatest expediency to address the governance of the plan, design of our staff, and compensation and position descriptions to achieve the planned goals.

>> Good.

>> Do I have a second?

>> Second.

>> Today a, I'm assuming that part of that retreat is discussion of the cortex and whatever have you.

>> Yes, and that's the plans goals and fiduciary responsibilities. I assume included in that would be the staff working on, what the positions are, the management of them. The compensation of them. The committees we have. The processes we have that should be explored. We have a disability subcommittee. Maybe there should be others looking at things. We used to have a investment committee, real estate, overall governance.

>> Roll back this tape, and it will keep us appraised of what's going on.

>> Are so there's some logicùthere's some logic in this to doing part of that offsite with federated.

>> Of that's true.

>> The half that you're talking about Sean, sort of a staffing and stuff. The other half, our committees and stuff, that's separate. I know that's a huge headache to get that many people in one room on a calendar. To some extent, this is about political will.

>> I think it's a great point.

>> Do you think we need to do that at our first juncture, or should we get our heads together first?

>> Well, we're in crisis. And one of the key elements of crisis is the staff. If we can do it, we get an off site, two groups together. The other half, us on our own. I know it's a headache to get that many people at one place at one time. I imagine the message from both boards would be twice as strong.

>> I remember when it was only five on each board. I can't imagine what this would be like. The other question is, do we want to label it it is a retreat, so it's discussion. Or do you want to make it a special board meeting, which.

>>> You should make it a special meeting. And you don't have to have it here for a special meeting. Only regular meetings of this board are required for city hall. So that would be my suggestion.

>> Yeah, my only comment about the special meeting and the direction is that before you have the retreat, it's very difficult to ageneral dyes what the action is. So this kind of general language doesn't really work for an action item. If you wouldùwere to want to direct staff to do something specific with a consultant, you couldn't do it under this kind of general agenda language. So that's my only comment, that actually, agendaizing the action before the retreat might be difficult.

>> So the retreatùsay July 1st, our meeting in August, we could have it on the agenda and take action appoint. But I mean, at least we would are our mindsù

>> Staff may have ideas about what specific action they want to recommend at a special meeting in July. They may. But they're going to have to beùin order for it to be an action item on a special meeting agenda, it has to be specific about what they're asking for, not this kind ofù

>> Yeah.

>> General language.

>> Can I add one more thing? Motionùone of the things I noticed might have been lacking based on Russ's comment was a descriptionùclear description of what's not being done that lends to the fiduciary obligations. I don't know if Russ wants to clarify that, but that was something you mentioned a short time ago.

>> Good point.

>> Soù

>> Of I was just going to say, our first time, I wouldn't want any actions. First time all being together, confusion, frustration. We get a chance to have a discussion and see where we're at. And then, of course, the other part of the retreat, we've got to be by ourselves. No question, being together, and ending up ourselves asùas this board here, and, again, no action. Justùit's just like we were saying before, all of usùtake it in increments.

>> And unfortunately, you know, they're big levels. Some of the approaches you might take to the both time and energy to might be incompatible, and you're going to have to decide which is first. If you want to work within the city structure, even for unclassified employees, that's one round with one complicated set of elements. Of but if you're going to go the cortex, we want to decide ourselves route, that's obviously totally distinct. And somewhat incompatible with the first. And how you're going to weigh those is difficult.

>> And through the chair.

>> Let me just ask the maker of the motion, do we have this down?

>> Do I needùshould I amend the motion to say, and other issues felt to be important management of the staff or boards, to open it up to things not being done? I just don't want to limitù

>> It includesù

>> Including, yes.

>> Includes.

>> I don’t want to go this. Say I can’t talk about that.

>> I agree. Okay.

>> Are we doing joint or not joint?

>> Half joint.

>> Okay. So a half joint receipt, board retreat to address governance issues and these fiduciary responsibilities and other issues.

>> Related to the management of the plan and the plan’s assets.

>> Okay.

>> Is that wording satisfactory to the second?

>> Yes.

>> Much okay.

>> Started out kind of a clear motion and thenù

>> Yeah, I guess I just need to clarify what half is joint and what half is not joint?

>> Well, that's the detail that we can work out.

>> Okay.

>> That'sù

>> Flexible as possible.

>> Coming up with the issues and talking about possible solutions we want to do jointly and then thinking about those solutions, we might need to discuss our own things in our own committee. If they want to have an audit committee or not, that's their choice. But we desperately need one.

>> There's some shared problems here.

>> Okay. Any further questions? Discussion on the motion? Okay. All in favor? All opposed? The motion carries unanimously. Okay. So that's going to cover 2.4. 3.1. And 3.7.

>> Are you going to separately discuss the cortex report?

>> Yes. And 3.5. Thank you. Okay. So we are now on 2.5, discussion and action regarding recommendation from the subcommittee on disability determination. And I'll open that up to the committee.

>> Conrad is not here.

>> You want to defer that?

>> Oh no.

>> We can talk.

>> I think we want to talk about that.

>> Okay. The letter is not in our packet, right?

>> No, we did hand out the letter. The subcommitteeùthe ad hoc subcommittee met two times to discuss issues. Oneùone thing that is requiring approval by the board is theùthe official response from the board to theùthe disability audit that the city auditor's office put out, and this is the draft letter that the committee is recommending to send to the city auditor, as the board's official response.

>> Okay. That hasn't gone out yet.

>> This is a proposal from the subcommittee for the board to approve, and so we're just making recommendations for the board. I'll just address the letter real briefly. There was a few things we set up with the committee with objectives to do. Some are longer-term, bigger. One was to give an meet response to the auditor's report. And so this letter encapsulates our response, basically saying we appreciate the report and the information it brings. We want to work through these issues and figure out the best changes, looking at best practices out there. Because it's so important to us, we set up a subcommittee, specifically looking at this. And we as board members, along with our staff, are available to help them evaluate any other things they're seeing in the disability process that could be approved. And we're asking them to please be open and wait for our input or accept our input into what they decide to do ultimately, and wait for that input before they decide to jump. Because we continue to look at more data and more information that could help come up with the best solution possible.

>> Okay. So as part of the subcommittee, would you like to make the motion to approve that?

>> Sure. I'll make the motion to approve the recommended letter to be assigneded and forwarded to the city council.

>> Okay. I have a second. Any further discussion on the motion? Hearing no further discussion. All in favor? All opposed? The motion carries. Thank you, guys.

>> Is there any type of reportù

>> Yeah. You want to elaborate?

