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>> Mayor Reed: Good morning. Let's get started here. Got a long day ahead of us. Might as well start on time. We're going to start the morning with our labor update. Then we'll go into closed session, and then we will come back into open session, as soon as the closed is done. Work until 12:30 or so. And then break for lunch. And come back and do it all over again until we get done. Sometime this evening. With a dinner break somewhere in there. But let's start with the labor update. I think Alex Gurza is going to take that.

>> Alex Gurza: Good morning mayor, members of the city council, Alex Gurza, Director of Employee Relations. Very briefly, as we remind everybody every week, there's information available on the City's Website, on labor negotiations including correspondence and proposals made by both the city and the bargaining units. On June 11th the city council directed staff to work with bargaining units on potentially giving more time to the process of retirement reform. To provide capacity specifically to potentially talk about two issues together, a potential ballot measure and negotiations over broader retirement reform issues. But today we'd like to give you an update on our progress in working with the bargaining units to try to see if we could reach agreement on a framework. The very good news that we have is that the coalition of the association of engineers and architects, CAMP, the city association of management personnel and AMSP, the association of maintenance supervisory personnel, were the first bargaining units to reach an agreement and that agreement was reached on Friday June 17th on what we're calling a pledge of cooperation and agreement upon a framework for retirement reform. We have provided the council with copies of that available on the Internet for review. We also are happy to report that late yesterday afternoon, we reached an agreement with the San José firefighters local 230 and the POA. We met with them together on a very, very similar framework. Budget cooperation and agreement. Only differences relate to reference to binding interest arbitration. And being clear that discussions on a ballot measure would not result in binding interest arbitration on that particular item. We want to point out and thank those bargaining units for working with us to reach an agreement on a framework to allow for those discussions. AEA, CAMP and AMFP are led by Nancy Ostrowsky of IFPTE local 21 and advised by attorney Chris Platten. At the meeting yesterday with Local 230 and the POA attorney Chris Platten, who represents the firefighters, was present along with Greg Adam, who is filling in for John Tenant, who is with the law firm of Carroll, Burdick and McDonough. On the association of legal professionals my staff met with them along with the five other bargaining units that represent employees in the Federated system listed below, offered a framework very, very similar to the groups listed

above. June 20th which we provided to you in your packet. And the other bargaining units listed below, ABMEI, IBEW, OE3, MEF and CEO, we also provided them with a draft and received a response from them that we have also provided to the city council and unfortunately we have not been able to reach agreement with those particular bargaining units on a framework. Like to very briefly go over the elements of the framework that we did reach an agreement on with the other bargaining units. Which, it does provide for the ability to negotiate concurrently on the issues of retirement reform and related ballot measures. It would include the ability to discuss pension and retiree health care for both current and future employees. The supplemental retiree benefit reserve and the opt in, knows reform that could be raised during the negotiations. Very importantly, the council wanted to be able to establish some sort of a time frame by which we would conclude the negotiations. The agreement we reached with the five bargain units has the completion of the negotiation process by October 31st. Hopefully and optimistically that will lead to an agreement. If not it leaves the month of November to be able to engage in the impasse procedures which is mediation. So we would have some sort of conclusion by the end of November giving the council the flexibility to then be able to place a measure on the ballot in March. The language in the framework specifically reserves the right of the city council to propose charter amendments in the form of ballot measures. And we also inserted there language similar to what we had had in many of the side letters that neither party is waiving any legal rights or even an employee's individual rights by entering into the negotiations. So that is the end of our presentation this morning. Thank you.

>> Mayor Reed: Thank you Alex. We have some requests to speak. We'll take that at this time. Nancy Ostrowsky, Brian Doyle and Robert Sapien.

>> Good morning everyone. First, we pledge and you know that we're very -- we're right there when it comes to working and we have a very short window of time. Again we appreciate the city's team effort in working with us for pension reform and our pledge in bringing that to a close. So now we can move on to the real work. And I also wanted to say, because I think it goes missed in the Mercury News comments that we made a little while ago, wanted to make sure that you all knew how strongly we felt about some of the unfortunate activity that has recently taken place, attacking many of you for an example, those mailers that had gone out. So this was the full statement that we did give to the Mercury News: IFPTE local 21 AEA CAMP and AMSP strongly denounce the

mail piece that calls several of you hypocrites and this piece that referenced Vice Mayor Nguyen. This type of tack we believe is a disservice to the hardworking members of our respective bargaining units that recognize the need for sensible and legal pension reform, and we implore all leadership to stop destructive tactics and work with all the stakeholders to create the workable solution. As opposed to spending time creating a fact-based and data driven pension reform proposal that is legally sound, that again is our commitment to you, the public should know that not all the unions are opposed to this. And I think that's evident now in our pledge and in our working together. So we do thank you very much.

>> Mayor Reed: Brian Doyle and Robert Sapien.

>> Good morning, honorable mayor and councilmembers, my name is Brian Doyle. I'm one of the representatives for ALP. I truly resent any other bargaining unit or anybody on the city's negotiating team implying that just because we didn't sign the piece of paper that was put in front of us last Thursday, that somehow we are not being cooperative. We are and have always been willing to discuss these issues since February when we have been asking for proposals from the city. We are a bargaining unit now with about 30 people. We do not have the money to hire an actuary, we do not have the money, barely have the money to hire legal counsel. We're doing the best we can to deal with you but we are supremely confused by your process. We have been willing to entertain proposals and we have gotten none. Now we are being told that we have this time frame we have to rush through discussions. Why weren't these proposals submitted months ago, when we were willing to look at them? We signed a tentative agreement that has a reopener in it, we showed up at the meeting that OER called, and I asked the OER representatives are you exercising your reopener under your tentative agreement and I was told no. So I am confused. I do not understand. Please help us. I just wanted to add that we are in wholehearted support of Councilmember Kalra's position that we agree, that the city needs an approach that accomplishes fiscal reform collaboratively and legally. We are not opposed to discussing these items with the city, we look forward to it and we look forward to doing it in the public. Thank you.

>> Mayor Reed: Robert Sapien.

>> Good morning, mayor and council, Robert Sapien, San José firefighters local 230. As Alex mentioned, we met with city yesterday, jointly with the Police Officers Association, and we did achieve the signed pledge document as he outlined above. We look forward to productive negotiations. The worth of that pledge of course we won't know until that October deadline whether or not we both came to the table for the purpose of finding good answers to very serious problems. We hope that we don't see gamesmanship. What we hope we see is hard work, diligence, and a true effort to come to solution. Thank you.

>> Mayor Reed: That concludes the public comments. We're going to now adjourn into closed session. We'll be back in here whatever time we complete the closed session. Hopefully around 11:00 is my guess. Only a guess. [Recess 9:13] [Closed session],

>> Mayor Reed: All right, city council is back into open session. We're on an end of the year schedule today, so we're basically working through. We anticipate taking a lunch break which we haven't had yet but we're going to get some work done before then. So the first item before us will be the orders of the day so we can figure out where we are. We have already handled the Redevelopment Agency portion of the agenda on Friday, so that stuff has all been taken care of. Have one item to defer to August 2nd, item 2.3A through G approval of council committee reports. Any other changes to the agenda order? Motion is to approve orders of the day. All in favor, opposed, none opposed, those are approved. City Attorney, anything to report out of closed session?

>> City Attorney Doyle: Yes, I wanted to report out it's been some time ago, but we finally have all the documents in order and the deeds as well, and that is the county settlement agreement between the city, the agency and the county of Santa Clara is final. I wanted to report out the vote was 10-1, Councilmember Oliverio voting no.

>> Mayor Reed: All right we had some budget actions following last week's budget action, 3.3, 3.12 and 3.4 before we take up other matters on the agenda so let's start with item 3.3 which is the various budget actions from fiscal year 2010-11, this is the final version in order for staff to know what to do with the allocation of fundings before the fiscal year starts. City Manager.

>> City Manager Figone: Mr. Mayor, we discovered this morning that we had inadvertently left out a piece of the total actions, basically housekeeping item. A supplemental memo was issued this morning to correct the omission. The supplemental memo recognizes additional 2010-11 revenue of \$600,000 to fund the 2011 tax and revenue anticipation note debt service expense that was discussed as part of 3.6 today on your agenda. This transaction was assumed in the development of the 11-12 budget and in the 2011 tax and revenue anticipation note memorandum.

>> Mayor Reed: All right so we need a motion on the recommendations including the supplemental memo recommendations.

>> So moved.

>> Second.

>> Mayor Reed: Motion is to approve the recommendations, all in favor, opposed, none opposed, those are approved. 3.12, the master parking rate schedule, we pulled those out from last week and continued to this week, actually started out at 3.7 C in case anybody is keeping records from last week. So on the master parking rate schedule this is item 3.12. Councilmember Liccardo did you have any additional comments? You had a memo out I recall.

>> Councilmember Liccardo: Yes I did thank you and I'm very sorry. I'd like to move the recommendation identified in my memorandum, from last week, along with all the recommendations from staff.

>> Mayor Reed: Motion is to approve. All in favor? Opposed, none opposed, that's approved. 3.4 is adoption of annual appropriations ordinance and annual funding sources, resolutions for fiscal year 11-12 budget and resolution establishing fiscal year 11-12 appropriation limits. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 3.1 is the report from the City Manager.

>> City Manager Figone: Thank you mayor very briefly I can't let this meeting pass without noting that Kay Winer, who is not in the audience, but she is entering her last week with the city as our acting human resources director. Kay did step in at a critical time leading the department as we grappled with so many significant and profound workforce transitions. So we were really blessed to have someone with her knowledge, experience and commitment who was willing to step in for such a lengthy period of time. Kay did so. As part of a retiree rehire part of the retiree rehire program which we do use infrequently, but strategically. I think this was an example of a time it was really important to the city. As you know the leadership of HR will now be handed off to Alex Gurza in his new role as deputy city manager over HR and employee relations. And again, I want to thank Kay for her willingness to recommit to the city over the past many months for her skill and sensitivity in leading the department and the city through the current set of very, very difficult employee transitions.

>> Mayor Reed: Thank you, City Manager. The next thing to take up is the consent calendar, any public testimony on the consent calendar, any cards? We have a card, Mr. Wall.

>> David Wall: Thank you, Mr. Mayor and good afternoon ladies and gentlemen. The lengthiness of these consent calendar at the end of your normal sessions, be it June, or July, I mean excuse me, June or December, is just not appropriate anymore. When you talk about performance based management you ought to hold whoever's responsible for these items to get them in a timely fashion so you don't have 49 items on the consent calendar. But specifically I want to talk to you about this Silicon Valley or this environmental innovation center. With the habitat for humanity, now I've raised concerns about their financial status as a entity, and we have not had any discussion about that. And I'm very concerned that with their fire sale that they had in Alameda a couple of months ago that they're not really a good thing to put a lot of trust in. There are other agreements too that I'm just not concerned about. That employee assistance program, that expenditure of \$2.5 million should be looked at Mr. Mayor. This is a lot of money for this type program and I think that -- I can understand with Police and Fire, that they need that type of issue. If you know, because they are involved with deaths. Also, the sewer service and use charge issue, with reference to the mobile home parks, we haven't seen any relief from the city because these property owners are benefiting and passing this charge through. Under a loophole or an

adhesionary contract type of device to escape their rent control obligations on these folks that are stuck with these type of properties or their mobile homes. And they've been at Rules for sometime and have seen no relief. I just want to make sure though, Mr. Mayor, that if you're going to continue with this type of conduct with 49 items remembering what's on the every boiler plate agenda, that you got two minutes or one minute per item. Talk about this in August. Thank you very much.

>> Mayor Reed: Jennifer Simmons and Kevin Albanys.

>> Good afternoon. I just wanted to say I'm Jennifer Simmons and I'm the executive director for habitat for humanity Silicon Valley and today you're considering our lease agreement and grant for the re-store to be located at the environmental innovation center. I want to thank you so much for your vision, to create such a center. We are so excited to be part of it and I think it's going to be a major asset to our community here in San José. So thank you.

>> Mayor Reed: Kevin Albanys.

>> Yes, honorable mayor and council persons, my name is Kevin Albanys. I'm the vice president and COO for Joseph J. Albanys incorporated. I'm also a resident of the city of San José. Joseph J. Albanys is a local construction company headquartered in Santa Clara employing almost 500 individuals mostly are union construction workers. We are currently on many projects for the city and enjoy a positive working relationship with the city. I believe it's agenda item number 2.34, but I ask this council to deem Goodland's bid nonresponsive and award the palmere project to Joseph J. Albanys. Because the statutes and case law demand it. Further, Goodland's postbid response does not excuse its violation. Only \$1500 separates Albanys bid from Goodland. However, Goodland's bid violates a subcontracting fair practices act and the city standards for awarding contracts. Relevant here, the act and the standards are materially the same and that both require prime bidders on a public project to list their subcontractors who will be performing work in excess of one half of one percent of the project. Moreover, the standard demands that the contractor shall list only one subcontractor for each portion of the work as defined by the contractor in their proposal. The underlying facts demonstrating that

Goodland violated the act are not in dispute. Goodland submitted its bid to the city and when listing its subcontractors it defined a portion of work, namely concrete, and instead of listing only one contractor for this portion of work as required, it admittedly listed a subcontractor and reserved a portion of that work for itself. In essence, notwithstanding the city standard and act, Goodland defined a scope of work, listed two contractors to perform that work, which is a blatant and facial violation of the act and the standard. Equally compelling, bay cities paving and grading vs. Hensel Phelps provides clear guidance to this council and requires you to reject Goodland's bid as nonresponsive for violating the act. In bay cities, Hensel Phelps was awarded a prime contract on the BART project --

>> Mayor Reed: Sorry, your time is up. That's it, that's the public testimony on consent calendar. So we're going to see if there's anything that council wants to pull off consent for further discussion. That's the next thing. So okay. On the request to pull items off of the calendar I think I heard Councilmember Liccardo wanting to pull 2.34, I'm sorry Oliverio. Councilmember Liccardo I'm calling on next.

>> Councilmember Liccardo: 2.12 and 2.17.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: 2.49.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I have questions and or comments on 2.12 and 2.42 which have already been pulled.

>> Mayor Reed: All right, Councilmember Herrera.

>> Councilmember Herrera: 2.5 travel report.

>> Mayor Reed: All right. I have double checked my notes here. 2.5, I need to pull 2.7 for disclosure, and 2.8, 2.12, 2.17, 2.34, and 2.49. Any other requests from the council to pull those items? All right. Motion is to approve the balance of the consent calendar. All in favor? Opposed? None opposed, okay. 2.5 is the travel report.

>> Councilmember Herrera: Thank you, mayor. I attended the league of cities meeting on June 17th, last Friday. As a member of the transportation committee. We heard reports on high speed rail, legislative updates, federal updates, and also, were briefed by the president of the league of cities on the current status of the budget relevant to the future of RDA. And at that time, was given the -- were given the opinion that the rider bills that have been submitted to the governor were unconstitutional and therefore would not be moved forward by the governor and instead there would be -- go back to discussions with the governor about the overall budget and that indeed those rider bills would not be able to be passed without a budget in place. And encouraged all of us to go back to councils and send letters, strongly, supporting continuing RDA and opposing the bills that are attempting to kill RDA. And even suggested that we ask individual legislators, assemblymen within our area to come to council and explain their no-vote. They also wanted to make sure that we affirmatively noted that the assemblyman Allejos who represented this area is one of the members -- is the only member of our delegation that did support RDA and voted no on the RDA budget killing bill. Thank you.

>> Mayor Reed: On trip report motion to approve somewhere? Councilmember Constant has another report sorry.

>> Councilmember Constant: I just wanted to mention that I also attended league of California cities meeting last Thursday. As a member of the public safety committee. In addition to the discussions that we had that were very similar to what rose just mentioned related to the budget, we discussed a series of proposed legislation that affect public safety throughout the city. As the vice chair of the national league of cities crime prevention and public safety committee I also provided an update to the league of cities committee on the actions of the national league of cities committee. With that I'll make a motion to approve both reports.

>> Mayor Reed: Motion is to approve the travel report. All in favor, opposed, none opposed, that's approved. 2.7 is an agreement with Host International for food, beverage and retail program at the airport. I pulled it because I wanted to disclose that in preparation for this meeting my staff met with representatives of host international, Scott Strickland and Pat Banducci. Motion is to approve the item. All in favor, opposed, none opposed, that's approved. Item 2.8, agreement for airport service market and communications consultant service I asked to have pulled because, well, we have a memorandum from councilmembers Pyle, Herrera, Liccardo and myself. There is work that staff has to do before this would come back to us on August 23rd and so I would modify the recommendation to add a \$30,000 out of this to go ahead and spend that so they can keep working on a couple of projects. Motion is to approve with the modification. All in favor, opposed, none opposed, that's approved. 2.12, I forget who asked to speak on that. The habitat for humanity issue, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I just wanted to welcome habitat for humanity to the C 3. Great to have you there. I wanted to thank John Stufflebean and his team. I know this has been in the plans for a couple of years at least, I remember hearing about this. I think it's great we're using AB 9 therein fees, fees that are paid by folks who are disposing of waste. This is not coming from ratepayer fees, I want you to understand that. I know Jo Zientek is here and John Stufflebean was here a minute ago. I just wanted to thank the city for making this happen.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I also want to commend staff and habitat for humanity for making this here, a re-store here in San José. The privilege of volunteering for habitat for humanity many times in the past. Help achieve some of the goals we have for our city in terms of Green Vision, thank you.