>> Well, primarily the focus right now, I think there's a couple things we need to address. But what we're really keyed on right now is the process. And what did come out of the audit report was that the city wanted to have a separate committee. We want wanted to try and drive that process, and that's why we're doing the research that we're doing. And I think we got the general structure behind it. We have listed what we think would be the important elements in having a subcommittee do the review first. Actually a three-step process we would go through. What we're really trying to focus on right now is what individuals would make up that subcommittee. So the general process, and I'll use some of drew's terms here is you've got a bag of marbles, and it's pretty easy to pick out the white ones. You're looking at the disability cases and the white ones go right through. So having the staff do initial run-through in approving certain cases would be very expeditious for us. Then you've gotùremaining in that bag, the gray marbles, which are a bit unclear. And maybe the black marbles that really shouldn't be getting through. Because really, if you look at a lot of studies being done, not just the city's audit report, you look at the one done back in 2005, approval rates are generally fairly high. The criteria that we're operating in is very rigid. So you're still going to have a fairly high approval rate. So what we want to do is have a process to go through those gray and black cases, if you will. And that's where it would then flow from the initial staff review, down to those cases that need to be reviewed by the subcommittee. And then the subcommittee

would make a recommendation to the board, the board would always have final approval. If, in fact, there were a case that were to be denied, that individual, the third step is they would have the ability to present their case, a secondin formal step, hearing, to the board. And we think that would cut down the amount of time involved that we're spending on disability cases. This committeeùwe're looking for them to cull through the information, make a recommendation, and so at the board level, we're primarily agreeing with that, or we could disagree. But they would have spent the time analyzing that, some of the credit tier for that committee would be no conflicts of interest. Independence. Expertise in dealing with disability cases. There's about two or three other criteria that we are looking for for those committee members. Initially, the discussion is having the staff member being part of that disability committee. A doctor. We're trying to examine whetherùor explore whether that should be truly a position or not. And then do we want to have a third member. Soùthat's kind of where we're at. And I think we're actually making some good progress. We have another meeting coming up in mid June. Late June.

>> Okay.

>> Can't give testimony and review andùthere'sùit's not as easy as it seems.

>> Okay. Thank you for the report. Any questions by the board or subcommittee? All right. Item 2.6. Discussion and recommendations of the San José city council on ordinance of the city of San hoe amending title 3 of satten José municipal code to add new chapters to 3.54 and 3.56, and to amend sections 3.36.575, 3.36.1295. 3.361930. 3.361950 and 3.36.2030 and section 3.36 of title 3 for the purpose of establishing two new trusts pursuant to section 115 of the internal revenue code related to retiree health care benefit funding and payment of retiree health care benefits. Wow. Mollie?

>> So you haveùtheùyou have the memo and the ordinance. This is the ordinance to establish a new 115 trust for receipt of the contributions for health care funding. For this board, it's not as urgent as it was for the federated board, because you are notùnot currently on notice that you'll exceed your 401H limits. But it's anticipated that at some point in the not too distant future, you might. I don't have a date for that. But this wasùit's also a provision in both of the negotiated bargaining agreements to establish this trust. So this implements that.

>> Okay. So are there any questions of Mollie? Otherwise I'll entertain a motion.

>> Has this been reviewed by the police and fire organizations in terms of this is what they had agreed to?

>> Other than the fact that they couldùI didn't send it to them directly. Other than the fact that it was hosted, and it's been postedùit will be postedùI think it's already been posted to the council agenda, too.

>> So this was written May 25th. I don't know when the ordinance was actually written.

>>EI withù

>> But for themùto speak up if they have issues.

>> Yeah. Iùand like I say, it's been posted on the council agenda, too because it'sùI think it's on council for next week.

>> Okay.

>> Well, through theùit wasn'tù[Inaudible]The local bargaining units, were they notified. I don't care if it's posted. It's very difficult. In other words, is there any changes or anything that, you knowùwe're going to be responsible for something, I want to make sure I knew this or did know.

>> Don't generally dealùour office doesn't generally deal directly with the bargaining unit. I don't know. I do see Sally from employee relations. Maybe she can sayù

>> I was hoping it would be good communication.

>> Well, they're supposed to get a pact. But I know there's been gaps in that. My suggestion is, you know, it'sùbefore we make a recommendation to council to approve this, Mollie says it's not as urgent as it was for federated. That we request our staff to send out a copy withùto the two unions, and we'll know they got it. And if he they don't want to do anything to respond to itùthen we can just approve it next meeting.

>> Well, let me just kind of lay out the process for you, and then I'll let Sally say something. This has been referred to you by counsel. There is a process for it to come to you. So when it goes to counsel, they can adopt it without your recommendation and send it back if they want. So I don't know ifù

>> So recommendation, and counsel has got it on their schedule, ready to go.

>> They've got it on their schedule, ready to go. They may want it pulled off. They may want it pulled off if the unions wanted it pulled off.

>> I would suggest that weùI would move that we approve this, subject to the reservation that we don't know police and fire unions have seen this yet.

>> One of our problems we have, we want to make sure there is good communication. And that's one of the reasons I'm here, because we have had good representation. So it might be something minor. But I want to make sureùwe can defer this, nobody gets hurt. I don't want to put my name on something without really understanding anything.

>> Okay. [Inaudible]

>> What we can do is, we can send it outùwe can send the ordinances out today, and we can ask if they can review it and comment. Generally, it's a one to two-week period. We might be able to get a response from them this week. If not, we can certainly notify you they need more time.

>> So the council agenda is for first reading of this ordinance next week. And then thatùand second reading. The following week. So there is plenty of time for people to comment on it at the council level, too.

>> Can I say that if we made a motionùas the board, to recommend this, barring any mistakes made in typing or misunderstandings between the city and the two labor groups, that was our motion to recommend it to go forward. Obviously, we're not going to be able to stop it anyway. And the labor groups would stop it at city level if it wasn't correct or if there was a misunderstanding or ifùthere is a disagreement as to what was understood. So I mean basically, I think it's just a recommendation from us at this point that we can go ahead and send it on. Knowing that, you know, the labor groups are going to stand upù

>> Wait a second. We don't speak for the unions. We didn't have any input from them, and are concerned they may not have been noticed on this. That's fine. We can put that in our motion and our commentary to the council. That doesn't preclude us. From my standpoint, sitting on this board, this is an absolute no-brainer.

>> Dick.

>> Well, it'sùI'm not representing labor. That's not the issue. The argumentsùit's responsibility. That effects somebody, and I'm making a relationshipdation, and is I haven't heard from anybody. It doesn't make sense to me.

>> Thank you.

>> Dave?

>> I think the boardùindividual board members have an interest in this that shouldn't be forgotten. Remember, you're nowùgoing to be theùboard of trustees of two separate trusts. Maybe the trusts can meet together, maybe they can't. In other words, as far as the length of meetings go. Then I don't know if you've had time to really look at the responsibilities that you will be assuming, assuming you stay on the board, if this ordinance is adopted.

And to the degree you haven't had a chance to do that as a board, you know, andùthose would be the kind of practical things that you might want, if you found something that seemed difficult to cop comply with, you would notify the council with and ask them to change. Otherwise, you're going to be stuck with this.

>> To Russell's point, was this draft given to staff? Have you guys all reviewed this?

>> I know thatùyes. I know that members of my staff reviewed oh the investment portion, and we put together from the point of view of the asset allocation, we're going to invest in the sameùin the liquid portions of the as sell asset allocation.

>> But not extra work on the investment side.

>> We're trying to minimize the extra work at this point in time. Just because this is an additional two trusts that we need to kind of follow up on. And it involves a significant amount of time to inthe invest the money. And at this point, there is isn't a whole lot of money involved. So we're trying to maintain aùa long-term asset allocation, but supports the actuarial discount, so there is no issue there. But at the same time, minimize the investment needs and the costs.

>> What about work load for the rest of the organization?

>> Yeah, I think both the accounting manager and operations have reviewed at least the federated one in great deal. And this isù

>> Yeah, the federated one went forward first. And it was reviewed. And this one is identical. So there definitely will beùthere definitely will be additional reporting. The meetings probablyùthisùtheùthe trustùthe board of trustees for the new trust may not need to meet monthly, but they will meet back-to-back with this board, most likely, the same way the city council boards meet back-to-back.

>> Who is on the board of trustees for this trust?