>> Mayor Reed: We have a motion to approve. All in favor. Opposed, none opposed, that's approved. 2.17, Councilmember Liccardo that's the grant agreement with the United States environmental protection agency for clean creeks healthy communities project.

>> Councilmember Liccardo: Thank you, mayor. There's a memorandum I submitted couple days ago. Really just wanted to thank everyone who helped to make this hop certainly from Department of Housing but particularly environmental services they really did an extraordinary job in taking advantage of grant opportunities with EPA to make this happen and I'm really hopeful this will become a national model we're starting right here in San José. I'd like to move to approve.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed, that's approved. I think next in order will be 2.34. Councilmember Nguyen wanted to pull that one. I'm sorry, somebody wanted 2.34. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Just wanted to since a speaker had come and submitted a letter on this item and I see Public Works in the audience, hi Dave if you could answer any of those questions, not my council district but I surely want to ask the question.

>> Sure, David Sykes, acting director of Public Works. Provide a little bit of context and overview of the item. This is the word of Paul Moore park in district 9, renovation of a playground project. Low bid was submitted by goodland and Joseph Albanys who has submitted a protest. The basis of the protest was that goodlands subcontractor list did not provide enough definition if you will that maxi creek would be providing, as defined by the speaker. What we are looking for in the subcontractor list, we require the contractor list all subs that they plan to use that will be doing work in excess of 1.5%. We require they provide the address and the portion of work that that subcontractor will be performing. Portion of work meaning, will it be concrete, will it be the handrail, will it be electrical, those sorts of things. The actual scope of work that is determined between the sub and the general is really described in the bidder's proposal, the subcontractor's proposal to the general. That's where we look to get the specific description of work. I think the protester is looking for a level of detail that we do not feel is necessary to make the decision for the award, and that's why we have concluded that the protest has no merit. The attorney's office has written a letter and details out the City's position on that.

>> Councilmember Oliverio: Just to further up on that, is there two lawyers disagreeing since they heard the case law charted stated?

>> City Attorney Doyle: No, I mean, lawyers always disagree. But in this case, we looked at data pertaining in the Hensel Phelps case. It's not a good protest, it involves a dispute between a contractor and a subcontractor for damages and is not applicable in this case. And any language that is cited is really dicta and is not controlling in this situation.

>> Councilmember Oliverio: If I remember we must accept the lowest bid regardless of the geographic location of the contractor?

>> That is correct.

>> Councilmember Oliverio: Those my questions are --

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. The follow up on the last question as part of the calculation, is there a local precedent on this type of bid?

>> There is not. There is no local preference points for low-bid contracting.

>> Councilmember Kalra: And in regards just to add a little more clarity as to the degree of specificity that's required as part of the bid, is what is if -- just because that we're hearing from the protestor now on this item, they're indicating that there was too vague in terms of the amount of work that was going to be done 50 subcontractor in terms of the concrete work?

>> Yes I think that's the basis of the protest. The goodland listed out that maxi-Crete would be one of the subs and in the portion of the bid they listed concrete/partial. Indicated they would be doing some of the concrete work. We know that this is a model that goodland uses, they have other projects with us. For us there is not really any ambiguity and it's really a level of detail that we don't think is necessary to make the decisions.

>> Councilmember Kalra: Again, I don't think the question isn't whether they do other projects with us or whether we lack confusion, but is the level of such specificity they have asked for in the bid process I think more relevant than what they ordinarily would have done. Even if they had done ten projects would have been fine, just in terms of I guess the protest.

>> Fair enough. I do think there is some discretion in that form in terms of how that contractor describes the work that the sub will be doing.

>> Councilmember Kalra: And what does it simply ask for when you are talking about subcontractors, as far as what subcontractors are going to do and the second point is, second question is, you indicated that it has to be over a certain percentage of the project to require a great deal of specificity, is that accurate or I'm just trying to get the requirement.

>> More or less that's accurate. We are looking at what subs are going to be on the job. This is to prevent bid-shopping and so we've asked that all contractors list subs that are going to be doing in excess of 1.5% of work. And we ask that they list the sub and describe the portion of work.

>> Councilmember Kalra: And in this case it didn't list over 1.5% of the work?

>> I believe it does.

>> Councilmember Kalra: That's what they're saying because it does it requires more specificity than put forward?

>> I think they are looking at the way the general, goodland describe that that is concrete partial and that is the basis of the dispute that they should have described it in more definition or more detail I should say.

>> Councilmember Kalra: Is that in other bids that you receive is there greater specificity in the subcontracting work for concrete?

>> I would say the bid that goodland submitted is not inconsistent. We see different ways of describing work. For us, what's most important is understanding what subs are going to be on the job and the portion of work is concrete is that level of detail what we're looking for.

>> Councilmember Kalra: Nothing further than that, thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: If there's no further council questions I move the approval of the contract that staff recommends.

>> Mayor Reed: All right I have a motion on the floor. I have a couple more requests to speak. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Dave, I understand what was identified was concrete partial for maxicrete. There is no other sub identified for concrete, is that right? In other words, would there be any obvious subcontractor who would be doing residual, or would that go to the general?

>> That's correct. There was only -- four subs listed. And only one sub was listed as concrete partial. The other subs were for rubber surfacing, metal railing and playground equipment installation.

>> Councilmember Liccardo: If the goal here is to avoid bid-shopping, the assumption for the city is whatever maxicrete doesn't do, goodland's going to do; is that right?

>> That is correct.

>> Councilmember Liccardo: Is that standard in the trade?

>> I believe it is, at least it is from our perspective and what we see in the contractor lists that are submitted .

>> Councilmember Liccardo: Okay. Thanks Dave.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: On the local preference item on low-bid contracts, is that state law or council policy?

>> City Attorney Doyle: That's the law. It's state law. The charter requires lowest response bidder and so you don't have an ability to give preference like you do in an RFP situation where you don't give points in competitive bidding.

>> Councilmember Oliverio: I think I understand that. I just wanted to clarify again. So if council wanted to pass a policy wanting to have local preference on low bid contracts, it wouldn't be possible?

>> City Attorney Doyle: Not in this context. It would require a charter amendment and there's separate constitutional issues.

>> Councilmember Oliverio: Thank you Rick.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that's approved. We have one item left of the consent calendar, then we are going to break for lunch. That's 2.49, the report on San José mayor's gang prevention task force programs under the bringing everyone's strengths together. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you mayor. I want to thank staff, especially Mario Macias and angel Rios for his wonderful work. We heard this item at the Public Safety meeting, and this was a very vibrant meeting. And I just want to thank you for all the work that's gone into this. And I want to thank Mayor Reed for his efforts and leadership in soliciting funds for the summer safe initiative. I think as is indicated in his memo they were able to raise north of \$164,000 for this really valuable program that we've been offering since 2008. So I just wanted to thank Mayor Reed for continuing to support this program because as he indicated again, that this program really shows a decline in gang activity in the last three summers that we offered. So with that I move for approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion to approve. Councilmember Herrera.

>> Councilmember Herrera: Yes, I just wanted to totally agree with what Vice Mayor just said and add that I'm very glad that we're going to be able to continue supporting middle school programs. I think that's really important and this you know as we're seeing, these rising incidents of gang activity right now I think it's really important that we're be closing efforts on programs like B.E.S.T. that really do achieve good results. I also want to thank the mayor for his leadership on this.

>> Mayor Reed: I want to thank the specific donors, they are in my memo but as long as we're here for a few seconds I can call them out. In addition to the \$75,000 out of my office budget, \$125,000 out of the reserves from last year, out of the B.E.S.T. program, our District Attorney Jeff Rosen put together some asset forfeiture funds of \$75,000. We had \$50,000 from the Sortino Family Foundation, and the Readers Digest We Can Hear You America Campaign, \$11,000, Health Trust \$10,000, Castellano family foundation, \$8,000, Ann Bowers, \$5,000,

Boston properties \$5,000, and the South Bay Islamic association, \$500. Thanks to them for making this possible for us to continue the program this summer. We have a motion to approve, all in favor, opposed, none opposed, that's approved. We are going to recess now for lunch be back here at 1:30. [1:00 lunch recess]

>> Mayor Reed: Good afternoon. We're going to try to convene the city council meeting as soon as we get the council back in this part of the building. We had been at this a few hours already. We took a very brief lunch break. I think we still have a quorum but I think we better see if we can get to six. Councilmembers are still in the back finishing their lunch. It will be out momentarily. Okay, we do have a quorum so we will start. With the invocation, Pierluigi Oliverio has the invocator.

>> Councilmember Oliverio: Thank you, Mayor Reed, want to welcome rabbi Joshua Fenton, who will be offering the invocation for our meeting this afternoon. Rabbi Fenton.

>> Creator of all things, we stand today together as servants before you and the people of the City of San José, who have chosen us to represent them. To work for them. To protect them. And champion their causes. As this city council meeting begins as is our hope and prayer for every city council meeting, may we be reminded of the charge we have been given: To work to build a better city and world. For our constituents, our community members, our friends and families. We turn to you today in truth and humility. Offering prayers of comfort for those suffering. Prayers of sustenance for those in need and prayers of illumination for those whose eyes remain closed. God grant us the patience to see and feel the hardships and struggles of those whose lives we can make better. Bless us with the wisdom and fortitude necessary to tell the difference between what is right and what is convenient. And please, give us strength to do the hard work and make the difficult decisions, that are part and parcel of service. As the fiscal year comes to a close, as decisions about resources and scarcity are made, I offer this final prayer: Master of the universe, may we have the courage to fight for those whose needs are the greatest.

>> Mayor Reed: Thank you rabbi. Next is the pledge of allegiance. Please stand. [pledge of allegiance]

>> Mayor Reed: Just to let you all know where we are in the agenda, we got part of the agenda done after closed session. We have one ceremonial item, to go and then start in the 3 category, 3.8, 3.9 and 3.10. Some

noticed not earlier than 3:00, we will pass through to the 4 section, until we get through, sometime before dinner break we hope because we have an evening agenda as well. First will be the ceremonial item, Councilmember Pyle, Joe Tarsoff, Denis Tarasov and Sophia Nasyrova to join me add the podium. Today we're commending Denis and Sophia for their participation as photographers in the sister city exchange between Ekaterinburg and San José. And Councilmember Pyle has some of the details.

>> Councilmember Pyle: I do. First of all, welcome, welcome, welcome to all of you. San José has valued its sister city relationships as a means of promoting cultural understanding. Ekaterinburg Russia has been San José's sister city since 1992. In March of 2011 the United States consulate general and Ekaterinburg in partnership with the city hall of Ekaterinburg and the museum of photography, Metinoff House, in Russia and the City of San José with San José State University launched the sister cities photographer exchange project, Ekaterinburg in San José through the eyes of one another. In May these three San José photographers visited Ekaterinburg. They were Robin Lasser, Adrian Powell, and Brian Taylor. Photographers Denis Tarasov and Sophia Nasyrova were selected through a competition to represent Ekaterinburg in the exchange. Denis Tarasov and Sophia Nasyrova are photographing San José this week, and the photography from both cities will be displayed at San José City Hall beginning in August 2011. Now, therefore, we do highly commend and thank Denis Tarasov and Sophia Nasyrova for their participation as photographers in the sister city exchange between Ekaterinburg and San José. Special thanks go to Barbara Goldstein and Jo Hedges for making this sister city exchange successful. Thank you so much. [applause]

>> Good day, good afternoon. We're very happy that this program exists and the professors from San José State were able to go and photograph in Ekaterinburg. And our pleasure to be here now. To work, to continue working on the project where we look at each other through the eyes of each other, I guess, from different countries. We hope that that will promote friendship between the two sister cities. And we hope that the exhibit which is going to be a result, a final result of this project will bring everybody pleasure and people will find it interesting. Thank you, welcome from Ekaterinburg. [applause]

>> Mayor Reed: Our next item of business is item 3.8, agreements for revenue enhancement services relating to sales and use tax, utility users tax and franchise fees, lodging taxes and fees. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. As you probably know, I've been very concerned about the tax situation in that we are tending to lose some of those taxes. If you look at the table on page 4 of the report, the amount under the limit section continues to increase. But and this is a question for Jennifer, is she here with us? I'll ask her. Scott Johnson.

>> Mayor Reed: You have Scott Johnson for questions on this.

>> Councilmember Pyle: Does the information Scott on the table on page 4, column indicate that we're collecting a smaller amount of taxes per resident? You know what I'm referring to?

>> Scott Johnson: Yes, Mr. Mayor, councilmembers, Scott Johnson director of finance. As far as the smaller -- as our revenues, for sales tax, if they go down, then we're you know in our population is increasing, then our per capita sales tax you know numbers are reducing. Then I know that during the budget process, Jennifer Maguire our budget director did present a slide on the sales tax per capita for San José which we are relatively low compared to other jurisdictions within this county.

>> Councilmember Pyle: Yes and from what I've been able to find, as businesses fail for example in shopping centers, when they move out, other businesses that don't have sales tax, what shall we say, duties, move in. And we collect even less in the way of taxes. And in 06-07 we had 72% of the appropriation limit but yet in 11-12 we're collecting 61%. So that's a delta, we have to find a way to make up for in one way or another. So if we were still collecting 72% rather than the 61, do you have any idea about how much that would be? I have some figures on here that Jennifer said it would be similar to 90 and \$100 million.

>> Scott Johnson: Councilmember I'd have to come back with that information and work with the budget office on that.

>> Councilmember Pyle: Yes in a nutshell we need a way to bring more revenue numbers to keep up with inflation, and increased population. Because with the increased population we have more services that we need to provide. So I just wanted to underscore the difficulty that we're in and the need to continue to do something about our tax structure.

>> Scott Johnson: Councilmember, can I add related to this issue, in the part of the package for the state of California there is some legislation pending, provided the budget gets approved, that relates to online sales tax. We ensure with this bill, the City of San José, as well other local jurisdictions within the state, as well as the state of California, would start receiving more of their fair share for online sales that are currently taking place. So we're going to continue to monitor that and see how that impacts the City of San José.

>> Councilmember Pyle: Thank you. I really do appreciate that. Thank you very much.

>> Mayor Reed: Any other questions on this item? I have no requests from the public to speak.

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: Move to proof item 3.8. All in favor, opposed, none opposed, that's approved. Taking us to 3.9, governmental fund balance financial reporting policy.

>> City Manager Figone: Scott has a few opening comments and we are here for questions.

>> Mayor Reed: Okay.

>> Scott Johnson: Mr. Mayor, members of council, Scott Johnson, director of finance. I just want to kind of orient the council in regards to this new policy that we're proposing, the governmental fund balance financial reporting policy. This would be a council policy, and it's pursuant to a new governmental accounting standards board new

statement number 54. The statement GASB 54 does not change the council's current policy regarding our budget practices and reserves or fund balance. As a matter of fact, our existing budget and reserve policies are based on strong fiscal management parameters. So implementing GASB 54 it will formalize the existing framework the council currently uses regarding our budget and reserve policy with this new reporting model that we will be reporting in our CAFR. Adhering to GASB 54 it's really viewed as best practice by the national rating agencies and requirement to be compliant with the governmental accounting standards. Therefore, staff is requesting council's approval of this new policy that complies with GASB 54. And I also want to note that GASB 54 we are required to implement per the governmental accounting standards board for this current fiscal year. And what we plan to do when we finish our comprehensive annual financial report in conjunction with our external audit with the auditors, we'll be bringing forward our CAFR to the Public Safety, Finance and Strategic Support committee and I will be giving the committee the progress and the implementation of this new policy and we will be coordinating with our budget office as well as our external auditors. That completes my report and we're requesting approval of this new policy.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just so I understand, are these five funds categories, are these being assigned for the purpose of our production of the CAFR or are we going to have to discern the difference between a committed fund balance and an assigned fund balance as we look at budget documents each year, is this something we're going to be adopting in all of our --

>> Scott Johnson: Councilmember Liccardo, the five funds are currently in the existing reporting structure we have in the CAFR. However to your point related to the fund balance classifications, these are new classifications at a the GASB will be implementing, so we will be assigning different levels of fund balance only for governmental funds such as general funds, special revenue funds, and the others that are noted in the staff report. And we'll be coordinating with the budget office and the city external auditor, Macias, Gini & O'Connell, on where they fall into these various categories. So in addition to that related to the budget, we will be working with the budget in the future for future budgets on how we may be able to incorporate these fund balance classifications within the

budget documents. So the challenge is that GASB 54 is implemented for financial reporting purposes, for our CAFR, for this current fiscal year that we're in. So the CAFR's going to head the process that we just went through related to the budget.