>> What this ordinance says is that the board of administrationùthis boardùthis board of administration will be the board for the new trust.

>> Are you sayingùI have this experience being on a board that was the trustee for multiple trusts, and it was not my experience that you would actually adjourn one board and then start another board. You would just have agenda items.

>> That's the way we doù

>> I just want to make sure. It seems like it would be overly complicated.

>> Notice, there will be additional pressure on investment staff to come up with new reports for each of these two entities. And that just highlights and adds a new dimension.

>> Right. We'll have to hire outside auditors.

>> It just highlights.

>> Supervision involvedùotherù

>> The inability to staff is nowùthe inability to fill vacancies is made even more serious a problem once this goes into effect.

>> And you alluded to this earlier, now there's two more trusts that need to be dealt with. So if you could make sure to include that as you talk about the work load. Thank you.

>> Okay. Paul?

>> Iùmy name is Paul Mulholland, I'm a retired San José firefighter. And just listening to this discussion here, I want to come back to what Mr. RICCADA says, that once this thing is adopted by this board, you're going to live with it. You're going have to wear it at all times. And from what I'm getting here, is that there is someùnot disagreement necessarily, but some question as to what this whole thing means. And being that I am a retired firefighter, and they're talking about whether it's related to retirees health funding and payment of benefits, I would like this board to know exactly whatùwhat they're beingùsaddled with. [Inaudible]So I just want to make that statement. Thank you.

>> Thanks, Paul. The only comment I would make is, you know, we're not adopting this ordinance. We're making recommendations. Council is going to move forward with or without our recommendations. If that's what they so choose. So it's an opportunity for us to express any concerns. But we are not adopting this ordinance.

>> Yeah, I think what I was getting at earlier was that I'm not suggesting that we're approving anything here. I think what counsel is looking for us to do is to say we want to throw a nail into the middle of this thing. And it's an absolute no-brainer that no, we don't, if you just take this on its face value. It was already agreed to by the city and unions they would make this happen. It's a prudent thing for all parties considered. So my motion is basically just tell them. We're not going to get in your way, but we want to just notice you that we understand you still have to talk to the unions to make sure it says what they think it says. I mean, for us to stand in the way of this right now, strikes me as politically and incredibly prudent. Given the fact that we'ring about about to go to council and tell them we're in crisis.

>> That's what bothers me. How can you recommend something, from my point of view, I don't understand it. When I see words like internal revenue, and I've got 33 yearsin invested. We had a lot of folks who died to get those benefits. And as Mr. Mulholland says, talk about health care. How can I recommend something that I really don't understand? That's going to be politically wrong when I represent 1,400 retirees. Absolutely not.

>> I'm just saying, Dick, I think the venue to do that is the city council.

>> That's correct. But why would I put my name on it until I understand it?

>> Well, then vote against it.

>> Well, that's easy. I'm trying to explain toùhere.

>> I got that. But I think we have to pick our battles.

>> It's not a battle for me. It's something I don't really understand. I'm sorry, I wish I was real sharp as attorney, I could read that and say it's safe for everybody. That's not the case. If you could convince me, it would be a different situation. You're making it sound like it'sùit's not to me. It's like a car and he says this thing has four tires, go ahead, Santosùwait a minute. I've got my family that's going to drive this thing.

>> I'm taking it on faceùso I follow basic rule, which you may not follow. And that is that I assume that's what in every document I'm read something correct. That it's the truth. And it says in here, which I take it as truthful and correct, that the agreements with the bargaining units provided a qualified trust that would become a sole funding vehicle for police and retiree benefits. Dick, if you're telling me you don't believe that's true, then you're operating under a different set of assumptions than I am. And I agree, I have no intention of passing. Every board I sit on, I assume the documents in front of me are full and correct. This tells me that the unions have already agreed to this. The city has already agreed to this. And I think it's our job to say, okay, we thought about it. We recognize it means additional work for us and we're okay with that. I take it on face value this is what the unions want and the city wants.

>> Well, there's a point when we asked Ms. Dent if the unions reviewed, this she really didn't know. You're assumingù

>> I'm assuming it's the city council. We're not approving T.

>> I don't have any information from any bargaining unit they approved this.

>> We're not speaking on behalf of the bargaining unit. I would second your motion, if a second hasn't come through and comment simply thatùI see the merits of having a separate trust account for these benefits. And that's primarily what this document is recommending. That the city council is going to hopefully implement.

>> Soù

>> And justù

>> I assume the city council is going to discuss this, and unions will be part of that discussion. Right? That hasn't happened yet, right? Okay.

>> Wellù

>> Just forùfor discussion purposes, this can go through with no recommendation. It's still going to council.

>> What's the motion right now?

>> A council can defer it if they want to. It's scheduled to be heard by council for first reading on Tuesday.

>> Then why so important for us to recommend it?

>> Because there is a requirement in the code that you be given the opportunity to make a recommendation on an ordinance. And so you're being given that opportunity. Now, there are other ways for council to adopt.

>> If you explain how it's safe, I would be glad to.

>> I guess I would ask specific hee what your question is. I don't know what you mean by safe.

>> Well, that everybody has already reviewed it, and said no, Mr. Santos, we trust in you and we support this. Okay, great. I haven't heard from everybody.

>> I can't speak to who else has looked at this. It's been out there, posted, available for people to look at. For well over a week. I don't knowù

>> A week?

>> Yes. They get posted a week in advance.

>> I got retirees living in New York. They're never going to see this stuff.

>> The motion was to recommend this subject to our acknowledgment that the unions have not had a look at this yet. So that's a flag to the unions and a flag to the council that that process needs to take place. That's not what we do here. That's what they do.

>> And nobody will be hurt if we just said, let it go to council, and then we can come back with a recommendation. There's no urgency to this.

>> There's no urgency, but it's going to happen without our recommendation. That's an option this board has and we'll take a vote and see what happens.

>> I wish we wouldù

>> Does this trust provide for any payment of the costs for administering trusts?

>> So this trust, like the other trust, provides that the cost of administering the trust will come out of the trust fund, just like they do now for the 401H account. The ordinance itself was drafted by your outside tax council with some minor modifications by me to make it, you know, fit within the structure of our municipal code. But most of this language is from your outside tax council.

>> I would be more comfortable saying we reviewed it, the costs have not been evaluated yet. And we could encourage that, both the city and unions are in complete agreement.

>> I would be happy to amend my motion to that.

>> Okay.

>> Thank you, Mr. Lanza.

>> And a second?

>> Okay.

>> She is writing as fast as she can.

>> And crossing out.

>> So recommend subject to acknowledgment to the unions have not reviewed it, and the cost to administer needs to be reviewed.

>> Right.

>> Recognize that we can administer this plan.

>> Okay. Recognizeù

>> And to the chair, I appreciate that input.

>> But costsù

>> All right.

>> Okay. Any further questions? Discussion on the motion? Hearing no further discussion, all in favor? All opposed? Motion carries unanimously. Thank you.

>> Okay. Item number 2.7, discussion recommendation to the city council on ordinance amending section 3.36.580 of the San José municipal code to suspend the distribution of funds from the police and fire department retirement plan, supplemental retiree benefit reserve during fiscal year 2011-2012. So this has also been referred to by the city council. What you have in the packet, you may recall that last year the council in November of last year, the council suspended the distributions from the SRBR for fiscal year ending June 30th, 2011. Counsel has nowùpassed an ordinance for publication of title, first reading. That would amendùamend that to extend the suspension through 2012. And that's what's being referred to forùfor recommendation. And it's the same procedure as the other ordinance that's being referred to for recommendation as your opportunity to comment on whether or not you think this the suspension should be continued through 2012 or not.