>> Councilmember Liccardo: Okay, so eventually our budget documents will be moving the same direction?

>> Scott Johnson: That's the intent. We intend to work with the budget office on that.

>> Councilmember Liccardo: Okay, motion to approve.

>> Mayor Reed: We have a motion to approve item 3.9. All in favor, opposed none opposed, that's approved. Next we'll take up item 3.10, actions related to the receipt of funds for the early retiree reinsurance program. Motion is to approve, all in favor, opposed, none opposed, those are approved. We're going to move into item 4.1. Remember, item 3.6 and 3.7 are scheduled to be heard no earlier than 3:00. Item 4.1 is a public hearing on business improvement district reports for fiscal year 2011-2012. We have a motion to approve. I think that we've got a script somewhere that I'm using. I will check. Is there a script, City Attorney? City Clerk's got a script because --

>> City Attorney Doyle: I don't have a script, so maybe the City Clerk can share the script.

>> Mayor Reed: I've got a script. I just want to make sure I'm use it at the right time and place. So because we have multiple districts here that we're looking at, this is a public hearing for the approvals of the hotels, Japantown, and downtown business improvement district, fiscal year 2011-2012. The budget report's in the levy of assessments for 2011-12. So the first question is before we take any testimony is, the clerk received any written protests from affected businesses in any of the three business improvement districts?

>> Dennis Hawkins: Mr. Mayor, members of the council we did not receive any protest for any of the three business improvement districts.

>> Mayor Reed: All right, so that's for the hotel B.I.D, the Japantown B.I.D, and the downtown B.I.D. For the protest, we will open the public hearing. Anybody wants to protest they can do that during the public hearing. Anyone wishes to speak? Any cards submitted? No cards submitted, anyone who wants to speak without a card submitted now is the time. All right, nobody wants to speak so we'll close the public hearing. Council can now consider the recommendations for these three matters. We have a motion to approve yeah we have a motion to approve all three. Anything else we've got to do? All in favor, opposed, none opposed, all three are approved. Thank you. That concludes item 4.1. 4.2, regarding sale of city owned surplus property on Cahalan avenue. You want to speak on this one, Mr. Wall? We got a card back there if you could pick it up. City Clerk. So we have a motion to approve the city owned surplus property on Cahalan avenue sale. Mr. Wall wants to speak. We'll take that testimony. At this time.

>> David Wall: Thank you for calling upon me, Mr. Mayor. The agenda is not clear, but if this \$450,000 is clear, and going to the General Fund, I would recommend transferring it to the police department. All \$450,000 to maintained some police officers. Thank you.

>> Mayor Reed: .

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve. Just want to thank the staff for bringing in some one-time revenues, so it's very helpful and we're counting on revenues from one time sources to help us close the gap. Good work. Also cut some liability and maintenance cost as well. On the motion, all in favor? Opposed, none opposed, that's approved. 4.3 is our next item, that's purchase and sale agreement for city owned property located at 150 Terraine Street. Motion to approve. Any requests to speak on that? All in favor, opposed, none opposed, that's approved. 4.4implementation of school of arts and culture at Mexican heritage plaza. Motion to approve. I think we have some requests to speak on this item. Mr. Wall.

>> David Wall: This is a unique expenditure. It's interesting as a matter of record, how out of one corner of the council's mouth, they poor-mouth, they stand in front with tin cups and beg. You assert a fiscal emergency. But

you have \$1.485 million over three years for an art school. You're laying off 100 police officers. That you've already trained and pumped in a lot of money. You've decimated the finest law firm in the State of California with the attorney's office. You're going to make some money off this art school? The only way this art school can be a viable project, the only way it can, is if you incorporate a recording studio, so it can have revenue. Other than this, I think it would be prudent for council to consider going out in East Santa Clara Street and just jumping up and down and saying look folks, we have fiscal emergency but we're going to further decimate the San José police department, the fire department, attorney's office, code enforcement, everything you need to run a city so we can have people serenaded as they are murdered in district 5 as they lie bleeding in the streets, somebody can come up and play a guitar or violin. It's a good thing for an art school when you have the money for it. One thing I keep saying about this art school is that you need a recording studio built into it to make it viable. Otherwise, it will be like it has been. The past two times. A failure. And you're wasting valuable city resources. Should be allocated to the San José police fire code enforcement and attorney's office. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve, all in favor? Opposed? Two opposed, Oliverio and constant. That motion passes, taking us to item 5.1, Parks, Recreation, and Neighborhood Services 2011-12 agreements. Councilmember Liccardo.

>> Councilmember Liccardo: Just had a quick question, Norberto, as we look at the chart on attachment A about competition paid by the City of San José, I was surprised to see Hitachi listed there. My understanding is they're providing park maintenance services on the park land. I'm just wondering why we're listing them as someone who's receiving compensation from the city? If this is a minor issue I'm happy just to let it go. I don't want to belabor the point.

>> Norberto Duen,s: Councilmember Liccardo, Norberto Duen,s acting director PRNS. If we could get some time to get back to you on that question, please.

>> Councilmember Liccardo: Thank you. I'll make a motion to approve.

>> Mayor Reed: I have one request from the public to speak on this item. I'll take that now. Sylvia Lowe.

>> Hello, thank you so much. I just wanted to come and report on the park I spend my time at so that you can have an insight into what it must be like not to have any rangers.

>> Mayor Reed: Just ask you to pull that microphone down just a little bit. There you go.

>> Like this? Okay. Anyway, it's just a report. Overfelt gardens traditionally only has a handful of graffiti incidences every year and even less vandalism. This is because rangers have forged deep and lasting relationships felt by the city. Graffiti have now spiked to over 30 incidences a week and vandalism has popped. On Sunday someone stole our sundial. And I have -- I didn't bring the broken tile. I was going to show it to you. But it's a little bit too demonstrative. Anyway I have a pile of rocks at the park where people have stride to throw rocks up on the roof of the hall to break the animals. They didn't get the animals but I have a pile of broken tiles which is going to have to be fixed because the wooden tiles under the eaves are hand-painted and there is going to have to be some maintenance. So anyway. They didn't get the animals. And those priceless woodsen panels are, I hope they won't be ruined. People also regularly report to me and thank rangers for saving them from lives of crime. People report their lives have changed from unproductive and troubled to happy productive lives. We have years and years of children who come back and let us know these things. They talk to my mother and I on a weekly basis. This tells you that rangers produce a powerful environment that improves people's life experiences. Yesterday -- not yesterday, Saturday, a park user reported to me two boys surrounded her and threatened her. She said if there are no more rangers at the park, she won't be running there anymore. She's also reported, she told me that other people who don't want to say what has happened to them, they have also been hassled in the park recently.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Councilmember Pyle.

>> Councilmember Pyle: Mayor, I just wanted to ask, if part of -- and if you are available, Norberto, is a side -- what shall we say, a side, plus, of all of this, that the City Manager and yourself can more easily negotiate and take care of contracts so that there isn't a lag to recipients? Is this one of the side benefits? Yeah, that's all I want to know. Just -- thank you. I think that's a real plus.

>> Mayor Reed: The answer to that question was yes.

>> Councilmember Pyle: Yes.

>> Mayor Reed: City Manager.

>> City Manager Figone: Yes, back to Councilmember Liccardo's question about Hitachi technologies being on the attachment A which it really is an error, because this is about compensation paid by the City of San José, and so that's why the zero is there but we kind of conceive things by having it on --

>> Councilmember Liccardo: Thanks for the clarification.

>> Mayor Reed: I have a question regarding attachment B, county of Santa Clara agreement for senior nutrition program, we're estimated in receipt of \$1,215,000. That goes together I believe with the money that we put in as well for the senior nutrition program. And I think that was 550 some thousand dollars plus another \$400,000 for some services to be wrapped around it, is that right?

>> Mayor, angel Rios, deputy director, Parks, Recreation, and Neighborhood Services. That's correct, the City of San José will bring to the table \$550,000. Those funds will be augmented by a county contract somewhere in the area of \$1 million to \$1.1 million. In addition to that, we have retained donations and USDA reimbursements that will help fund the entire city nutrition program.

>> Mayor Reed: So we are collectively with us and Santa Clara County spending more than \$2 million on the senior nutrition program?

>> That is correct.

>> Mayor Reed: Okay, that's what I was trying to get the idea unfortunate scope of it. We really appreciate the collaboration and cooperation we have in Santa Clara County that lets us maintain this program. Although it's a county program they use our facilities to do it, and we're putting some money into it pursuant to Council's budget approval. We have a motion to approve this item. All in favor, opposed, none opposed, that's approved. Next item is 5.2, actions related to the neighborhoods commission. Councilmember Constant I think you're the liaison to the neighborhoods commission.

>> Councilmember Constant: I am. Thank you mayor. First I'd like to make a motion to approve the recommendation.

>> Mayor Reed: We have a motion on the floor.

>> Councilmember Constant: And then some commentary. I hope that as outlined in your budget message the Rules Committee has an opportunity to really look at and discuss all of the commissions because I know we have been discussing commissions for quite a while. And I think that the neighborhoods commission serves a vital role. But we really have to look at how that role interplays with all the other commissions. Given the resource constraints we've seen ourselves in over the number of years and project to see ourselves in the great number of years we need to make some serious progress on that. So I'm looking forwards to that on the Rules Committee.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 6.1, Monterey road resurfacing rehabilitation project. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I'm very excited this is going forward. Last serious maintenance was 15 years ago, it has really been in need of complete redo for a decade or more. Anyone who has ridden down there knows that. I have a question for anyone who knows thousand bid is being set up. It is great that we are going to be using rubberized concrete, a new technology that lasts longer and better in terms of wear and tear. It is part of the authorization under A-2 it indicates the green resurfacing process which I know kind of uses the concrete that is breaking up as part of the resurfacing process. But how is that going to be incorporated into the bid process? Seems like there's two separate processes or if it can fall under the same cost and someone puts that bid forward that automatically gets accepted over someone who is not using a green process?

>> Councilmember Kalra, Jim Ortbal, assistant director of transportation. We've put the green recycling element as a bid alternate in the process. It has the potential to be more expensive than a standard asphalt concrete pavement contract. But if the bids come in and it's within the available budget, we will be able to award that and do the green project.

>> Councilmember Kalra: So if there are ten bidders and four of them put in this alternate process and they're all within the project, they'll get priority over the nongreen process?

>> We're requiring all of them to submit under the alternate. It is the City's choice to accept the alternate.

>> Councilmember Kalra: Okay, I'm home that we'll be able to get an alternate that still fits within our budget. I look forward to this project going forwards in August. Motion to approve.

>> Mayor Reed: Motion to approve, all in favor, opposed, none opposed, that's approved. Our next item is 7.1, a hearing on a commercial solid waste and recyclables collection franchise. Staff I can't believe we're finally here. I think we've been talking about this for seems to me at least a couple of years trying to get this done so congratulations on getting it this far. Now we've just got a few more minutes.

>> John Stufflebean: Hope so. Instead of a presentation I want to mention the major change since we were here last time, as council requested we did beef up the language with the contractor regarding performance measures, and customer service, and we believe that the current measures will provide adequate service and they will then be quite motivated to comply, we'll be glad to answer any questions you have.

>> Mayor Reed: Let me take a little bit of public testimony. Mr. Wall you want to speak? Let's do the public testimony at this time.

>> David Wall: Thank you. With reference to performance measures, the agenda and some of the supporting documents are unclear, whether or not there will be liquidated. Damages in form of deterrence for lack of performance. Also it would be interesting to have staff explain, while there's just one vendor here, allied waste services, for this service. And I'm concerned too establishing, quote, establishing maximum customer service rates. This is somewhat vague and ambiguous, needs to be flushed out for the public. The rates may have a multiplier in it that creates a profit. Now, I don't -- I'm not opposed to profits per se. But when rates are used in this process, and we reference, what is this past the environmental innovation center, with substantial funding coming from those fees are from rates. And I just want to know if other cities are going to be using that center with reference to whatever's dropped off there. If the rates within this item here go to subsidize profit making, at the expense of the ratepayers of San José without their knowledge. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I think I'll hold off, thank you.

>> Mayor Reed: I have a couple of questions. The cost control and rate-setting, staff report says that the rates will be established by the council before the July 2012 startup service startup date. So I assume that would just be rolled into our rates and fees budget process, or will that be ahead of it?

>> Jo Zientek, deputy director, environmental services department. Because this is a new suite of services, and the customers would want to see the rates before they select which services they want under this new franchise, I think we would come in spring of 2012 with the proposed maximum rates, so to give customers enough time to make those decisions.

>> Mayor Reed: Another question I had came from some McDonald's franchisees that I met with a while back. I'm not really sure how much of the McDonald's waste stream could be recycled and reused or whatever. If you just take that fast food prototype, how twill outreach that you're contemplating by allied and us, how would we reach out to a McDonald's or jack-in-the-box or any of those getting them to sign up for the service you think will be implemented and how much of their waste stream do you think we can successfully collect, considering we get garbage but also the others.

>> In the new franchise agreement similar to the program we do with apartments, all waste will go to a recycling facility and the recyclables will be pulled out. So for McDonald's, anything they have that's recyclable plastic, paper, all food waste, all compostable waste, including dirty paper will be pulled out for recycling and the target diversion rate is 75% for the first year. But nothing goes directly to the landfill.

>> Mayor Reed: I think a key in that is the organics and being able to pull out the food waste and getting that into a recycling stream.

>> That's correct.

>> Mayor Reed: And what company is going to do that food waste part of it?

>> Zero waste energy development company and we'll be considering -- I think it's -- not the next item.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I hope that helps with the litter along the highway. I took a trip of 680, up to Pleasanton. I couldn't believe the litter on the side of the roads, just phenomenal. Maybe with advertising of your program and the efficacy of people recycling and making -- I don't know, can there be some incentive? I don't know what that would look like. But just the time for the litter pickup along the highways has got to be astronomical. And then of course it's such a turnoff towards our city and our state in general. I don't know, it's just a crazy thought but it is any way to encourage people to recycle, that would be tremendous. And one thing I thought of school kids doing posters or whatever. If you start with kids generally it works well. They do eat fast food, thank you.

>> Mayor Reed: Motion is to approve. All in favor? Opposed, none opposed, that's approved. Item 7.2, speaking of recycling these are actions related to the construction and operation of a dry anaerobic digestion facility. Before we get started on that I want to disclose that in preparation for this meeting over the course of four years I believe, when we first started hearing about this, I've had meetings with Rich Christina Emily Hanson, and Greg Ryan of ZWED, Eric Shanehauer of the Shanehauer group, many times as we've talked about this concept trying to bring it to fruition. With that I'm going to turn it over to our staff, who have a presentation.

>> Mr. Mayor, Nancy Kline, members of council from office of economic development. We don't have a specific presentation for you but we're here to answer any questions you have about any aspects of the project.

>> Joe Horwedel: Mr. Mayor, I will add just a couple of caveats. Staff did receive today another series of letters related to the project in the environmental review for the proposed project. We've continued to receive correspondence from a number of parties since the environmental review process completed on May the 9th. One of the comments that has come up is that the city was not providing adequate comment period and I will note that it's been since May 9th, we are almost six weeks since that date and continuing to receive comments and respond to those. So in looking at the most recent correspondence that's come in staff has prepared two supplemental memos for the city council that looks at those issues, provides our analysis of those, of how we have dealt with those issues through the initial study. And the project design itself, the letters that came in today, my staff did look through those and looking to see the issues that have been raised in those. Again, we have

looked at the wide range of issues, water quality, we've looked at visual impacts, we've looked at biologic impacts, traffic impacts and we do feel that the initial study has put forward an adequate analysis under CEQA of how the biologic, how the storm water, how the wetlands issues, the traffic issues, need to be addressed with this project. If the council knows that CEQA is an information process to provide information to the city council and the public. We do think we have provided that and I know there's a number of speakers here today that will be sharing their thoughts about our analysis, and staff will be prepared to respond to questions raised by speakers.