>> And Mollie, that's June 30th, 2012.

>> Yes.

>> Question on that.

>> Go ahead.

>> Page 4, the top bullet. No distribution during calendar year 2010. Or during calendar years 2011.

>> Or 2012 isùthis is the old ordinance.

>> This is the old one.

>> Yeah, this is the old one. So they’re talking about amending this to add to 2012.

>> So calendar year prior to June 30th, 2012.

>> Right.

>> And this is the same issue we went through before, where they canùthe money still rolls into the trust, that can’t be changed or into the reserve. But distributions we ultimately determine can be.

>> Yeah, this would not effectùthis would not effect whether or not money goes into the SRBR. It would only affect whether or not distributions are made. And I believe that it is basically because there are ongoing discussions with the bargaining units with the SRBR.

>> Is there any argument for taking any action on this at all?

>> Again, it’s your opportunity to comment on theùto the council on whether or not the ordinance should be adopted to continue the suspension of the distributions.

>> It seems to me that there is an argument for just doing nothing on this.

>> Yeah.

>> So I'm just not necessarily just confused, but I am, I guess. This is just saying the council said they're going to suspend it for one year.

>> Another year.

>> Another year. Okay. Yet the way I recall reading the reply to some of this information on is theùon this SBRB was that we had the right, this board, to distribute that money, orùwe had the authority. So I'm trying to understand, is this oneùthis is a different issue?

>> Russ, you can correct me. I believe you said we had the authority to do it until they passed the city council resolution. And once they passed the resolution, then we lost our ability.

>> I think that's the fairùthe issue for me is that a municipal code provision is the council amended previously again requires, A., annual distribution. Some specified as the amount. The amount could be very minor. But it's a mandatory provision in the code. But itùand the council, and one could argue, and I'm not saying it's an easy argument, given the language in the municipal code for the SRBR. One could argue that you had a bested right in that, because unlike the federated system, and its provision, this provision in the police and fireman is mandatory. But it's mandatory as to a very vague concept. Not just A., annual distribution. Now, whether a zero annual distribution, which is what a suspension amounts to, is consistent with that, is the possible legal issue. But then the fallback question for me is, does this retirement board have any obligation to raise that possible issue? And you have an obligation to administer the plan, but the plan has been modified by first the ordinance last year, and now this ordinance. So it's not clear

to me that you would be breaching your fiduciary duties by not raising that possible issue. So I don't think you have to raise it. But I think it's an issue that's there.

>> The reason Iùturned the chair aroundùI raisedùI was gone when this was negotiated, and I understand that I wasn't concerned about me or someone else during my time. But when I see todayùraised question, I go through this and see people like chief Murray or Lauren gray, only making $1,000 a month, and now he just passed away, I thinkù[Inaudible]There's no survivors. It bothers me, because this money wasùthe way I understand it, negotiated and whatever have you, and put away to the reserves to supplementùit was implied, the way I understand it, it didn't work out that way, but it should have been. For those retirees, 80, 90 years old, whatever may be, who really needed it. And that's what I was hoping this board would take a look at. So Iùyes, you're right. I read the papers, I see things, when someone leaves making good money and all of a sudden got $1,000, I was appalled. But I really have this feeling forùas you probably do too, when I see an older gentleman like Mr. Grayùwhen I was a young firefighter, he left, and they really didn't make very much money at all. Getting by on $1,000 a month, $12,000 a year. So I was hoping this would be helping those folks, no matter how many are left. But not today's firefighter or police officer. So that'sùwas my concern. So I'll just let it go at that.

>> The trustee Santos' comments. Sean and Iùreally Sean, had been looking at different formula that we could propose. I don't know, Sean, if you've got any update in terms ofùplaying around with your spreadsheets, trying to figure out if there's a better way.

>> My understandingù

>> Kind of address your point in terms of seeing that the beneficiaries would be the people that were most in need of bending from it.

>> My humble nonlegally educated undering is that as a board we can change the formula for the distribution. So I dabbled with ways we might be able to do that to address exactly what trustee Santos has raised. My understanding is that the bargaining groups are still talking with the city and working

up a bigger resolution to the overall issue. And it might include recommendations what the formula could be or more significant changes to it. Nothing moving forward.

>> Actually, the board can't just changesùwhat the board does have discretion over is actually the dollar amount of the distribution to be made. Butù

>> So we're required to make an annual distribution?

>> You're notùthe ordinance originally said you were required to make an annual distribution last year. That last year it was amended to say it shall be no distribution in 2011. And now they're going to amend it to say except that there shall be no distribution in 2012.

>> Do we have this ordinance they're talking about?

>> No. And I don't know where you got the old packet.

>> There's no way for me to comment on an ordinance I haven't seen.

>> So what's been referred toùI read you the change, 2011, 2012 on the top of page 5. On the top of page 4.

>> There's no other changes in the entire ordinance?

>> No, just that change.

>> I don't believe this is going to go anywhere, because all we can do is make a recommendation for or against, not make any recommendation. But on the principle of it, the principle of what SRBR was set up for, having had negotiated many years ago, I'm going to make a motion that this board recommends against the council action proposed.

>> And Mr. Chair, can we also add to that, an addition, we would come up with a recommendation to help out the policeùthe retirees police and fire who are in need of substantial monies or some kind of form that both Seans are talking about?

>> My motion is to recommend against this.We would go back to making the distribution as it's set forth while that process is being done.

>> Could we put that in the motion? And send a letter to that to the city council? We're not just no. There is a reason behind itù

>> Say it again to me.

>> I would like to say we don't support sending this, but here's the reason why. We believe this should be a formula, some money going to the needy and the police department retirement system. So they know the reason why we're saying this.

>> Okay.

>> Maybe summarizeùsomething to the effect of that we don't supportùand here's a suggestion of the type of formula that we would like to recommend.

>> We believeù[Inaudible]As it stands. This board's opinion there is a need among some retirees and that need should be addressed.

>> For commentù

>> Structuring ofù

>> Okay.

>> Yeah. I'll accept the amendment to the motion. Do I have a second?

>> Second.

>> Okay. I have a second. Now discussion.

>> I'm not in agreement with that motion. That motion. I mean, if you look back, and I don't want to belabor this, but if you look back historically, and this is part of our agenda packet, as well. This plan had a large surplus back in 1998. And the debate was, what do we do with the surplus? Does the city get to keep the surplus? The employees make less contributions, the city is getting the pension holiday, if you will? And maybe my conclusion is wrong, but I believe that's really where SRBR came from, was the city running the surpluses, and is so let's share some of that benefit with retirees. Well now we're running large deficits. I mean, I don't understand why we even have an SRBR. I meanùI think that that's a plan that's using the analogy, you're taking vacations when you can't pay the mortgage. We can't pay the mortgage right now on this pension plan, it's ridiculous. So I'm opposed to that motion. Just share that.

>> Thank you.

>> Okay. Any further discussion?

>> I would just say that I think that, you know, if they were going to roll SRBR back in, that would be one discussion. But if they're keeping the SRBR intact, and, you know, if there was maybe a proposal from the board in terms of a formula that would benefit, you know, the retirees who have long service and very limited benefit, that maybe that would be of interest to the city council to hear, you know, here's a formula we think would make

sense for distributions of the SRBR. Souping assuming the SRBR continues to exist, rather than having it sit idle.

>> Do weùso Vince brought up a very interesting point. Do we in general approve of the notion of an SRBR at a time when we're runningù

>> Well, it's not for us to approve. I think the city council makes thatù

>> I understand that. But we're kind of dancing around this issue.

>> I would disagree with that. Because as trustees, our primary responsibility is to the beneficiaries of this plan. And if we have a pension plan that's underfunded, isn't that my first priority? SRBR is beyond that particular obligation. We're not able to meet that obligation right now.

>> Maybe Pete can speak to this. I think this is really between the unions and the labor negotiations of the city. I don't think we have any input on that of what happens with the SRBR. So the SRBR exists, it's fully funded. Not just sitting there idly. So the question is, well, if the city council were going to roll it back into the pension fund, that would be your fund. But assuming they're going to have it sitting idle, doing nothing, accumulating capitalù

>> Is it invested with the rest of ourù

>> It's investedù

>> An accounting number we have put somewhere.

>> Yes. But the issue with SRBR is whereasùit's okay to give a benefit, but it's not okay to give a benefit that's not funded actuarially. The pension benefit is funded actuarially, meaning the actuary looks at how much this is going to cost, and the actuary's job is to make sure we have the right amount of money. SRBR isùsitting in an

account somewhere, basically accumulating dust. And the problem is, the ack air pretends that doesn't exist. However, that benefit is actually costing the trust a little bit of money every time a payment is made. So the problem is not the benefit, but the problem is that it wasn't funded when it was created. And when I say funded, I mean actuarially funded, which means the actuary should have been told, you should plan for the fact that we have an SRBR benefit, and this benefit needs to be funded, so that the city is ensuringùthat the pension trust is not being negative life affected.

>> I hear what you're saying. I am behind that 100%. And I guess you guys are saying the same thing. To the extent that there is an SRBR, those are the people that would seemùwe would want it to go to. But there is a larger question about whether we should make a commentary on the existence of the SRBR. If we're going to make a commentary on where we think the money from the SRBR should go, I think we're well within our rights on whether there should be an SRBR as trustees. And for a thing that's in liability, yeah, it's not a really prudented why, except I agree with you, Santos. Those numbers blew me away. I read through the whole packet, too. Of course, [Inaudible]Yeah, that struck me.

>> What I want to be careful about is when it comes to any benefits. So when the plan is 120% funded, we shouldn't be saying we've got a 4% cola, we have lots of money. We can say the same thing about the cola. The way the plan is right now, 3%, it's just too much. We should recommend city council only do 2% cola. There's owl all kinds of reasons to lower what our payouts are. I'm trying not to get into the middle of the city labor negotiation. Andùyou know, it'sùI think weùone thing we haven't done, I don't know, have we costed out the SRBR, what the change is going to be to our assumptions going forward? Do we have an officialù

>> The approximate cost of SRBR is approximately 25 basis points per year on the discount rate. Currently, this hasn't been taken into account. So now Kyron is taking over. I know one of the first things Kyron did is tell the board is thatùthey must fund the SRBR benefit just like they fund pension benefits. And this obviously has the --

>> If it's there and you go forward with it, please do this one. If you don't, suspend him.

>> Could i try to encapsulate all of that. Say we do not support the ordinance. We believe a long term solution should be developed. Whatever the long term solution is, figure it out--- we have this money sitting in a fund.

>> I will move on with this. I will except this friendly.

>> I accept that, and we have a second. Any further discussion?

>> Can you read the motion again?

>> The council develop a long-term agreement.

>> Not taking a position with regard to the loss. I don't know whether---

>> They're not working on it now.

>> The negotiations are going on as we speak.

>> If there is no further discussion on the motion, all in favor?

>> Aye.

>> All opposed? Thank you.

>> Okay. Under old business, we've already taken care of 3.1. Item 3.2. Discussion and actions, legal analysis of the impact on current board members of government code section 75.1395.

>> As you probably discovered on your own. The copy of the memorandum in your agenda packet was--- a corrected version was e-mailed out yesterday and was also left in front today. The correction only dealt with the

discussion on page three concerning your status and the impact of government code section on the retirement board. The bottom line on the merits is, that the government code section we're dealing with is vague. And there's no real way at this point to provide definitive content. I think there's a core meeting that a retirement board member sitting here cannot market investment products as commonly understood. And then there's probably dimensions aside of that, that we tried to cover that may also apply. But then we back up a step and need to ask the question, whether 7513.95 can even apply to charter cities. And interestingly enough. A few days after i authors this. And prior to this meeting, california appellate court issued with respect to the city of san José, a charter city decision where it summarized some of the recent california supreme court decisions on this issue. The particular subject matter that is not really germane. It held that a state law governing procedural protections for firefighters in the district did apply to san José. It's a state law that did apply to a charter city. And at least one of the rationales, it doesn't affect the substance of any issue. Just procedure. Now, obviously, the government code section we have before us, i think regulates substance and not procedure. But the--- and, therefore, i think there's significant doubts as to whether this could apply for the retirement board. But really, the broader issue here is for whoever thinks they're impacted by the state statute, they're not going to get much solace by an opinion from the city attorney's office, even though if has continued to have great weight as to interpretation of municipal codes, it does not have great weight in determining state law. Therefore, our opinions don't help much. Instead, the only thing that would give us some definitive advice would be to obtain an opinion from the attorney general's office, we're not going to get that, even if it's decided to do that. And the certain requirements and desks by other boards that have decided before us. We wouldn't receive an opinion from the attorney general for a number of months, and maybe at least a year or more. That doesn't help any board member sitting who thinks they're in this position. That is a very big problem. And i think it's very unfortunate that this problem has developed. I hope everyone knew of 7113.95 before becoming a member of this board. Because their time has perhaps been wasted and time spent in training unfortunately has been wasted of any board member, sitting board member feels they have the design in light of 7513.95.

>> What's the worst thing that could happen.

>> Let's say i work for black rock. And black rock sells to every pension fund in the world. The city wants to give their expertise to the board. I go sell a fund to whatever. What happens, what are they going so do?

>> First issue, you don't want to violate state law. It's not an enhancement to your resume. If you have--- if you're applying for other rfp's from other systems and they're vague.

>> It's like, you need to be arrested type of thing. Taken for a perp walk.

>> There is a provision in the government code separate from this section. The part of the government code dealing with what are called 1090 conflicts of interest. I would call them troy points of interest. That may apply to this type of violation. And that makes them--- the other end of it is that under--- it may be a felony.

>> It is--- i think there's a separate section in that, it's not 1090 but there's a separate overall section that talks about conflicts of interest. I know russ didn't really look for what the disability was. I think there is a potential criminal violation.

>> It almost seems like this legislation, which i'm sure it not the legislation. That would make you completely unemployable.

>> The other aspect of it is that case law holds that where a statute is violated like this, a public policy statute, the contract that is made in violation of the statute is void. So the security that got sold to the other entities could be--- it is voided. It's void. It's not just voidable, it's void.

>> Okay, that treasure bond goes down.

>> I myself think that if this needs more work, i'm not personally sure. I haven't had a chance to look at any of the mechanisms that have developed its own jurisprudence would be applied to this at all. It's unclear that there's any criminal directions to this. There may be something broader.

>> Isn't this---

>> In and of itself by itself.