>> Mayor Reed: Thank you. I just wanted to make a couple of comments before we take public testimony or hear from councilmembers. I really did start talking or hearing about the possibility of dry anaerobic digestion facility four years ago. And I had no idea what it was. I've learned a lot about it since then but I do know that we are still the first in the United States to have this kind of a facility. Assuming that we can get this one over the goal line. Although we're not the first in the world because they're in use in Europe. So I think this is a very interesting and important project, because it directly supports three of our Green Vision goals, getting 100% of our electrical power from renewable sources because we're going to be able to generate electricity out of the gas that comes from this, diverting waste from the landfill and converting this waste to energy, which is exactly what this will do, and ensuring that 100% of the fleet vehicles run on natural gas. This will be the first of these on the U.S. which is good to be on the leading edge but sometimes it takes a little longer when you're on the leading edge and there are many problems that we had to work through in order to get this project to this point. I'm looking forward to seeing it in operation generating energy as well as taking care of lots and lots of yard waste in particular that we don't have to use in other ways. So that's a good thing and eventually we'll be getting some revenue for the city. But because this is a new thing there were a lot of people that had to work on it. I just wanted to mention some of them. I know I'm not getting everybody, but Nancy Kline, Chris Burton, Jo Zientek, Matt Fukuda, Bryan Doyle, Renee Gurza, John Davidson, Joe Horwedel, Laurel Prevetti, and John Newby out at the plant all had to learn new things in this process and figure out new ways of doing things, and they've negotiated this lease in order to set up the facility and then in the next item in the agenda we'll be talking about a contract for processing of waste. And with that I had one last question, I think, for the staff and that is how long will it take if we approve this today, what's the time line for getting into operation, getting under construction, whatever things do we have on the conceptual wise?

>> John Stufflebean: Councilmembers, this is John Stufflebean back here. The answer is summer of 2012.

>> Mayor Reed: That's when they're going to be operational?

>> John Stufflebean: Yes.

>> Mayor Reed: That doesn't give us a lot of time to get all the permitting done and unconstruction. Do we have a schedule for that?

>> We are very close, the SUP is outstanding and that will be submitted in the next several weeks.

>> Mayor Reed: I know you have had a teamworking on this but do we have a team in place to get it done and so they can get under construction?

>> Joe Horwedel: That is one of the types of projects that Lee butler and his army of win would be off working on. So the biggest thing that helps success is to have the application on file. So once it's in then we can start running.

>> Mayor Reed: All right, well that's good. We need to run and get it done so that we're under operations. Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to thank the folks at ZWED for their commitment to innovation and for their commitment to the city. Certainly this has taken longer than we would have preferred but I'm grateful that we're at this point. I'll defer to Councilmember Chu to make the motion but just thrilled that we're able to get out there and do something really creative in this area.

>> Mayor Reed: Thank you, Councilmember Chu another thing in District 4 to brag about.

>> Councilmember Chu: That's right. I'd be happy to make a motion. But before I do that I'd like to disclose I have met with the applicants during the past two years. So here's the motion.

>> Mayor Reed: Motion is to approve. We have a couple of things to do. We've got to make a declaration, we've got a lease assignment. We're not going to vote on the motion but we have a motion on the floor. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I just wanted to disclose I did meet with Eric Shanehauer of the Shanehauer group as well as members of zero waste energy.

>> Mayor Reed: Thank you. I want --

>> Councilmember Liccardo: Same disclosure.

>> Mayor Reed: Okay, I want to thank folks for coming you out to speak. We'll take that testimony now. Eric Shanehauer representing the applicant. He will go first and we have some others who wish to speak.

>> Good afternoon, Mayor Reed, members of the council. My name is Eric Shanehauer, and the Shanehauer Company represents Zero Waste Energy Development on this project. We're very excited to reach this milestone today, and we hope that you share the excitement. We entered into an MOU two years ago after much discussion before that for a total of four years. And today we're going to take a highly undesirable piece of land that the city plant happens to own and turn it into really a highlight for the city, from an environmental and innovation perspective. So we will advance our facility that will be the first of its kind in the United States. And we will also put in place at a later point on this agenda the organics collection contract that will feed the organic waste needed for this facility to be successful. As has been stated the project advances really two key city objectives. The first being that it will help the city achieve Green Vision goals of 100% waste diversion, energy from renewable resources and fleet vehicles uses renewable fuels. Secondly though the project will bolster the City's reputation as

a center for innovation. As we on this site deploy technology that has not yet been deployed in the United States and we think it will bring notoriety to the city and we are hoping that others in the environmental sustainability field will want to come to San José as the city's highlighted in that positive fashion. The main thing we wanted to do today is to thank the city staff for all their work in negotiating the lease, as well as preparing the CEQA. You can imagine the complexity of sort of drafting a lease when you're building a first of a kind waste energy facility on top of a landfill. There are a lot of issues to consider, a lot of contingency to contemplate. So we want to thank all the city departments and all the staff that worked on this. They did a thorough job with a very thorough lease document. They did a very thorough CEQA process as you've seen in the many responses and a thick document. So today we hope that you will approve the MMD and approve the lease so that we can keep San José the cutting edge of environmental policy and innovation. Mr. Mayor, with your permission we'll come back to address anything after public testimony.

>> Mayor Reed: Okay, we'll see what needs to be done. Richard Santos, followed by Shannie Klinehouse and Eileen McLaughlin.

>> Good afternoon, Mr. Mayor and council, Richard P. Santos, Alviso. I support this zero waste energy development project. It's a win win situation. In terms of environment, they can discard waste, and making energy, same time. Construction jobs and some other jobs to run that situation. I'm very active in the Alviso community my neighbors and people I'm working with have all supported this. I sure hope you will and I appreciate your time. Thank you.

>> Mayor Reed: Shannie Klinehouse, Annie McLaughlin, David Wall.

>> Good afternoon, Mayor Reed, city council members, I'm Shannie Klinehouse with Santa Clara Valley Audubon society. We have submitted comments on this project and are still talking to staff about our concerns. Which are pretty focused and serious. We do think that this project has potential to be a very, very good project. But we are very concerned with violation of CEQA law on a variety of issues including the segmentation of the project from the water pollution control process, planning process, inadequate analysis of various cumulative impacts on

almost all environmental resources, and being Audubon of course, inadequate mitigation for impact to burrowing owls and their habitats. We have provided expert opinions and our own repeated cautionary statements that the proposed mitigations do not reduce the impact to burrowing owls and other resource to below the significant levels that is required for this type of document. To do that you need an EIR. And this is not an EIR, it is a mitigated negative declaration. Mitigated negative declaration requires that all impacts be reduced to a less than significant level. We do believe that this has not been done. We are talking to staff and hoping to find a good faith resolution for our concerns and hopefully, we'll be able to do that. But we did think that it's very important that you know that at this point in time we are not satisfied that this MND does satisfy CEQA law. Thank you very much.

>> Mayor Reed: Eileen McLaughlin, David Wall, Craig Breon.

>> Good afternoon, Mayor Reed and members of council. I hate to pop any bubbles, but there is built another facility in the United States at the University of Wisconsin, Oshkosh. It is much smaller, built by another facility, uses dry process anaerobic digestion. Sorry guys, but that's on the web. I also wanted to speak about this project. We have submitted a number of detailed letters for the citizen committee to commit the refuge. It is a reality that a project of this project's merit comes to you riding on the back of such a badly flawed CEQA process. We are very concerned of the investigations that are incomplete or simply not done. We are very concerned that the public has had less than adequate information to be able to assess this project. We have grave concerns on a number of issues one of them being the nature of the land affiliate beneath which was once unsecured and had waste dumping in it in the middle of the night. And we -- for that reason we don't know in places still in this landfill what is there. So we can that the city make sure all of those processes are really handled in an appropriate way but we actually think the best thing we could do here is hold off on this approval. Thank you.

>> Mayor Reed: David Wall and then Craig Brion.

>> David Wall: This agreement needs, requires rather, some additional refinements. For example, hold harmless and indemnify agreements should be entered into with ZWED with reference to the nine par possible liquefaction

issues to the property as sea level rises. There is also habitat destruction of a variety of God's little creatures and plants and subsequent referencing to the habitat plan to which, Mr. Mayor, you seem to support. Also within the agreement there should be significant and severe liquidated damages with reference to the illusory prediction of energy production and generation. Staff should comment on their calculation as to garbage trucks per day are going to feed this machine. Financial structures, with referential to Planning, Building, and Code Enforcement and the attorney's office must be locked in and secured to compensate these valiant departments for their expertise and monitoring this experiment. This 30 year term is very disturbing. I don't like it one single bit for this invocation type of project. I think there should be a little bit more of a limitation as a function of performance. Also, will there be a reduction in the sewer service and use charge since this is used on plant property land? This quote, base rent, equivalent to \$850,000 per year on phase 1, comma close quote, this additional rent is objectionable on the grounds it's very vague and ambiguous. It is equivalent to we scratch your back if you scratch ours.

>> Mayor Reed: Craig Brion.

>> Good afternoon, Craig Brion. You are in receipt of my letter, and I don't really need to go into that. I will answer questions if you have them on that. I will tell you of the story of the last time I dealt with a development on landfill in the Alviso area. The legacy development project. On old landfill to the West of the city. And the city council just like you, sat up there, signed off on all the documents, said we've thoroughly analyzed these issues, we're going to take care of everything, et cetera, et cetera, and it all sounded good, until the bulldozers got out there. And I went out to take pictures. And the bulldozers had ripped into the landfill and taken things that had been buried for 20 years, tires and other things, most of it unrecognizable, and thrown it into the adjacent wetland to some extent. So I brought those pictures to the city and even a video of black liquid oozing out of the landfill into the adjacent wetlands, and they did nothing. So I had go to the regional water quality control board, and regional water quality control board threatened to take over the city's jurisdiction over that because you were doing such a bad job. Things have gotten slightly better, not much, you can see that from my letter, and you can see that by the admissions of your own staff and your own councilmembers in a previous meeting. If you sit up there and you say to yourselves and to the public that this is all going to get taken care of, our environmental documents are good,

we're going to fulfill our promises, this is all taken care of, you are lying to yourself as much as that council was, ten years ago.

>> Mayor Reed: That concludes the comments from the public. Does the applicant have anything to -- I don't think there's need for rebuttal here. No, okay. I just want to verify a couple of things. We have two recommendations from the staff for is resolutions that are contained in the first staff memorandum. Which is a resolution to adopt the mitigated negative declaration, and a resolution to authorize the City Manager to execute a ground lease in the form. I believe those are included in the motion. I want to verify from Councilmember Chu. Those are both in the motion. Then we have our supplemental memo dated June 14th with comments and then another supplemental memo dated June 16th with additional comments. And responses. Those I think are the documents, in addition to of course the negative declaration work itself. So for purposes of our motion, the two resolutions to adopt the negative dec and the resolution authorizing, at least that's what's in front of us right now.

>> Joe Horwedel: That's correct.

>> Mayor Reed: Okay Councilmember Chu did you have any additional comments? Councilmember Kalra?

>> Councilmember Kalra: Thank you. In regards to some of the issues that's raised and I know that there are certain thresholds that have to be met that require a full CEQA analysis and I'm looking at some of the mitigation measures and in particular there does seem to be mitigation measures in place in regards to the burrowing owls. And in regards to that mitigation, as well as the mitigation I'm referring, here, I think it's June 14th supplemental, the mitigation regarding the monitoring and reporting program, especially regarding the statements of the last speaker to make sure that the mitigation that we purport to require actually goes into effect. I think -- which we're creating a project here which certainly has great environmental benefit, and I think that we certainly don't want to -- we certainly want to make sure we comply with all mitigation as necessary so we don't create any undue damage to the surrounding environment. So Joe, I don't know if you can or Renee can speak to the threshold and how we're meeting the standard in terms of mitigation in this case.

>> Joe Horwedel: Yes, Councilmember Kalra, I will take a crack at answering it. As a part of the western burrowing owl, the -- we did have a biologist that is very capable, qualified in assessing one, whether burrowing owls are nesting on the property. Because that is the prime standard for impact, is if you have nesting owls on the property. So we have gone through those proper protocols. The second issue is more around the opportunity of foraging on vacant lands. And there's in one of the letters that came in today, there was an e-mail exchange with Dave Johnson with California fish and game who answered a series of questions that the writer had asked them related to burrowing owls. And very specifically, acknowledging that how we have dealt with burrowing owls, we have the difference between nesting and foraging, that with the habitat conservation plan, there is some evolution going on about treating foraging habitat as a much higher impact. But that has not -- that would be a function of adopting the habitat conservation plan. And I will remind the council, one of the real differences with just project by project, versus the habitat plan is, you're asking for 50 years. So there's a much higher standard of impact in mitigation. So we've looked at it based on what the protocols were when we went through the CEQA process. We think that they have absolutely complied with what are the proper protocols for burrowing owls. There are not burrowing owls on the property so we think we have absolutely addressed that. That said, the city has continued to look for opportunities to mitigate for burrowing owls on the treatment plant land. That is a part of the master plan. That is an important part of the master plan can so bring back the habitat for burrowing owls. The habitat plan has a conservation strategy that looks at the whole South Bay for habitat for both foraging and nesting so we are very committed to doing that. But as the rules that are in place today, that is how we've looked at it.

>> Councilmember Kalra: Okay, well I'm glad to hear that. You know I think that there's still a cumulative effect, have an impact on the surrounding environment including the burrowing owls but I'm satisfied moving forward and hopeful that we'll continue to work with the applicant as well as with interested groups like the Audubon society and others to ensure that we mitigate as much as we possibly can, not just during construction but during operation. My understanding is the facility is going to be such that the waste that's going to go through this process will be totally enclosed as it goes through the process so it reduces the opportunity of having that have a commingling impact with the surrounding animals and other wildlife as well. So I'm pleased about that and I'm all in all excited about this project going forward and certainly, think it can be done in a way that's environmentally sensitive and I'm hopeful that some of the comments made about in the past how we have or have not acted,

that's the past. I think right now, I know that we do have a commitment particularly in this type of project of all projects to make sure that we do everything we can to be sensitive. And I also just in terms of recommendation B, the way the lease is structured, I think that gives us, I appreciate the way the lease is structured. I think it gives us an opportunity to kind of scale up. And I know especially if we move on to residential, huge education process and a lot of infrastructure that will be put in place in terms of outreach and you know moving that forward and I think it gives us several years to get to that place. And so I'm excited about the project and I'm confident that we can do it in such a manner that makes us all proud. Thank you.

>> Joe Horwedel: Councilmember Kalra, I do want -- you had asked about our ability to monitor those.

>> Councilmember Kalra: Yes.

>> Joe Horwedel: I do note that the landfill Mr. Brion noted, was one that another regulatory agency outside the city was actually granting grading permit and authorized the work that was going on out there. We were very disappointed when we heard what was going on out there. Could we have stepped in differently? 20-20 hindsight, probably so. I can tell you that San José is not the best about mitigation monitoring. We have a long way to go about being the best. But looking at around the rest of the state of California it has these same requirements, we have committed through T&E committee to go through and post our monitoring of projects that have mitigation requirements. So that the public can go through and track those. We do post those up there, we're a little bit behind right now, just as I lost one of my staff for retirement recently. But we do go through and all the new projects that are coming through with mitigation such as this one here will go up on a list and then we do have tracking on it. And it is one that we've done that because we want to provide the public the opportunity to be our eyes and ears too because staff can't be everywhere, as we want to provide a spot light on these greater issues.

>> Councilmember Kalra: Are we going to have greater oversight than as an example of ten years ago?

>> Joe Horwedel: Correct. We are the property owner in this case, we have rights to be on the property, lease rights, as well as the enforcement responsibilities through my department.

>> Councilmember Kalra: Okay, so it's a different relationship, we actually have full access and ability to monitor?

>> Joe Horwedel: I would say -- I would characterize it different than the legacy project.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: With regard to this, this is a separate and independent project for EIR purposes, Joe, my understanding is if, when we complete a plant master plan EIR if we had not done separate EIR on this project we'd have to do it anyway. Am I right? Separate environmental for the project we're talking about right now?

>> Councilmember Liccardo: That's right.

>> Joe Horwedel: Is we would -- I think expectation --

>> Councilmember Liccardo: In other words if we had simply not done this EIR and somehow wrapped this up in a plant master plan EIR we would have a hard time going forward with this had we not done a separate EIR is that correct?

>> Joe Horwedel: Well --

>> I think what you're meaning is we did separate environmental clearance for this project and we have -- we're aware of the fact that there's a preferred alternative for the plant master plan that's out there. It's still very preliminary that both the plant master plan and the environmental analysis for that plant master plan has a long way to go. If it ever does come to fruition. So we would have been waiting years, if that's what you're referring

to. And so this project was on the table and we've analyzed it. It sounds like you're saying if we hadn't, and at some later date --

>> Councilmember Liccardo: Let me try to clarify if I can.

>> Yeah, okay.

>> Councilmember Liccardo: I'm not referring to delay, I'm referring to there are different levels of environmental clearance, project level and program level.

>> Program level.

>> Councilmember Liccardo: If I'm not mistaken, plant master plan is much higher level of clearance, we would still need to have project level clearances, don't we?

>> Generally speaking, yes. But there are times when you're doing programmatic review that we know that there are certain projects that we want to move forward. So rather than making the council and the city staff go through that project twice we can incorporate project level into program level documents and so we've done that on occasion. So had that occurred and we knew that we were going to want to analyze that particular project two years from now, we have sometimes incorporated project level analysis in a program document.

>> Councilmember Liccardo: Okay.

>> John Stufflebean: If I could -- this is John Stufflebean here. If I could add on the planned master plan, there are elements of the environmental work that is being done at the project level. But only the elements directly related to the rebuilding of the plant. Anything outside the plant area, and the land around the plant is being done on a program level. Of course this piece of property is not included, is not included in the plant master plan program itself.

>> Councilmember Liccardo: Understood, okay. And I just want to be clear that the reason -- there's clear rationale for us not wrapping them all up into one. I know delay is only one of those reasons around the other is we really -- my understanding is we do need separate environmental clearance.

>> Yes, that's true.

>> Councilmember Liccardo: Okay. In any event I look forward to seeing the first dry fermentation anaerobic digester south of Oshkosh, Wisconsin, in the Americas, go forward.

>> Mayor Reed: All right, we have a motion to approve the two resolutions. Councilmember Herrera.

>> Councilmember Herrera: I just want to go on record saying I'm very supportive of this project. Whether it's the first or the second, innovative, as has already been said, it helps further our Green Vision goal. It helps further us as the center of innovation for further economic development which we very much need in the City of San José for jobs and really moving us forward in a new way. Thanks.

>> Mayor Reed: On the motion, all in favor, opposed, I count none opposed that is approved. Thank you, staff, congratulations, it's been a long haul to get here. And another year from now we'll be using it. If we can take up item 7.3 we'll talk about how we'll make use of the facility with our potential agreement with zero waste energy development company for commercial organic waste processing for our waste materials.

>> John Stufflebean: Yes this as mentioned is a complementary item which if everything goes well, will feed the anaerobic digestion process.

>> Mayor Reed: We have a motion to approve. Any additional cards? Mr. Wall, did you want to speak on this one?

>> David Wall: Again, I would like to look at the language in the agenda, and it's rather vague. We quote some substantial compliance with the term specified in the draft agreement from a term July 1, 2011 through June 30, 2027, with an initial service mobilization period from July 1, 2011 through June 30, 2012. And services to begin July 1st, 2012, comma, close quote. It's a long time period for just a draft agreement. I am very troubled with the fact that such a draft agreement could have such a long period and I'm certain that it allows for modification but it's unclear at this time period. In the issue of the first annual cost and not to exceed \$6 million, gives rise to the profit that I mentioned earlier on the rates of the solid waste franchise. Because taxpayers are being basically gouged in their garbage rates to support and subsidize this great anaerobic digestion process. And above all, our San José ratepayers are the only ones who are footing the bill for there since a lot of other jurisdictions use these landfills. And we also have to, from director of ESD's testimony prior, this is not a water pollution control plant project, but yet Mr. Mayor the treatment plant advisory committee, there are employees from the water pollution control plant, it's foreseeable heavy equipment operators are being used and other sewer service and use charges being used for this project and I think this should be included in the auditor's work plan of ESD with reference to paying back moneys that are allegedly coming from other sources for this experiment. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. I think we got a motion on this. We do have a motion on this item. One last comment, I think, is that the owner of this project has put probably some \$40 million into it before we get into phase I usage, and that's going to be directly to the benefit of the people of San José as we can put our yard waste and other waste products through this facility to turn it into compost and fuel. So that's a good thing. Private sector investment we're using lands that is currently generating zero dollars to anybody and if it generates revenues that will be to the benefit of the plant participants. The city is one, Santa Clara Milpitas as well as West valley cities get the benefit of this. But we're putting an idle piece of property to use, generating a private sector investment of \$40 million and furthering our goals on recycling. So all in all, a good thing so I'm certainly going to support the motion. On the motion, all in favor? Opposed, none opposed, that's approved. 7.4 is our next item that's the term sheet for the new markets tax credit transaction for the environmental innovation center. We have a motion to approve. I have a question. And trying to figure out when we're committed and when will we be committed finally to move ahead? We've got all this work we have to do, to get there. But it's not closed

until it's closed and we're not going to get the money until we do that. But what's the time frame do you think to get there?

>> Jo Zientek environmental services. Our time frame is to bring back final closing documents either the first or second council meeting in August. The team along with our consultant and the CDEs and chase have been meeting weekly pulling all the due diligence documents together, doing the appraisal and finalizing the term sheet next week that we have a draft that we're arriving along with staff and other city departments and we'll be working with drafting final closing documents for council consideration in August.

>> Mayor Reed: All right. I have a request to speak from the public, Mr. wall.

>> David Wall: This project is probably the first project that I've seen in San José history that relies on basically a gamble. I mean an outright mathematical gamble statistical speaking. There are so many variables financially that can cause this program to collapse that I believe is flawed from its onset. Furthermore, I think Mr. Mayor you should you have poignant questions on record, the fact that the General Fund is directly liable for any screw ups that could occur. Now, people are people and we're all prone to make mistakes. I think it's arguably sound that you folks as an entity make a great deal of mistakes. With reference to the budget deficit, not funding things that you should fund. But all those things, notwithstanding, I cannot with full confidence stand before you or anybody else and give you my confidence on this financial structure. I think it's horribly flawed. And I think it's rife for embarrassment for the city and that's why my opposition is basically to save your reputations. There's too many things tax wiseto that could ultimately cost the city money. I think Mr. Mayor you could really get it on the record how to protect the General Fund for somebody's error in judgment or this whole system, the financial system is flawed from its beginning. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve the recommendations. All in favor? Opposed, none opposed, that's approved. We have items 3.6 and 7 which we'll take up at 3:00. Open forum is the last item on our agendas. I think we have it completed. Unless I've lost track. Any requests to speak under open forum? David Wall first and then Roland LeBrun and Michael Medland.

>> David Wall: First I would like to thank madam City Manager and Planning, Building, and Code Enforcement, with reference to code enforcement. Madam City Manager, you are doing a wonderful job I would like to thank you personally for your efforts in this regard. I would like to thank the staff of Councilmember Liccardo. Your staff is, obviously there is no words that I could surpass that you haven't already given them accolades for and that's due to your leadership and your kind treatment of them. Please convey them and tell them that more salmon will be forthcoming. Smoked salmon. I'll bring some for you, too. Mr. Mayor, I want to reassert the treatment plant advisory commission, or committee, rather, TPAC, that meeting needs to be recorded and governed by the office of the City Clerk. Our last meeting not due to any fault by you or any member of TPAC was an atrocity because it's not recorded. And even though it is recorded, the minutes are atrocious. This can't occur under the office of the City Clerk. Because of the way they conduct themselves. Further, it gives them legitimate funding, to help augment their funding to maintain the business of the city which is to keep the citizens informed about what's going on. And when you're dealing with the rebuild of the plant of about \$2 billion, where hundreds of millions of dollars fly through that committee with a twinkling of an eye, I think it's very prudent that this meeting be moved from the environmental services department which is a demonstrative conflict of interest in itself, to govern that meeting and to record it and to basically have errors because people make errors, equipment breaks down. But our City Clerk, under Mr. Hawkins, doesn't have those encumbrances. And I think the citizens would be well served to have that meeting under the office of city clerk. Thank you.

>> Mayor Reed: Roland LeBrun followed by Michael Medland.

>> Mayor Reed, members of the council, good afternoon, my name is Roland LeBrun. I'm a conservationist and I support habitat conservation. The question is why am I here speaking against the habitat plan? The HCP is a complicated plan. I will try to make it as simple as possible. The county of Santa Clara is proposing to build a reserve system to mitigate for past and future environmental impacts without impact on the county's General Fund. The county proposes to do that by appropriating 14,000 acres of existing county parks including half of Santa Teresa park and \$70 million in park shelter funds over the next 50 years. This proposal is unethical and will be subject to legal challenge specifically it's a violation of section 604 of the county charter. This afternoon the

board of supervisors approved another quarter of a million dollars in contract extension, including over \$50,000 for the City of San José's share. And for the record, the vote was 4-1, 4-1 with supervisor Cortese dissenting. I urge the city council to decline any further requests for contributions to this project effective immediately. Thank you.

>> Mayor Reed: Michael Medland. Michael are you here? No Michael. Okay. You going to deliver Michael's comments?

>> I am actually Mike Medland. I am. I'm going to look back and see who watches me while I talk real quick. Thank you, mayor and council, my name is Michael Medland I'm a resident of district 4. This is one of the highest levels of unarmed security officer without a Department of Defense can achieve and I've enjoyed serving both the residents and employees of San José. To Councilmember Oliverio, I sometimes raise my eyebrows and do double takes at some of your ideas but appreciate your out of the box thinking. I would simply ask that you continue your efforts to reevaluate the current seniority systems to include performance evaluations. As I talk with many co-workers I sense the majority consider evaluations as a positive rather than negative tool. Excuse me. In fact many have said the feedback on their performance has been helpful in them achieving exceptional status. The problems that council faces with our current deficits are truly unique and one question will always remain once others have been answered. How many of the city's best and brightest will leave employment each year before we finally address this issue? It's time to level the playing field and send a message that bias and favoritism claims do not hold merit. I thank you for your time and hope our paths will cross again.

>> Mayor Reed: That concludes the open forum. And we are three minutes ahead of the start-time for the items -- I've lost my numbers, the financing items, 3.6 and 3.7. Councilmembers have been at this since 9:00 so we're going to take like a three-minute break so councilmembers can finish their lunch, or restrooms. We'll start at 3:00. [Recess 2:57 p.m.]

>> Mayor Reed: All right, it's 3:00, we can get our council reconvened. We will take up the last two items for this afternoon's agenda, of course we still have an evening agenda that will start at 7:00. I've got a quorum, so let's

get started with 3.6, the tax and revenue anticipation note. There will be a presentation from our staff, Scott Johnson.

>> Scott Johnson: Thank you, mayor and members of council, Scott Johnson director of finance. Okay, here we go. This is a request that staff is proposing that council approve the city issuing 2011 tax revenue anticipation notes, the TRANS. And to start off with, this is relating to providing funding, sufficient funding for the city to make a retirement contribution, a prepayment of our employer retirement contributions. The annual prepayment of the City's retirement contributions was initiated in fiscal year 2008-9. The contributions prior to that were made biweekly, this city discounted offer -- there is a discount that's offered for prepayment, resulting in budgetary savings for the two retirement plans have approved this, there is Muni code amendments that the council has approved and since 2008-9, both boards have approved prefunding. Starting this current fiscal year, due to the City's cash flow, it required that we issue some short term notes on an annual basis due to the timing of receiving our property tax revenues. And so we achieved that in the current year, and what we're recommending here is that we move forward and also issue trans for the next fiscal year to facilitate the employer's prefunding on juggle 1st. And as can you see here the total prefunding amount is about \$245.5 million. The citywide budgetary savings for the prefunding is almost \$9.5 million. For the General Fund alone it's \$7.3 million. These savings are already factored into the budget that the council approved and so this is just an overview of the mechanism that we're requesting that the council put in place to allow us to have sufficient funding to facilitate the prefunding amount of \$245.5 million. This next slide just shows you know the due diligence that staff had done, in regards to our General Fund projected cash flow. And there were three scenarios that we reviewed, the first scenario which is the orange line, that's assuming if we had no prefunding, no -- which would result in no budgetary savings, and we would just continue to pay on a biweekly basis as we did prior to 2008-9. The blue line is assuming the prefunding with no trans, no tax revenue anticipation notes, and then the green line is prefunding with trans with results in the savings that we can achieve, that's assumed in the budgets that you approved and it still shows by the end of the fiscal year we would have sufficient cash balances. So basically this is just a bridge loan to facilitate the timing in regards to the receipts of mainly property tax revenues that the city receives. On the next chart, this is just the elements of the key terms of the trans. This is a private placement with J.P. Morgan Chase Bank. For the current year we use J.P. Morgan as a private placement through a competitive process. For 11-12, we utilized

our independent general financial advisor that did a poll of banks and financial institutions, to determine their interest, of a private placement and J.P. Morgan was in fact the most competitive so we're proposing to move forward with J.P. Morgan again for the second year now. So the par amount of these trans would be up to \$125 million. We would initially draw \$100 million on July 1st. July 1st is when the prepayment would be due for the entire fiscal year to both of the retirement boards. The security would be property tax in our sales tax revenues and other general revenues of the General Fund. The interest rate is LIBOR plus 4. LIBOR is currently .2%. In our model we assume that the LIBOR could get up to .75%. So it's a very, very favorable rate compared to what the retirement boards are earning and so therefore that's why the retirement boards provide us with a discount in prepaying all the funds up front. Then we have our payment schedule, and fund maturity we would have to pay this by June 30, 2012 and that is clearly after we would receive our property tax revenues from the county. So therefore, we're recommending that the council adopt the resolution authorizing the issuance of a trans, not to exceed \$125 million. And adopt a resolution authorizing an amendment that we need to make to our general financial advisory contract. And with that mayor and council we're available to any questions you may have on this item.

>> Mayor Reed: We have a motion to approve the recommendation. Councilmember Constant. Doctor thank you, mayor. Clearly, this makes a lot of sense from a General Fund perspective and I know this is not the first time we're doing it. I just wonder if we have any plans out in the future say five years or so to review this policy, it's not an official policy but these actions that we're taking on an ongoing basis to see if -- how we're doing based on the assumptions the retirement boards are using to provide us our discount. Whether we're creating any additional unfunded liability as a result of not meeting targets. And I think it's important that we continue to do this from a General Fund perspective but I think it's important that we have some plan for revisitation in say five years, seven years something like that where we can look back and just make sure that we're not having a good effect on one side and a much bigger negative effect on one side.

>> Scott Johnson: Right. Councilmember to that point on an unrelated note we issued a supplemental memorandum related to the issuance of the airport revenue bonds that we're going to talk next and in the supplemental we do cite the returns, year-to-date and one of them is one-year return. And the other is year-to-

date. Which in the last two -- year-to-date and last year, it significantly exceeded the assumed rate that the discount rate was based upon. So with that especially the last two years as we moved forward on the prefunding we benefited even more than we assumed in the budget document because our return was greater than the assumed rate that the actuary of the boards have approved.

>> Councilmember Constant: And there's no doubt that that's the case in this period of time. But I know looking at the longer term like we do at the retirement boards we had fairly modest or extravagant depending what side of the financially you are assumptions of returns and we didn't make it over the long term. I just wanted to have a longer view instead of looking at one year or two year windows.

>> Scott Johnson: We'll continue to do that. To future when we go forward with our memo we'll cite the historical return as it relates to the return on a year to year basis.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank mayor. Scott thanks for taking the time to respond to some of the questions that my office had. I had two remaining questions sort of building on those. One is that seems to me we're making a bet each year, I think a very reasonable one, a very calculated risk that our investment returns are going to exceed our interest cost. So LIBOR plus 40 basis points or whatever the cost might be on the notes. Inevitably there are some years where we've got some down side risk, right? I mean 2008, 2001, '94, whenever you've got a really bad investment year things are going to go South and then we'll essentially lose on those years, is that fair?

>> Scott Johnson: Well I would say that would be fair. If we have a negative return or a return that's less than the rate we're paying if we're borrowing or less than the rate that we're earning in our portfolio, what we have to keep in mind councilmember is for the prefunding, it's the prefunding for just that year. Because we would be -- by the end of the year we would be paying more than that in the biweekly payments. So when we look at this analysis it's important to look at it in the year we made the prefunding and what the returns were for that particular year.

>> Councilmember Liccardo: Right.

>> Scott Johnson: Any future returns really aren't relevant to the prefunding because those funds would be in the plan anyway on the long term basis.

>> Councilmember Liccardo: I guess where I'm going with this Scott, tell me if I'm barking up the wrong tree here. Is there any value in us going out to the insurance market and say to a surety, hey, we'll pay you some percentage of that \$8 million that we expect to make here, you just guarantee us the rest, in other words, they cover the downside risk?

>> Scott Johnson: You're really talking about swaps, or derivatives or something of that nature. We'd have to go back to the council to see if we were looking at our investment policy to see what level of risk the city would be willing to make this that regard.

>> Councilmember Liccardo: I was actually to mitigate the risk, if there is some down side risk in us prepaying. Every seven or eight years you're going to run into a bad year in the market. To mitigate that down side risk is there value to us going to a surety and saying, we expect to make \$8 million by arbitrage by prepaying this year but if the market's bad obviously we'll make less or nothing so what if we give you guys a percentage and we get a fixed amount so that way we know exactly how to plan our budget that year in terms of General Fund revenue. Is there any value in that approach?