>> That was government coach 1090, he was involved in a contract. By definition you're not--- you're sitting here--- you're not having anything to do with this board. You're going somewhere else for a contract with another board on which you do not sit. So to the degree the enforcement mechanism is 1090, i don't think any of those sanctions would apply, there may be something else, for example--- his pointing out to me right now---

>> There's a section in the government code 1097 about any laws of the state that prohibit you from being interested in a contract. Being punishable by a fine of not more than $1,000.

>> We would want to take a look at that and whether or not that was going to transport over to the code section. There is a specific voidability of the contract is in 1090. There's also case law that predates 1090 that applies to other statutes that are void under law, that are invalid under law. So it isn't just 1090, there's case law on other--- for example, it violates its own municipal code. There are -- i think there could be enforcement mechanisms, i certainly would not want to encourage anybody to just ignore the statute, because you don't think there's an enforcement mechanism. In terms of the charter city issue, i want too address that real briefly. There are--- the ins and outs of whether or not something is fair is really complicated. And i'm not prepared to sit here and say all offices could included or not conclude. But i think you have to also understand that the other end of it is it how is the other entities that you're selling going to view it. This is not really regulating what you do for us. It's regulating what you do outside us. So i--- i would also caution people to think about whether or not that charter gets you where you want to go. I thought that they tried to respond to the hypotheticals you raised. And we responded pretty clearly, that the first five hypotheticals would be a violation. That there were two hypotheticals that may be a violation. And so it would be within that space of what might be a violation, where you haven't gotten a clearance. If you have a concern about it, if you want to ask our office to request an attorney general's opinion

you can. We can consider your request. There's also ability to ask the local legislature for an attorney general's opinion.

>> The board itself cannot ask?

>> Yeah, the board itself cannot ask.

>> On page three, a member employee of the board shall not directly or indirectly employ a person or entity other at that point board, sell or apply any investment products. This is the key part for me. That would be considered an asset of the fund. What fund are they talking about here? Is that our fund?

>> That's a key point.

>> I think so.

>> You're talking about---

>> Let me tell you what that means. To me that means, if this plan owns a security, all use pimco's opportunity fund and you worked for pimco. You could not then sell the pimco opportunity fund to any other pension plan. That's how i read that.

>> If this fund does not own a specific interest in the specific securities an you're selling that to another fund that would not be a violation.

>> You may well be right. The point is--- but i think you may well be wrong. The point is, it's not clear. You want to remain on the board where you may be running afoul. I think it's an interesting interpretation. The badly drafted language supports that interpretation. I'm commonly used for the term fund meaning retirement fund and, therefore, it's the retirement fund of the public--- of the other retirement system. It's not the only ways to---

>> Consider it an asset of the fund.

>> Right.

>> No, i understand your interpretation. I don't think it's the only interpretation, i think in are equally reasonable other interpretations. Therefore---

>> Would that be allowed, though?

>> No. I don't think---

>> The first part. If you worked here, you're on the board here, and we own a fund that you then market to other people. Would that statement be illegal we own a market?

>> Yeah, no, that's what i'm saying. That's my point. If a fund---

>> Not if you came on to the board after the contract was over.

>> Possibly.

>> To me, it seems like, if you are marketing a hedge fund or whatever and you--- this fund--- could you not go out and market that plan to other funds.

>> I think the phrase that would be considered an asset is not the same as that is an asset. That's the one problem i see with that. And the other--- i think it's--- i understand that, but the other thing this section could be getting at is the duty of the loyalty to the particular fund you're a board member on. In the sense of, if it should be an asset, it should be an asset of the fund that you're a board member on, and not being sold to others. I think i

agree with russ that i don't think the language is clear on is that issue, and is it could mean it could be considered an asset of his fund and it could be considered an asset of the other fund.

>> I would say, it doesn't necessarily make that a duty of loyalty.

>> That's wrong.

>> This is just the kind of section the courts interpret literally. They don't interpret it liberally. This is the kind of section that's going to be interpreted generously on behalf of public policies is the court devices, based on what the legislature had in mind when it drafted this fairly ridiculous statute. I don't think we can comfortably breathe a sigh of relief.

>> Going back to the attorney general, which might give someone comfort on the statute. You know, i mean, that's--- if you wanted to ask the attorney general a question, this is an asset of the fund i'm sitting on. I can't sell that. That's a question you could put to the attorney general's office.

>> I would---

>> Whatever this applies.

>> We won't ask the attorney general's office for an opinion on charter city issues. We will--- i'm just going to.

>> I understand you think the attorney general has issues. But perhaps---

>> Are you in--- i appreciate your advocacy on trying to find a way to do it. It seems to me, among the weakest of the arguments, whatever the ridiculous purpose of the statute seems ridiculous. It seems to me the legislature has a very good argument as it applies to all retirement plans. It's specifically addressing a matter of linkage.

>> That's a very good point. I don't think i considered it heavily enough. I am more thinking this board should be able to decide who is going to be part--- the city of san José, should be able to decide who is going to be on this beard. Not the state of california, not the legislature, you decided that not having investment people on the board has been a serious step for me. And you're trying to resolve that detriment. Now the state of california comes in and says, we don't care if you have problems, we don't care if you think this is an incredibly complicated environment which to invest. You can't have a whole subsection of investment individuals who otherwise might be interested in serving is this board. We're just going to tell you you can't have them. There's a linkage argument on the other end. It offends me in terms of this municipal affair versus statewide concern. The state of california, things that can do that. And then it danes to do that, in language as miserable as this. It's just--- if there's anything left of the charter city doctrine, i think that this is a rather good case against what the state of california thinks it does in some panicked knee jerk reaction to some other problem.

>> As we're going on kind of late this afternoon, is there anything that this board can do? Or is there an issue for the city council to take some kind of action on. The city council avoided the board members. The council scant do anything.

>> There are a couch el things. I don't know if it's time to ask. One thing we can do, we can ask our office, ask the attorney general's opinion. The other thing we can do is communicate to the council your concern that this statute may interfere with the ability to recruit and retain board members expertise and kind of throw it to the council, if they share that concern. I don't know if the council even shares that concern. They may think they can still get plenty of qualified people even with this statute. I mean, you just don't know.

>> Let's continue to get the lawyers to say what they think it needs. I know it's painful, you can do it. You've already done the most important thing. We can think this might apply to ten different phases. We came up with seven. Let's institute transparency. Here are the seven different cases. How many of you are involved with these seven cases. This can't possibly be what the state of california meant. We're going to get an opinion. This is what we think it needs. You didn't do a great job. Then we're going to be trans parent. If this does nothing else, it will inoculate the board. We thought about, we spent time on it. And we did the best of all.

>> Is that a form of emotion?

>> The problem with that is that you actually assume good faith on the board of law enforcement authorities, including the attorney general and actually having people volunteer in the public records that they believe they need violations of the law. Yet they--- in my opinion, invite somebody who's not acting in good faith.

>> Does anyone here actually think they're in violation of the law, based on how they know it? I think we know what's on one end of the law.

>> I don't think anyone wants to say on the record that they want to do this.

>> Are we aware of someone out there aggressively selling---

>> That's not what we're saying.

>> There's a lot of cloudy area here.

>> The way we designed the new board member who look for these kinds of--- you get to be on the board. You still have to work a regular job.

>> What if we amended the motion to say we refer this to the city council, so see if you have concerns on it, and let them take it to the ag, they can take it to the ag where we can't.