>> Scott Johnson: Councilmember, I think that's something we can look at. And then also look at how that would compare to making the payment on a biweekly basis. So we can come back you know with that analysis on either buying insurance or you know, a guaranteed investment agreement. But we don't -- we don't really -- we don't have any control over what your point -- to what the retirement boards invest the funds in. They have their own guidelines in that regard so we can come back with some analysis if the council desired that.

>> Councilmember Liccardo: I don't want to waste your time with a lot of work. I'd be happy to speak with you offline to see if this is worth talking about. The only other comment we're boring on a very short time a year. Is there any value in us extending the period of time for which we prepay, in order to take advantage of the benefits of compounding returns, in other words to get the money in early or those interest rates rise so quickly over a longer term, that we'd lose the arbitrage?

>> Scott Johnson: Councilmember that's something that we've talked about internally of looking at. Clearly, you know, based on the discussion last year about issuing pension obligation bonds, that's not what you're referring to like a long term but maybe looking to two to three years of prefunding and --

>> Councilmember Liccardo: Right.

>> Scott Johnson: -- what that that would yield us and then we should also be looking at the risk associated with that and whether or not the markets will change significantly within that longer period of time.

>> Councilmember Liccardo: I only raise it, because we're in such a historically low period, is there opportunity for us to save money. Okay, thank you.

>> Mayor Reed: City Manager.

>> City Manager Figone: What I was going to offer and Scott you can correct me if I'm wrong. This was a budget decision that was made for 11-12 that we are now implementing. These questions to really factor them in as we make the decision in the 12-13 budgeting process.

>> Mayor Reed: Thank you. I want to support that because I'm looking at the chart that is in the appendix C which we're going to take up as part of the airport financing in a little bit on page C-15 that shows the historical investment returns. A loss of -- I'm looking at just the Federated piece, a loss of 3% in 07-08, a loss of 17% in 08-09. So if we'd put money in prefunded in those years, the value of our money would have gone down, and the

question is would it go faster putting it in up front or going down faster if we'd paid it in monthly or weekly or biweekly. And so there's a big difference whether market is going up as investment returns are going down and I'm not smart enough to figure that out which is why we have really smart staff to work on this for us but I think it's an important question for us to consider as we're looking next year at having to make an even bigger contribution because the pension costs are going up again. Whether or not we're just hedge egg against the market, and that's an awfully hard thing to do without guaranteed investment contracts or insurance or things like that which then add cost to it. And eventually at some point it's pretty much a break-even. But somewhere before budget time I think we should talk about it before we build it into the base budget. We're talking about 7.3 million from the General Fund which is an important savings. I would like the chance to talk about it in greater detail as you've mentioned. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'm going to state the obvious to start: I'm no expert in financial matters. So I'm going to -- the question might be easier for you, but it might be harder for me to understand the response you give me. So I'm trying to -- the concept here is the retirement funds are our funds, in a sense, city-managed, so the discount we're getting is from our own funds. And we, the board, established the policy to allow prefunding and a discount. So I see it as I'm borrowing \$20 from my savings and move it to my checking. I tell myself, if you pay it back before payday, you only have to pay me 19. So I'm short a dollar either way I'm looking at it. I'm assuming this is -- this works out, because of interest rates or rates of return. So if you can explain to me how that simple concept that I just put at you works in this scenario.

>> Scott Johnson: Right, councilmember, it's similar to -- basically this is what we call arbitrage where, when basically we are issuing debt or funding something where we're earning a lower, either paying or earning a lower rate of return than what we're investing in. So in this case to your point, the retirement boards are independent, they have their own fiduciary responsibility independent of the city. And it's very similar to PERS, the California public employee retirement system. They also offer a prepayment option, a little bit different nuances in regards to their program. But basically it is an opportunity on an annual basis to pay up front. And in our plan we structured it where we actually have options to pay in you know either twice a year or quarterly. But based on our analysis and the returns and what we're paying to your point, it's more beneficial that the city pay up front. And the actuaries for

the retirement boards whether they compute the discount, they're assuming that they're going to break even. That discount is based on the they receive the funds over the pay periods each year, the 26 pay periods that they basically would -- they're a break even, they're made whole. That's why they give us this discount. Because they're assuming that they're going to get the money up front, they're going to invest it, and by the end of the year they're going to be at the same place that they otherwise would have been as if we paid on a biweekly basis.

>> Councilmember Rocha: The interest rates on that side are better than they are on our side.

>> Scott Johnson: Yes.

>> Mayor Reed: The difference is we are ultimately the guarantor that the boards were right about their assumptions because the taxpayers have to stand behind the paying the benefits. The benefits cost whatever they cost and if the boards are wrong about this internal assumptions and rates of return and all that sort of stuff, we on the other side of the equation are having to put more money into it. But it certainly seems to work in the short run, but I'm interested in looking at a longer term view which we'll do sometime between now and the next budget cycle. Any additional questions or comments on this? Anything else for staff to add? To supplement it? City Clerk did I get a motion on this? All right, Councilmember Herrera had the motion. On the motion, all in favor, opposed, none opposed, that's approved. Now item 3.7 issuance of City of San José revenues series 20A, some somewhere in this is appendix A, I've mentioned it several times today, we'll get to it at this time when we take up this financing.

>> Scott Johnson: Thank you, Mr. Mayor, members of the council, Scott Johnson director of finance, and we're also joined here by Julia Cooper, our assistant director of finance, Arn Andrews, our division manager for treasury, Mr. Bill Sherry, our aviation director, and we have also support from our city attorney's office here and bond counsel and our financial advisors are here. This presentation we're going to bifurcate it a little bit, because I have a potential conflict in regards to the financing. But what I do want to do is take a little bit of time with you related to just general disclosure requirements for entering into the market. So with this first slide, the bond disclosure requirements are basically speaking to the market. So we've been spending a lot of time in regards to

our disclosure documents and making sure they are accurate in that we are providing sufficient information to those in the market, that we would be interested in investing on the City's bonds or any kind of debt related to the city. So pursuant to the federal law and enforced by the Securities & Exchange Commission, the issue is the municipal securities have an obligation to ensure that the information contained in our disclosure documents is not material or misleading. In addition that proper disclosure allows investors to reality understand and evaluate the financial health of the local municipality in which they are investing in. So moving on. The bond disclosure requirements related to securities fraud, exception 17A of the securities act, it prohibits making of any untrue statement of material fact, or omitting to state a material fact in the offer of sale of securities. And a fact is material if there is a substantial likelihood that its disclosure would be considered significant by a reasonable investor. In regards to the bond disclosure requirements, it's really important in regards to the document review. As part of the process, of the city issuing any new debt, or refunding its existing debt, it's important that our elected officials, and our administration office, that's involved in the financing, thoroughly read through the primary financing documents and raise any issues that they may have identified. Specifically related to the document review on this next slide, understanding the following elements on the bond issue is huge in your review of the financing documents. First of all, the purpose of the bond issue, secondly the source of the repayment of the bond, third that the risk of the sources of repayment may be insufficient to repay the bonds, and finally discussion of any other events that could affect the deliberations of a reasonable investor. The documents themselves, this is a list of the primary financing documents. These are preliminary official statements, otherwise known as POS. It describes purpose of the bonds, the security of the bonds, and the risk factors for investor consideration. And staff had hand-delivered the POS to all the council office, prior you know to this item being agendized. In addition, staff did provide a supplemental report as it relates to the financing documents. In addition, so within these documents we have an appendix A, that describes the financial and the activity information of the airport, appendix B is a feasibility study by professional consultants that includes projects such as airport activity, airport revenue and the debt service coverage. And then finally appendix C, which we've talked about already today, which describes the City's two pension plans. Now, I want to reiterate the importance of reviewing the primary financing documents. The documents are intended to provide sufficient disclosure for a reasonable investor to make an informed decision and there are no omissions or misstatements of a material fact. And as we continue to comply with reporting requirements, you may have noticed over the years that our bond disclosure documents are growing as far as the

thickness of it and the volume, and so we take this responsibility very seriously and we know the council and the mayor does as well. I do want to speak a little bit about the supplemental memo that was issued dated June 16th in regards to appendix C. As indicated in the supplemental memo, the pension disclosure continues to evolve based on guidance from the city attorney's office, our disclosure counsel, and best practice recommendations from professional organizations. Based on there's been some recent guidance from the national association of bond lawyers publication, staff has included additional information needed to the asset allocation charges for both plans and historic return information. The additional table 7 A that is included -- that was included in the revised POS, preliminary official statement, it illustrated in the supplemental memo, it reflects the investment returns as provided 50 plan's respective investment advisors. The plan's advisors have indicated to us that the foot note as represented do not adequately reflect the data provided 50 investment advisors. So we're planning on making that correction immediately. Staff will work with retirement services to ensure that the footnotes are accurately reflected on the data for table 7A. Retirement services, to that note, that reflection of accuracy retirement services has indicated that the returns are trailing returns and they are gross of the manager, administrative and SRBR cost as of March 31st, 2011. In addition the 17.6 return for the Police and Fire plan is actually a nine-month return rather than a one-year trailing return of 14.5. So we felt it was important to make that statement verbally to you, and to make sure that we're accurate in our disclosures. Finally on the next slide, related to the document review, after your review of the financial documents the following additional statements should be considered. First have you considered of identified any risk or events that have been brought to the attention of staff, bond counsel or any other professionals, and second, has such risk and events been closed, and if not, what is the rationale for the nondisclosure? So these are some of the things that we are expected to consider the counsel and the administration as we move forward related to our bond documents and asking these type of questions. That being said you know in regards to the councilmember responsibilities, it's important you understand, council is not expected to be a fact-checker, but if any councilmember has any personal knowledge of any of the material information in the financial documents, which include the preliminary official statement, appendixes A, B and C, if you have any information that any information is false or misleading the councilmember must raise these issue prepare to the approval of the distribution of the preliminary official statement into the financial market. And so if, pair, you had indicated you may have some questions in regards to some of the appendix, I don't know if you

want to wait until after the full financing presentation or if there's any questions that the mayor or the council have in regards to the disclosure documents.

>> Mayor Reed: I think we'll let you do the whole presentation then we'll come back for questions.

>> Scott Johnson: Okay then I'd like to pass it over to Julia Cooper.

>> Good afternoon, Julia Cooper assistant director of finance. In terms of the airport financing, the TAIP project is substantially complete. The construction is completed on schedule and under budget, about \$140 million under budget. So we have about \$96 million of unspent bond proceeds. The commercial paper program provided interim financing for the construction and at this point, this financing is basically a refunding. It's taking the variable rate commercial paper that's outstanding and replacing it with long term fixed rate debt which has always been part of our plan of finance as we described in the council in 2007 when we brought the plan of finance forward. In addition to fixing it out, it also mitigated the future letter of credit renewal risk and variable rate interest rate exposure risk to the airport and also gives us the opportunity to match the long term assets with the long term fixed rate liabilities. Just as a brief overview in terms of the current status of the Airport CP program, as you recall it's supported by five separate letters of credit from Lloyd's, Citibank, Bank of America, J.P. Morgan Chase, and Wells Fargo bank. There is currently 417 million notes outstanding, 130 AMT notes issued to refund the 2004 auction rate security which is a big piece of this refunding that we're doing today. 233 million of taxable notes issued for the rental car facility and 54 million of CP notes for other airport projects. The Lloyd's letter of credit does expire in September. The 2011 airport bonds will be issued as long term fixed rate debt in two pieces. The first piece will be issued in July for refunding the airport commercial paper notes that we did the refunding with the 2004 auction rate securities. And then also, we'll be looking at outstanding airport bonds 1998 and 2001 and bonds to the extent that there's economic savings we'll be doing some refundings as well. And then later this fall we'll bring forward to council a refunding of the commercial paper notes that were issued for the rental car facility and those will be the 2011 E bonds. After both the A bonds and the B bonds are issued this year the CP program is projected to be reduced to about \$150 million. And as I mentioned the Lloyd's letter of credit expires on September of 7th of this year and it will not be renewed. In terms of the security for the 2011 A bonds, they are

secured solely by airport revenues and certain other funds net of the maintenance and operation and cost of the airport. The city is only obligated to pay debt service on bonds from net general airport revenues. The General Fund of the city is not line and the credit or taxing power of the city is not pledged. There is no city property or asset pledged except for net general airport revenues and we have to maintain a projected debt service coverage above 125. So we have a table there that's pulled from the feasibility report that shows the projected debt coverage from 2011 to 2017. It's important to note that there is a relationship between the debt service coverage and the CPE. To the extent expenses are down and revenues are up, then debt service coverage is up and CPE is down. So that's an important thing that the airport works on in terms of bringing in revenue and reducing expenses to keep everything in alignment. This is the estimated source and uses so at this time you can see for the refunding of the CP notes we anticipate issuing about \$145 million worth of bonds and then refunding of the bonds that are outstanding, the 1998 and a portion of the 2001 A bonds that are economical for a total amount of just over \$200 million. To the extent the market improves and interest rates drop we have the flexibility to increase the size of the financing to take in more savings for the airport. So the recommendation for you today is to hold the TEFRA hearing for the tax exempt airport revenue bonds and subordinated CP notes not to exceed \$320 million then to adopt a resolution to authorize the issuance of the 2011A bonds not to exceed \$300 million and then also to authorize a resolution for the City Manager to execute an agreement with financial advisory services and the City Attorney for a legal services contract. With that we're open to questions.

>> Mayor Reed: Thank you for the presentation. I have a couple of questions. I'm sure the councilmembers will, as well. On page C-5 of appendix C, and appendix C is about the City of San José pension plans. Actually, before I get to my specific questions I want to go back and ask the City Attorney to remind us how San Diego, city council in San Diego got in trouble about five years ago about disclosures or lack of disclosures on bond issues as it dealt with pension plans.

>> City Attorney Doyle: My understanding it was both the city elected officials as well as City Manager, and the appointed officials who were -- did get into trouble. The Securities & Exchange Commission, Scott pointed out, takes this very seriously and I think the markets are demanding greater disclosure now, particularly in the pension area. And that's why you have these growing documents and significant disclosures.

>> Mayor Reed: Thank you. And that wasn't just the retirement boards, that was the city council as well as professionals. So we're all trying to do exactly the right thing. And I appreciate the -- our professional staff doing such a good job of putting this all together. Back at page C-5 where we talk about the fact that our contribution requirements are expected to increase over the next few years, as a result of deferred investment losses. Under the actuarial value of asset smoothing process to the extent those losses are not offset by future investment gains. That -- I certainly can't argue with that statement. But when I turn to chart page C -- table 7 on page C-15, maybe it's because I'm not an actuary. But I wonder how investors look at the historical investment returns chart, and is there some other way to make it clear that even if you have a year of 16% or under the Federated plan it was 15.9% return in years 9 and 10, that you're still way behind. Because in year 7-8 we lost 3%, in year 8 and 9 we lost 16, almost 17% which together was almost 20%, and we didn't get the seven or 8% assumed rate of return, that we actually lost 36 points in terms of where we should have been and if you gain back 16 of those points, you've only gained the eight you were supposed to get and another eight on top of that. So you're still 28 points behind. And I guess maybe the investors are sophisticated enough to figure this out but it is difficult to do that math without sitting down and actually doing the math in long hands to understand that the 16% return after you've lost 16%, you're not back to 100%. The City Auditor did a good job of explaining that in her report where if you lose 50% of your money, and next year you gain 50%, you still only have 75 cents because that's just the way math works. And I just don't know if that's clear enough in here, that even though we had a good year in 9 and 10 and presumably a good year following that we are nowhere near back to where we were. And I usually just try convert it into dollars but that's impossible to do with these pension funds. So I don't know if that could be done differently in a way to make it clear that even though we gained back some of it, we're nowhere near gaining back all of the losses, even with a couple of good years. And I don't know how you explain that to people. We're talking about relatively sophisticated investors who might be buying this. We're not talking about -- maybe the standards are different if you are selling this to the general public.

>> Scott Johnson: Mr. Mayor, let me take a crack at the response here. One thing that we have to keep in mind. This is an airport credit. And the exposure that the airport has in regards to our entire retirement system as opposed to the city overall, in -- as it relates to funding, I think to your point I think most of the investors are very

sophisticated. They look at the long term view in regards to our retirement plan because they're looking you know our retirement plan theoretically is a perpetual plan. That's why also, working with bond counsel we thought it was important to include table 7A because it does kind of help put it in perspective in regards to you know the long term returns. To your point, looking at the last five years, you know our return were 4.7 and 4.2 respectively lower than the assumed rate of return but if we look at the information related to since inception and you have to go back to the footnote to see how that's determined, that it's not since the initial implementation of the two respective retirement plans. But they're looking at 8% overall since inception for Federated and 9.1 for Police and Fire on a gross basis I believe this was. And so they're looking at the funding level. Our funding level is roughly 69 and roughly 89%. But they are also you know the market is concerned about how we can absorb increased cost as it relates to our pensions. And they're you know this is something that you know they put into full context in regards to the entire financing. And what revenues are being supported you know for the financing structure. And I think Arn wanted to add a couple of points here.

>> Arn Andrews: Honorable mayor and city council, Arn Andrews, treasury division manager. To your point, we worked with retirement services staff to develop what the compound rate of return is for what's depicted in table 7 because that takes the concept of volatility drag the fact that you're discussing, if you have less assets you can't earn as much on your way back up. So that's why we asked them to help us on a compound rate of return as a general arithmetic means which doesn't reflect the concept you're speaking of. That is why when we got the guidance from the national association of bond lawyers, the table 7 is actually the data that comes out of the plan's CAFRs and we had retirement services help us calculate a compound mean and then table 7 A comes from the investment advisors and this helps give an additional snapshot of what is happening during various intervals of times, whether it be a five year interval, a one year interval, a ten year interval so that people can get a clearer sense of what the yields are over whatever spectrum they want to look at.

>> Mayor Reed: The other connection of course to the airport, is the fact the airport employees, most of them are covered by one of these plans and as the cost goes up the airport's costs go up. And we're looking at some potentially significant increases in cost to everybody including the airport. I think that's clear throughout here. I had another question on page C-21 and that's a summary of the Federated experience study and it just wasn't clear to

me going through here whether or not the conclusion that is in the next to the last paragraph of that section says, the recommended approach would increase total contribution range of 1.1% and 1.8% with the recommendation of 1.8%. Is that everything in the Federated experience study accumulates to 1.8% or just the recommended methodology for SRBR and administrative expense?

>> Arn Andrews: Honorable mayor and city council, those were two proposals that were brought before the Federated board, and those percentages are only for those two recommendations that have not been acted on by the board. The one recommendation is to basically take the administrative costs associated with the plan and factor it through normal cost and then the other recommendation is to take the SRBR, since the actuary perceived that to be a future liability, and also factor that through the normal cost. So the numbers you just referred to are just for those two elements. They are not at all reflective of what the potential increases could be, if all assumptions that have been recommended are acted on. In full disclosure, I am a board member on the Federated board and I do know the board did ask the actuary when we bring this up at a subsequent board meeting to actually break down costs associated with all the recommendation. Because when you receive an experience study there can be anywhere from half a dozen to a dozen recommendations and we want to see what that means in its totality in terms of increased dollar cost not just in terms of contributions could be.

>> Mayor Reed: In that sentence where you say recommendation would increase total contribution of 1.8%. That is 1.8% of payroll, correct, not 1.8% of the contributions?

>> Arn Andrews: Yes I believe so as opposed to the administrative cost which is some factor a percent of payroll. This is actually the percentage that would be added to the current percentage.

>> Mayor Reed: So it's more than a 1.8% increase in dollars. It's by percentage of payroll.

>> Arn Andrews: Correct and this is why we've asked the actuary in the future to also show us what the dollar equivalent is for each of these incremental contribution rate increases.

>> Mayor Reed: Okay, thank you. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. My questions were along the same line, and I also had the same concerns with the way it's worded with the 1.8%. Because when you read that I read that paragraph several times, it sounds like contributions increase 1.8% versus the contribution rate increases by 1-- the index is up 1.8% and that makes a huge difference in the aggregate number. So I would just think that we would want to be a little more clear, that the rate itself is going up by that many points, not the total cost is only going up by that percentage.

>> Arn Andrews: Thank you. We'll go back and work with retirement services and the city attorney's office to make sure that that's clear since it appears as if it was clearly not clear on several fronts.

>> Councilmember Constant: Okay. And then the other question I had, and I've read this a couple times and of course with all the numbers, you start to think you read things that's not there and then you wonder if you read something that wasn't there. What I didn't see is some of the concerns that have been discussed about the negative cash flow situation we see ourselves entering into in the pension funds. And Arn, as you know the last meeting when the representative from Cheiron was there, we did the modeling for how the negative cash flow changes the future projections significantly. I didn't really see anything that talked about us entering that negative cash flow portion, unless I'm missing it.

>> Arn Andrews: No, thank you councilmember. There is currently not a discussion of the negative cash flow in here. One of the appendices and in particular appendix C, is to have source documents to be able to point to when we put something in it so that in the future if investors ever wanted to question what the rationale was we have the ability to point to that. While Cheiron did put up the dynamic model and they talked about for Federated it is a 2% negative cash return they have yet to illustrate that in any of their documents. If it is something that does start to embed itself in its documents we would speak to it more than likely. Our whole objective is to find consistent documents that are published on a routine basis, whether it be the city's CAFRs, the annual actuarial reports, quarterly investment reports, to the extent that that concept makes its way into either an experience study

or a recommendation or even if retirement services puts forwards memoranda to the board to try to alert the board of potential concerns those are the type of documents that we would use to source in our appendices.

>> Councilmember Constant: And I understand that but maybe just to Rick. My concern is often times the word is known or should have known or disclosed or should have disclosed and knowing that that is something that has been brought up to retirement services, brought up to the board, does it at least deserve a mention so that we make sure that we've covered our bases?

>> City Attorney Doyle: I think the issue -- we work closely with disclosure counsel on these issues and we can go back to them and to double-check. But you also need to know that we have continuing disclosure requirements on an ongoing basis and to the extent that I think they're then starting to be used in source documents we would revisit it as to whether or not we then had the obligation to disclose. So that's something we can go back and talk to our professional consultant.

>> Councilmember Constant: Okay, thank you. And then just as a side note. When we get these documents for bond issuances, the appendices are I think the best reference material that we have. I know that every time we've done one since I've been here I pull out in the past I think it's bin appendix A, B or A, one of them I always have it printed out and I usually have the last couple sitting in my office. Because if I have a question about where we are in a more larger context, broader context I can usually find the answer there a lot quicker and it really helps to have one document that explains all of our pension issues in one area. So I want to thank you for that. And I'd also like to make a motion to approve the recommendations.

>> Mayor Reed: Motion is to approve the recommendations. And there's actually several recommendations. One is that we hold a TEFRA tax equity and fiscal responsibility act hearing which I want to do official now. Anybody here who wants to speak on the TEFRA thing as well, and then we have the 16 separate resolutions and another resolution -- two more resolutions on public resource advisory group and the law firm on this. So I want to make sure that we don't forget the TEFRA hearing. So let's take public testimony not including the TEFRA hearing. Mr. Wall.

>> David Wall: With \$320 million, with section A, 3.7A, I'd like to know from staff, what portion is to finance, but more importantly, to refinance, all or a portion. In other words, there's an ambiguity here, with reference to the debt service, I think that's schedule B. July 1st, I believe there's a \$40.2 million responsibility. And I would like to know, you know, the difference between how much is being refinanced at the airport and also, what happens if the money supply tightens with reference to this debt service? On B I'd like a little bit more explanation, because we're talking a lot of money here. And from a layman's point of view my West section of my garden, I can count airplanes. As they're on their final approach. The city has somewhat of a problem. With reference to item C and D, this borrowing money for professional service, I know the amounts are somewhat of a piker concerned to how much you are issuing bonds. But the 2011 A series and the series 2011 B, I mean, the amounts aren't discussed. And this is borrowing money for services which I think is \$770,000. That's a lot of money for services. And I think that it should be broken out a little bit better. Thank you.

>> Mayor Reed: Nobody else wishing to speak on this item? Nope, then that concludes the TEFRA hearing and it concludes the public testimony. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I have a question to the mayor's earlier point when he first started, Scott, and it was in a reference to noting that where we're at now is not where we were at one point. And referencing the shortfall or the deficit or the revenue drop, I guess. What I'm trying to understand is in the world of finance and reporting, is that something you would ever do? Because wherever there was, there may be another there before that there that was lower or higher than that there. How could you establish a point of reference, I guess is what I'm asking to point to well we're not there now so we're in trouble.

>> Scott Johnson: Councilmember to that point as Arn had mentioned earlier it's important as we work on these disclosure documents and working with the city attorney's office and bond counsel that we have a source document to go back to. And related to the cost, you're referring to projected cost in regards to the pension plan.

>> Councilmember Rocha: Yes.

>> Scott Johnson: And because there's a document that's out there that was produced you know by the retirement staff, that is a source document we noted, so given that we have that information and it is a source to it, we have an obligation to disclose that. And we do I think characterize it as projections. And that as to your point, we also provide historical data as well as incremental data on a year to year basis.

>> Councilmember Rocha: So would the unfunded liability be better there to point to or the health care, retiree health care unfunded liability?

>> Scott Johnson: We do disclose the unfunded liability and we also disclose the funding status of -- the funding status in regards to both of the retirement plans.

>> Councilmember Rocha: Okay so those are more concrete I guess points to talk to or you're there as I referred it to is.

>> Scott Johnson: To the earlier point, in regard to how seriously we take it and the volumes, especially as it relates to the makes pensions and a lot of this had to do with what happened in San Diego. When I first started here, a little over 10 years ago, we had about three paragraphs related to pension disclosure and we're up to 35 pages. So we try to capture as much as we can as the market will be willing to read.

>> Councilmember Rocha: I'm sorry I'm chuckling, it's not a funny topic, it's an unfortunate topic. Thank you.

>> Mayor Reed: At the end of the day almost anything is funny, Councilmember Rocha. Councilmember Liccardo.

>> Councilmember Liccardo: Just looking at table 7A which is on page 3 of Julie's supplemental memo. As we look at the return since inception, I know we see those numbers thrown around a lot, I think publicly, by some who would suggest there's really not a problem in our pension plans, because if you look at the returns, at least if you

throw out the administrative costs and don't look at gross return assumptions and just look at the net return assumptions you would seem to do fine. But I guess going to your point Arn, because we talk about volatility drag and we look at these -- you know we recognize the numbers themselves have to be unpacked a bit. And I'm wondering though, even knowing that, should this be leading us to a conclusion around the nature of the problem, which is we don't have an asset problem, we have a liability problem in the pension account. I think that's how Scott described it at one point during one of our conversations. And that it's not a problem with our -- I mean certainly we had a terrible year a couple of years ago. But we're going to have good years in the future, we hope, and that's not going to solve the problem. It's really about the size of the liabilities. Is that a fair description, Scott?

>> Scott Johnson: I would agree with that, councilmember. I think in the disclosure documents as I mentioned, we talk about the funding level, we look at you know what the rates of return are and it just really depends. If you look at for example, the return that we have in 7a, the return for the Police and Fire fund since February 1971, for example, and you think about you know since 1971, what has occurred, there's been a lot of volatility in the market. There's actually been five recessions since that period of time. But you know that the return actually has been pretty good. Because there's been some years as we look at the other schedule 7, you know we've had some really good years and we've had some bad years. But overall, on average, you know, we have an 8% return. I think the real problem we're trying to disclose here in these documents is that our annual costs are going up. And we -- the city needs to address those costs. And they're going up for a number of factors, and a lot of those are identified in the City Auditor's report, audit report on pension sustainability. But that's really what we need to get a handle on to curb those costs. Because the big question is how can we continue to pay those large-
cs, in regards to the annual contributions. But when you look at the historical rate of return it doesn't seem that bad but when you look at how much we're paying in regards to contributions it doesn't appear to be sustainable. And here again that's why we reference in the document so investors are aware, that we're on top of this, we're paying attention to it and as we move forward to look at the solutions.

>> Councilmember Liccardo: Thanks. I understand this conversation has obviously veered a bit from the central issue but I think this document really does give us a good context for understanding the nature of the problems and that we're going to have good returns in future years too but that's not going to solve the problem.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Yeah I really look this document. I'm going to be hanging onto it, it's a very good source document. I think the explanation that somebody made a few minutes ago on if you have less assets, you can't earn as much on the way back up. I think that's the key. So when we have those severe losses like we did in '08-'09, you have less to earn. You have less of a pot then to be earning those investments returns and to so that makes a lot of sense and can you not come back as fast. And the other thing I reflect on I think it was Russell that said in here, I think it was Russell that is so important that while we're at near full funding to hang onto that. In hind sight, that's where we would like to improve in the future. If we get to where we are nearly full funded we have to caution to protect that. We have slipped and we're not full funded so those two things are big take aways for me and I know we're deviating from what our initial decision is today but that prospective investors are somewhat relieved that we're understanding the problem that we're taking steps to correct it. So I think that that's got to be something that gives people more willingness to engage with us. Thank you.

>> Mayor Reed: I had one more question just to stay on that topic a little bit. 7-A table 7-A that you added showed a Federated 8% return since inception. I would ask the question then why do we have an unfunded liability? If we've been running at 8% since it was created? I'm looking at table 2A on the page and 1.9 billion of unfunded liability.

>> Scott Johnson: Mayor, there's several reasons why we have that unfunded liability. And some of those are identified in the City Auditor's report. When we are giving retroactive enhancements to our benefits system, it creates unfunded liabilities. The other thing we have to keep in mind is that which we disclosed in this document, is the amortization period in regards to our unfunded liability. So if we're at you know 69% and almost 80% funding ratio, but we still have 16 and 20 years to go, to pay off that unfunded liability. So it's basically like a mortgage, you know. So the actuaries are assuming over a 30-year period that that unfunded liability will be paid off based on the amortization periods that the boards have approved assuming that rate of return. So we should expect that we'll have an unfunded liability but the big question that we have to continue to pay attention to, is how

we're tracking that unfunded liability. Is it going down in relationship to the planned amortization period for the respective plans.

>> Mayor Reed: On the disclosure side of this, I can't remember. I think we reference in appendix C the work done by the City Auditor. And there's a link somewhere in this, I just don't remember exactly where I saw it, was it appendix C or someplace else in the report. Because I think if everybody wants to understand what's going on that's the best place to go. And if there's a link to that, you get brownie points if you link to a source document right?

>> Arn Andrews: Honorable mayor and city council, at the conclusion of the pension section we start a category referred to as pension form initiatives and the first initiative referenced is the September 2010 City Auditor's pension report. Followed by a chronology of other initiatives that have either been taken on by the mayor and the city council, or the administration on behalf of the mayor and the city council. And we will continue to add content to that section to the extent that we have new information.

>> Mayor Reed: Okay, good, because I think the City Auditor's report is an excellent source of information if anybody wants to understand what's going on so we have that link. I think that's the end of the questions, that's all the requests to speak I have. We have a motion somebody forgot who made it. Councilmember Constant got the motion. On the motion, all in favor? Opposed? None opposed, that's approved. I think that concludes our work for this afternoon. Already did the open forum. We have an agenda that starts at 7:00 tonight. We're not kicking anything into the evening agenda off the afternoon agenda. That's good. We should be out of here well before midnight. We're adjourned or recessed until 7:00. [4:01 p.m. recess]

>> Mayor Reed: Good evening. I want to call the city council meeting back into session. We've been at it, since 9:00, various times, various forms, we're now ready for the evening agenda items. Fortunately we got done with all the an agenda items so we just had the matters that were be previously noticed for the 7:00 p.m. meeting. So we don't have a lot of items but the first is the item 10.2, amendment to the transportation diagram, designation on a 19-acre site at East Monterey road and East Alma avenue and we should hear this jointly request 11.3, rezoning of the property at the same place. Oso we'll take testimony on both ten.2 and 11.3. Known more commonly as the sun garden project and then we can take them up. So any public testimony on the sun garden project? Got one card, please get your cards in if you want to speak. We'll hear from city staff first see if there's anything to add to the written staff report.