>> We can ask for the design of the board. The description of the design of public board members should be modified in light of this?

>> So the referral to the council really would be more--- without saying that you think it is in violation, i think you can say that the board is concerned that this code section may have a chilling effect on public board members. I don't think you have to confess anything to do that.

>> I didn't think so.

>> You would like to share that concerning with the council. The second thing you can do is ask our office to get an ag's opinion. The three things that--- there's two hypotheticals down here that were sort of wafflers. And we wouldn't ask the charter city argument. We would ask whether or not the code section prohibits is it. The third question that came up today was the interpretation itself, that would be considered an asset at the time. And whether or not you would want to ask our office to request an opinion on that. Probably if you did, i would come back to you in august with the actual question needed.

>> I'll make that a motion.

>> Hearing no further discussion, all in favor?

>> Aye.

>> All opposed?

>> The motion carries unanimously.

>> There's a why from the board to assist in developing an internal board government framework. I would make a motion that we approve the request at all places.

>> Any discussion on the motion? If there is no further discussion, all in favor? Aye. The motion carries unanimously.

>> Thanks.

>> Discussion and action regarding the city's revolving door ordinance chapter 12.10 and council policy 0-15.

>> This is really just for your information. It's companion information on the city requirements. Similar to some of the issues that we were just discussing.

>> Okay. We handled 3.4. We did five. 3.6. Staff report on payroll audit and overtime payment issues. This was from may 5.

>> The other issues that were out there, there's a memo in your pocket summarizing flsa and try to provide some feedback for the new trustees on flsa and other issues that have been happening, the correspondents going back and forth between the city and the plan and attempted to provide a beginning point as far as where we're at in the process, and what needs to happen. Since the memo has been put out. I have met with the city staff, and we have come up with some time lines to come up with recommendations as far as what more the city can provide to resolve these outstanding issues. And so right now, it--- with the city and the plan both doing a financial audit, that begins right around mid june time frame, we're going to work our best to try to fit this piece into the same time frame. We'll have conflicting pieces that are going on as well. My resources will be set up for the new trust funds. Three in total. I'll probably come back to the board in august, with also a memo requesting additional temporary staff to assist with this process, there's no bandwidth to handle all of these adjustments that are happening.

>> This is another one of the projects--- staff resources. My concern with this, and for people who aren't here, you go back to september 2009. We have active employees who had pension contributions taken out of their paychecks and put into pensions. It was subsequently determined that that information was not pensionable. They're not going to get any income for that when they retire. The city has there withdrawn that money from the paychecks and given it to us. The employees want their money back, they want it from the city. The city wants their money back, they want it from the pension plan. In the pension plan, we have people who retired, who had

that money in their pension calculations, we want our money back from those people. There's a few different steps in the process which involves adjusting retiree's pension. It involves the employees who don't care about all these issues. The city took too much money out of their paycheck, they want that money back. We're caught in a big loop, there's a few sums that go different ways, we may owe retirees some money, they may owe us money. How do we get the ball rolling. It's been years in realizing how big the problem is, and it might only be--- i don't know what the amount owed per employee, but it might be $1,000, $2,000. That's still $2,000 we're sitting on that they have every right to. What i don't want it to escalate into is lawsuits and deductions from their paychecks. I don't want to go to a retiree and say, we're reducing your paycheck. Well, this other area, we're going to increase your paycheck. What i'm looking for is a clear--- i hear the resource issue, how can we figure out the time line to resolve this. We keep telling people, give us another year to sort this out. They're not--- and we're paying retirees this money, it's just building up how much we're going to have to go back and ask for the money back.

>> This is a manual process. Some of the issues overlap one another. Where there may have been a calculation for correction on one side. Now there's a new piece that was discovered and now you need to go back and put that variable in to calculate whether or not this new amount is the correct amount. So it is a very labor-intensive process, and it's not only the plan side. We haven't begun our hiv very lifting on this to be honest. We're waiting for the city to come back with pieces, you may recall they did a review of flsa, and there were issues that came up in the review, the hesitation on staff retirement services, we don't want to go forward with a file when we don't have complete confidence in all of the information. It may be that the amounts are immaterial or--- i don't want to go immaterial--- but they may be at the best available. At this point what we're waiting for is something from the city to say, this is the best available information that we have. And thin at that point the board will have to determine, what do you want to do with it? Do you want to accept it, and put our members on notice that this is the best available information we have, and we're going to collect the files accordingly, it may take us this long? Legal will have input, and there will be a process that we'll have to go through, and we may have things that net back and forth. At this point where we're at from retirement services side, we need the city to come back and tell us, is this the best information you can give us? If not, what more can you give us, and do we hire a third party to come in and take a look at it again. Or do we take a look at it.

>> When would we expect that feedback from the city?

>> The last meeting i had with the city, they have a new accounting manager over there as well. A division manager that just joined this month or last month, and she's just kind of getting up to speed and getting all the pieces going, they were hoping to have some sort of response back to us from the august board meeting as far as if they can provide any additional information.

>> If they can provide any additional information, this is as good as we got, go with what we have right here. By august, we could be told, these are the numbers?

>> In regard to the flsa question, yes.

>> If the numbers have to go up or come down, we're going to have to take care of it. We're sitting on people's money that they have a right to. And paying retirees money they're not entitled to.

>> Is there a statute? Five years, ten years?

>> It's not that long.

>> Okay, so august.

>> Is everyone else lost on that issue.

>> Good, further questions?

>> Thank you.

>> Thank you.

>> Okay, item 3.8. Discussion and action regarding electronic agendas.

>> This is a request i think from one of the trustees to discuss--- staff has been looking at options to do electronic board packets. We had a demonstration from one vendor. Our it person went out and looked at another plan, software and evaluating that. I think we're at the stage where we need to get a trial and test everything out. Security is our biggest thing with the confidential information. And we should have a recommendation for you in august.

>> And the one that i saw that got me thinking about it was called ford books.

>> Yeah, that's the one we had in our office. There's another plan that may be different.

>> What's the information that's confidential?

>> Medical.

>> The medical? The performance plan.

>> Sign me up if you're looking for beta test.

>> You're not going too do it in hard copy?

>> No.

>> Any further discussions on that? Item 3.9, discussion and action regarding trustee fiduciary nonrecourse fees. This was also diverted. Veronica, have you a memo here?

>> Yes, there's a memo in your packet. This is a question that came back from a trustee. In talking to the insurance procedures and with legal, i summarized in the memo the results. It pretty much would comment back, there are other options for the party to pay for. It's not the general practice or it's not at least what the insurance provider--- i don't want to use the word recommend but best practice, i'm sure.

>> Well, i think from our office's standpoint, and i'm sorry mr. Cada is not here. I think he also--- from our office's standpoint it wouldn't be an appropriate use of trust funds to pay the nonrecourse fee. But some plan you could ask the council, sometimes plan sponsors will pay it. That will be something that you'd have to ask the council to do. And i think within the insurance industry what veronica is saying, is that the insurer ace believe that it should not be paid by the trust fund. They believe it should be paid by the individuals or some third party.

>> Okay, so that's more information than i've gotten over 10.5 years of sitting on this board. I've always been told it's illegal for anybody else to pay.

>> It is illegal under erisa. It is illegal under erisa. We're not an erisa plan. I believe our office opined that we didn't think it was an appropriate use of trust funds separate from erisa. And i think way back when you remember that, that would still be our opinion. The benefit of the nonrecourse is to the individual.

>> It was brought up because i applied for this position, i didn't see it on there. I said, what is the mayor doing on the city council? I'm on the special district board and get representation from the city council. We're appointed, why wouldn't we get the same coverage. That was my point. Not just about the money. Russ said in a, but there's other ways he said it. He said--- it was something else we talked about. I still think it's wrong. Individuals have to pay for this, the city should--- in my opinion, pay for this. They appoint us, and we're responsible people. They should provide us with that petition. It wasn't on the application. I think to get a bill, it's wrong.

>> We can make a motion requesting the city council consider making that payment for us.

>> I would like to do that. But i would like for russ to give his explanation. Again, just the principle of fact, when you apply, and the city's going, where did this come from? You buy a car, it should have four tires. Whatever it is,it doesn't make sense.

>> We get the same opinion from the city attorney's office, when your insurance company is telling you your best course is for the individual to pay it themselves and not somebody else, that's tells you something. Unless you get tested in court, how do you know that if the city pays for it, it's going to be good enough. I think it's up to every individual to decide whether or not you feel that if the city pays for it, you would still be protected the same as the people who got it on their own check.

>> When i applied you didn't tell me that. If you told me that, i would understand that coming in.

>> It's an individual issue. If you really feel that the city--- the city attorney's office is giving you an option to have the city pay for it. I have the same option.

>> That's not my point. My point is,i want to be treated just like the mayor and city council. We get representation whether we make a good decision a bad decision, we're responsible. I don't believe i should pay out of my pocket, i think it's wrong. On something like this, it's not being hard headed, it just don't make sense to me. It's like the cart before the horse. Before you sign up, here's all the things you have to do. You need a license, this and that. I understand all those things.

>> Oh, we're just trying to help you out. The city should are libel for that. They appoint you and you go through a process, and just like all of us here got appointed somehow. They're responsible.

>> I don't mind if you want to defer this to august.

>> I'd like to give his input. I don't think we have to pay for this, this is part of the plan.

>> I think one of the things i guess we can look at is whether or not--- the nonrecourse is really to protect the individual trustees. We can look at whether or not, if the trustee doesn't want to pay it, we just don't get a waiver recourse.

>> If the mayor makes a decision like us, he gets sued. Does the city attorney represent him? Of course they do.

>> Well, it's just a little different because there's a difference in fiduciary responsibility because of the trust fund. It's a different level of personal responsibility.

>> We can bring it back if you want a little more information on it.

>> Pete, you guys are fiduciaries for various things in your council duties, do you have to have a policy like this? A fiduciary policy like this?

>> There's different levels of fiduciary responsibility, when i served i had to individually pay my insurance.

>> Do you have to do that as a councilmember as well?

>> When "was a councilmember on the board, yes. But from my other duties, no.

>> Not your council duties, i was speaking as far as your council duties?

>> No, i did not.

>> So we're going to defer this until august when russ can be here. Okay. Retirements we've done. Death notifications. Not my favorite part. Item 5.1, notification of the death of lauren b. Gray, retired 4/1/73. Passed away on may 3rd 2011. Notification of the death of william c. Murray battalion chief retired march 10, 1985,

passed away on april 30, 2011. No survivorship benefits. And we are an audience of ourselves, but i would still like to take a moment of silence for two dedicated city employees who have passed away.

>> Thank you, mr. Chair.

>> Thank you board members, staff. Standing committee reports, none. Consent calendar. Under the consent calendar, we can take those items in one motion unless there's anything that any board member would like to have polled.

>> 6.c bravo.

>> Anybody else like anything pulled? I would like the--- i don't need--- i would like the approval of the minutes pulled because we have an amendment and also--- i need to abstain on that.

>> Anything else? Entertain a motion on the balance of the consent calendar? I have a motion and a second. Any further discussion? Hearing no further discussion, all in favor? Aye. All opposed, the motion carries p.m. 6.2 approval of minutes. Monthly board meeting held on april 7th. Mixing that up with the other issue. May fifth there was a correction we did in the orders of the day. There was a word molly recommended inserting. That was noticed as in front of the telephone conference part. And that's the only thing we need to amend on that. I'll entertain a motion.

>> One of the things from that meeting, 6.6 f. That did not carry forward.

>> Okay. So correction to the minutes, 6.6 f was moved to be carried over. So we'll make that correction, and i'll entertain a motion on the---

>> It says local 250 for the firefighters, it's 230.

>> Where's that at?

>> The front page.

>> Thank you.

>> Any other changes to the minutes? Hearing no other changes, i'll entertain a motion--- a motion and a second. Herring no further discussion, all in favor? All opposed? The chair will abstain. Now we have 6.6 b and d, shawn?

>> The first one, we forwarded this to the city manager's office. Has there been any--- annual required contribution using credits to offset normal cost contributions, i think one memo is--- has there been any response from the city manager, any indication that he'll be referred?

>> No response, if you want i'll follow up.

>> My request would be, given everything going on in terms of looking at fiscal responsibilities and codifying changes to ensure payments are made and those types of things, this is something that could be considered as part of that overall process. So not letting that slip past these upcoming city council meetings, by the end of the month. I would like to see included in the recommendations for fiscal reforms.

>> This is an informational memo to the mayor and council. Normally--- you wouldn't necessarily get any response---

>> I want to make sure it got to them in time. It never gets communicated until after all the stuff is done and passed. If it's missing the one summary of the memo, the first references. I think you're here for the meeting, but basically as an offset, the way the formulas have worked. When the plan was well funded. Some of the normal cost contributions could be offset, our point is that, if that didn't happen when there were good times, it would help

level the depth of the bad times, it might be another good fiscal policy, as you're considering the other thing we talked about. That's my point. Thank you.

>> And 6.6?

>> 6.6 delta. We were going to--- we planned a response earlier today. I reread through this, i think it would be appropriate to include this with a response. As i reads it, it just says we are ready, willing and available to help. Just to reiterate as we said, back in april, we're still here.

>> Can you make a motion to do that? Or is that just done?

>> No, we can do that.

>> And then i'll need a motion to accept nose two sections of the consent calendar.

>> Motion to accept those two sections.

>> Any further discussion?

>> Hearing no further discussion. All in favor? Aye. All opposed? The motion carries.

>> Item number 7, education training and notification of trustees ruined table. October 14th, 2011. I'm not going to read the second notification of ifb training. They're in your packet. As always contact staff if you're interested in the available training. Proposed agenda items. An opportunity for the board. Any agenda items we haven't discussed?

>> One of them would be discussing the possible moving back to our retirement building. That might be done--- also any part would be an example for us today about positions in the retirement staff and so on. Dr. Das' office

always, we need--- there's another area where we pay higher, i think we should take a look at that, in terms of staffing and what we pay for what we're getting and so on. I had a chance to meet with dr. Das, i thought it was very enlightening, and we had a chance to clear some rumors and have a good discussion.

>> The first item is discussing moving back to the department of retirement services. And the second one, discussion on dr. Das' staffing and so on.

>> And our responsibilities and what we pay for, and i'm sure it comes to the cortex but---

>> All the services we use, said they would be included in that discussion.

>> We want to save that for the board retreat.

>> That's kind of what the cortex and stuff, once again we pay for dr. Das. He's also hired---

>> The same issue. I think that would really be. We'll just make a note that we do include that in the retreat.

>> Okay. Public comments? An opportunity for any public comments? There are none. With that, i'll adjourn the meeting. Thank you very much for a long meeting.