>> Joe Horwedel: Thank you, mayor. Staff has a short presentation. Staff is recommending the general plan change. Commercial property, we have looked at this as part of the envision 2020 general plan update. Recommending making those changes in the update. We brought these matters forwards faster at the request of the applicant, we felt that made sense. Staff and the applicant are in agreement on all the issues with the exception of the interface on Monterey road, that city staff has worked really hard with the applicant, moving forward with the project. We felt it was important for the council to have context of how this compares to some of the large shopping centers that have been built in the city in the recent years and have been very successful. And so you will find at each of your seats has an aerial photo on the top and four pages to it. And wanted to walk through of how this sun garden project compares to both the market center project on Coleman avenue and the plant project on Tully and Monterey road. So it's a matter of comparison, the sun garden is proposed to be about 260,000 feet, has 1400 lineal feet on Monterey road. The market center project has about 380,000 feet and about 2,000 feet of frontage on it with four drives and signalized intersections. And the applicant is proposing five on the sun garden site. Staff is concerned about the issue of street frontage, big issue we dealt with in the general plan update process about how to make our streets more pedestrian and bicycle friendly that we are trying to go and deemphasize high speed movement of cars throughout the city big wide street but as a part of doing that we need to make sure we do that in a rational responsible manner. So we have included policies within the draft general

plan that talk about appropriate spacing of driveways, the goal of how we connect major developments such as this to make sure our pedestrians are safe. I did also want to note that the project site has frontage on it, actually includes part of the future three creeks trail on the railroad alignment that does move across the Monterey corridor area and it's part of our concern about how movements of pedestrians and bicyclists on the three creeks trail also connects. We also wanted to compare with the plant which is the same neighborhood as the proposed project, about 650,000 square feet, again about 2,000 feet of street frontage along Curtner avenue. On this side we put five driveways in, recognizing a longer frontage, how the buildings were situated, and it seems to work well out there, we had not had problems with traffic accidents occurring, the flow of vehicles seems to move appropriately but on that long frontage it gives us proper spacing to it. The concern that staff has is that as you go through and add more driveways and street cuts to these is that the distance between them starts dropping substantially. On this case on the G.E. site, it is a substantial difference of how that street would operate. So as it relates to the project site you can see that staff has accommodated a great amount of access out on the Monterey road including a new signalized intersection. We've accommodated drive thrust within the development, the gas station making sure that the truck circulation works. Really, the fact of where the future drugstore is located on the right-hand side of the site plan, they need to have a driveway on each end of that building, staff is concerned it really is duplicative and it puts three driveways extremely close together, right at where the three creeks trail would be coming in. So staff has recommended that the driveways, that one driveway be eliminated. The applicant will want to talk about that tonight and their traffic engineer is here to do that. Manuel Pineda from the City's Department of Transportation is here to answer questions the council may have related to the driveway. So staff is recommending that we go with the four driveways, rather than five, and recommends approval of the general plan amendment and the rest of the planned development zoning.

>> Mayor Reed: Thank you staff. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed, did you want to take the public testimony?

>> Mayor Reed: I've got two requests to speak, 10.2 and 10.3 same project in different forms. We'll hear from Martin Delsum first and then Mary Guzman.

>> Good evening, my name is Martin Delsum. I'm a member of save our trails but this evening I speak on behalf of myself. I came to voice my support of the decision of the Planning Commission and its favor regarding this sun garden redevelopment project. As a resident of Willow Glen, and a person who prefers using my bicycle instead of my car whenever possible. I'm very aware of the obstacles and heading east across town. The three creeks trail which was recently included in the city's revised master plan offers the potential of a safe off street path for bicyclists and pedestrians. The city is now in negotiations with Union Pacific Railroad to purchase the western half of that trail. The eastern segment between highway 87 and Senter Road presents more difficulties. The railroad has already sold several parcels and the Planning Commission has already granted a development permit on the trail right-of-way. This evening you have before you a plan for the development of another parcel, along the right-of-way, I was very pleased to see that this redevelopment plan had the foresight and the generosity, this portion of the trail will be an essential link in the city's growing network of interconnected trails. I urge city council to approve the resolution under the understanding that the easement for the trail must remain part of the development trail. Thank you.

>> Mayor Reed: Mary Guzman and Michael Mulcahy.

>> Hello Chuck. Chuck, I'm for this, because as you see, I'm handicapped and I need a store close by. We haven't had a store since lucky's moved out and this would be great for jobs for my side of my people. Okay? And I have 140 people and this is going to go to each one of you.

>> Mayor Reed: Hand that to the clerk so it can be distributed.

>> There you go. I went 1030 at night to people's houses because that's when they're home from work. I walked the streets, you can call me a streetwalker because that's how I get results. So please please approve this plan. We need a store. I have to go all the way to meridian to a Safeway. And the pop and mom stores, they sell me a can of tomato sauce four ounces, \$2.89 or \$2.29. If I don't like it, it is the free country, like I told the lady I can buy whenever I want. Safeway, lucky's anything except mom and pop store. Then I come down first street

downtown it's not as good. I want my area to have a retail place. Where it's safe and I ask go to it on one bus, not four. Thank you. All of you. Appreciate it.

>> Mayor Reed: Michael Mulcahy and then lovey Spencer.

>> I'm speaking on behalf of the applicant so if you want to take lovey first.

>> Mayor Reed: Happy to do that. Lovey Spencer and Michael Cord and I'll let Michael Mulcahy have the last word.

>> Thank you, Mr. Mayor, city council members. My name is lovey Spencer and I reside about two and a half blocks from this development. Our family has owned the property there for four decades. And we are very excited about this development coming into and bringing a sunlight into a fairly devastated area. One of the issues that I think was of concern when we attended the planning committee meeting was egress on to Monterey. Monterey highway. And the plans include a traffic fuel station, it includes two drive-throughs I believe. And egress will be an issue for the amount of traffic coming in and out onto that corridor. Someone had mentioned that the traffic speed onto Monterey was 45 miles an hour. And I think when the city takes over the control of that, that we will want to bring that speed down to 35 miles an hour. Because it is right at the entrance, this historic entrance to the city from that side. Again we ask for your support. We want to do anything in our neighborhood. We've had an association there for about 20 years. My neighbor, Bernice Ortiz and I have, to bring this neighborhood back to the level in its heyday when there was a cannery at that installation. A cannery that my late mother worked at, by the way. And we are very excited about jobs being brought back into the neighborhood. Thank you very much.

>> Mayor Reed: Henry cord and then Michael Mulcahy.

>> I'll withdraw. I was just going to hand out the petitions from the community. If Mary didn't make it.

>> Mayor Reed: Consider it done because it was, thank you. Michael Mulcahy is the applicant in this matter.

>> Do I get five minutes?

>> Mayor Reed: Yes you do.

>> Great. Mr. Mayor --

>> Mayor Reed: But only one matter.

>> Pardon me?

>> Mayor Reed: Speak to both of them.

>> Mayor Reed, vice counsel Nguyen and councilmembers, my name is Michael Mulcahy, the managing partner of sun garden TIC. It's exciting for us to be here after a full year, actually today marks the date when we submitted our general plan amendment literally in 2010. We had unanimous support from the Planning Commission last month and we are looking for your support this evening. Our family in this site has a long history in the Monterey corridor. This is the former home to the sun garden packing company which ceased operations in 1987. During its heyday sun garden was the largest producer of total tomatoes and apiary cots application we acquired two additional pieces of land on the back side or the east side on the Union Pacific railroad, as well as on the South border of the site behind the -- where bold knight is today, another railroad piece. Early on, we also acknowledged that we would need to include a signalized entry here at cottage grove, as well as relocate the railroad arms back here on Alma. As well as make accommodations to a future three creeks trail along here on the south border. Our development plan and objectives are to fully develop the site and maintain a long term ownership, build a quality community retail center, introducing needed goods, services and infrastructure, for the surrounding neighborhoods. Acknowledge the site's important legacy and history in the architectural design, advance the Monterey corridor redevelopment plan and city policy for the preservation of employment lands and respect stakeholder input throughout our process. The entitlement process began as I said in May 2010. The

GPA and zoning have addressed CEQA through the EIR. Finding no significant impacts other than greenhouse gas emissions. The GPA is consistent with changes proposed by envision San José 2040. And the site addresses all city development policies. We've demonstrated community and neighborhood property owner support as evidenced by your packet here this evening as well as by public testimony you'll hear tonight. In cooperation and planning with parks and parks departments, save our trails volunteers we have managed to include a 600 foot segment of the three creeks trams as I have said earlier. We have had nine all hands meetings since February 2011 we have a good working relationship and appreciate their effort during this short staffed era. Consequently we have but one in this big project disagreement. And that is over the driveways that Mr. Horwedel pointed out. Ironically, this is the plan that we showed them back last year that I've since spent \$350,000 developing the plan that I've presented to you this evening. We've designed into our plan a total of five driveways fronting Monterey road. We need to retain all of those driveways, they are critical to the marketing of this site as they provide access and circulation for a tenant mix we tend to attract. There are three tenant driveways that are south of cottage grove. One two three. Those exist as they are today. You may remember redevelopment did a median project several years ago which accommodated this left turn here that you find. Our consultants, and if you'd like to hear from Gary black from hexagon doesn't see any issues with retaining all three of these driveways and we are asking you this evening to approve our plan with all five driveways as proposed. Monterey road is in transition and our competition in the retail market is fierce. Our project needs every edge it could get and these five driveways are no small measure of that. This project by today's estimates will drive over \$42 million in construction spending, and we're ready to move and be under construction in 2012. I wanted to just take a moment, and point out the folks that I have working with me on this project. The environmental consultant is powers and associates. Many familiar names to you. Hexagon is our traffic engineer. Architecture, Ken Rodriguez and associates. Engineering, Karen right, general contractor, Devcon, construction manager Ingram and associates and entitlement manager and my right hand, cord and associates. Thank you and we are here to answer any questions you may have.

>> Mayor Reed: Thank you. That concludes the public testimony portion of this item. If we have any questions we'll call you back. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. Let me just begin by thanking staff for working expeditiously for bringing this project forward. This project provides ample incentives, that's why council asks staff to expedite the process I also wanted to thank the applicant for bringing this wonderful project to the Alma community as well. Some of the surrounding communities as expressed by one of the speakers we have been looking forward to a project such as this for many years. And we all know that this area has its fair share of problems, problems including homelessness, loitering, lack of retail stores, among other problems. So this project is going to revitalize as well as bring much needed jobs to the area. As Michael alluded to earlier this is a \$42 million investment from his company along with the companies he's working with. What the city is anticipated to receive is over half million dollars a year and we are slated to receive about \$50,000 in city property tax. And then the things that I'm excited about the most is that the project is going to bring forward about 400 to 600 jobs both construction and retail jobs. By the time the project's completed. And so just talking about this, this is just really great economic incentives during a time when we really need to revitalize our city. The developer also included -- developer also mentioned the portion of the property to be part of the future three creeks trail, I know that my staff has been working with Councilmember Oliverio and his constituency, to move that project forward. And so I think that this would really help to increase walking and biking access for our residents in this area. Now, the planning director alluded to earlier there's one issue of disagreement and that is the number of driveways, five versus four. I support the applicant's plan to keep five driveways in this project. I really appreciate planning and D.O.T. staff meeting with my office many time over to go over this issue. But as I stated in my memo dated June 16th, 2011, the option for an additional fifth driveway will reduce traffic speeds, improve customer access, reduce the traffic load at the signal light intersection, attract retailers to the center and improve its economic strength. The additional driveways will also problem of to increase customer access which gives retailers the incentive to develop at least the space. Successful development in this center means more jobs for our community. I do not believe that additional driveway will jeopardize the pedestrian safety or significantly change the aesthetics of the center. They look forward to the business and jobs that will be created. Considering the difficult economic times faced by retailers across our region I believe we should give this center every tool it needs to be successful. So for that I'd like to move my memo dated June 16th, 2011 to include -- thank you. To include the fifth driveway.

>> Mayor Reed: Thank you. We have a motion on the floor. Is -- we have 10.2 and 11.3 and I want to straight make sure I've got this. The CEQA clearance and the CEQA motion resolved. Do we need to have special language, matching language included in 10.2 or 11.3 or both?

>> Joe Horwedel: For both Mr. Mayor. We did an EIR with statement of overriding conditions.

>> City Attorney Doyle: And the project the statement override needs to be read for that as well.

>> Councilmember Nguyen: And Mr. Mayor, I had statement I wanted to read for the project as well.

>> Mayor Reed: All right.

>> Councilmember Nguyen: All but one environmental impact can be reduced to less than significant level. The only impact identified as significant and unavoidable was the project's based upon information we have received there is no feasible way to lessen or avoid this contribution to one significant environmental impact. However approval of this project will result in several benefits for our city. Therefore I move as part of my motion that the council find that all of the benefits for this project will outweigh the one identified significant and unavoidable environmental impact for the reasons stated in the EIR resolution.

>> Mayor Reed: Okay, I think Councilmember Constant had the second so we have a motion on the floor. I want to disclose that in preparation for this meeting that my staff or I have talked with Michael Mulcahy and Henry cord on this project. I'm going to support the motion. It's exciting to see another significant retail project coming in because people love the services and we love the revenues. What's not to like about that? And the private sector investment many millions of dollars creating jobs all good. And I think councilmember, Vice Mayor Nguyen did a good job of summarizing the benefits of moving ahead with this. So I'm very happy to see this moving to fruition. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I too, met with Michael Mulcahy to briefly discuss this project. I did want to point out one of the reasons that I'm supportive of the additional driveway is, we saw the depictions, the aerials of the other centers. And what isn't really identified on the picture is the fact that in market center there's four other entrances that aren't on the frontage that give access to the property. And on the plan there's at least six that I know of that aren't on the frontage that give access to the property. When you look at the subject property here, there's only one additional driveway, and it's actually to the rear of the building, which is more of a service access versus a customer access. And it's for that reason that I strongly support having that additional driveway, because I do think given the successes we've seen at this exemplar properties that are very similar, the traffic count is going to be high, and it's going to be important to effectively move those vehicles in and out. So I wholeheartedly support the plan.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I support the general direction as well, I just had a quick question. I don't know if this is for Rick or for Joe. But I know we've had issues come up before where we tried to be directive around site plans at the rezoning and plan -- general plan amendment level. Do we have jurisdiction to do that?

>> City Attorney Doyle: I think the planning director usually takes as advice and --

>> Joe Horwedel: Well in this case you are approving a planned development zoning so that is one of the criteria or one of the categories of things we deal with, with the planned development zoning is access points.

>> Councilmember Liccardo: Okay so PD zoning we can weigh in.

>> Joe Horwedel: It is within the realm of the council.

>> Councilmember Liccardo: Great, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I agree with the what Councilmember Constant was just mentioning about extra access that other centers have. However I do understand some of the concerns as I drive North on Monterey every single day and I know that there's always concerns in that far right lane when people are going out and in, it does have a tendency to kind of clog up traffic. My question on the applicant's suggestion, that left turn in, is that suggested to be just left turn in or is that also left turn in right identity? On the three driveways, the middle driveway they have the left turn in.

>> Manuel pineda, deputy director, Department of Transportation. There would be a left in right in right out so there would be no left outs.

>> Councilmember Kalra: It would be a left in but also right in right out?

>> That is correct.

>> Councilmember Kalra: And then the first driveway would be under their plan the right in right out only?

>> That's correct.

>> Councilmember Kalra: You know I have -- I think there are issues of having the driveway on the far right being strictly a left in when you still haven't even gotten to the right in driveway yet. And anyway, I think that -- I understand staff's concern. I think staff's plan could cause even more of a clogging but again that's anecdotally driving down Monterey. I do think right in right out with left in could cause some issues as well. There may be some traffic issues here no matter what just because of the level of traffic on Monterey but I think I'm comfortable with the plan as the motion lays out and I'm sure we'll figure out and oftentimes some of these commercial complexes, the management kind of sees how the flow is and they can adjust accordingly in terms of right in right out or limiting some of that, particularly would I think about limiting right in, on that left turn in. But you know we'll

see how the traffic flow goes. But all in all I think this is great to see particularly in district 7. I think we have now book ends with the plant obviously a much larger complex than this over here, I think that's a really good sign we can encourage folks all we want but the fact that Mr. Mulcahy and the other folks involved that are willing to invest, people don't invest unless they see there's an opportunity there. It's a great sign for our city, our economy, I appreciate the investment. I hope as much as possible the design itself incorporates some of the history of the site which I'm sure Mr. Mulcahy already alluded to so I'm sure that will be part of it and finally I'm very appreciative of the trail portion of the plan here in hope that as that's developed that there's some intelligent way of kind of incorporating the bicycle pedestrian access from the trail as well as from the street side into the prompt as well so that people can easily access the center on foot or on bike as well. Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I do have a questions for the applicant and I don't know if it's for Michael or for Gary Black. But it's about those two I guess southern most driveways and it's just given that I'm not a planner or developer I had a question for the necessity of the two next to each other and why you couldn't eliminate the southern most just in terms of flow for the site. So if I could just understand that.

>> Joe Horwedel: I maybe answer, staff may want to come down, for truck access, to serve the site, you do need to bring semis in. The southern access the way to do that.

>> Councilmember Rocha: Not the northern way?

>> Joe Horwedel: From both ends the northern on Alma and the southern.

>> Councilmember Rocha: Great that was it thank you very much. And I'd also like to say thank you for investing in San José. Given the difficult times we're facing for anyone to have private investment is greatly appreciated. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. There have been many compliments for the developer. They did purchase land from the railroad, they did leave it so there was access for the trail. The land was not purchased cheap, the railroad is tough customers on the purchase of their land. Really appreciate the gift they're giving, because frankly somebody else could propose to do absolutely nothing as we have seen on the trails in the railroad areas. Thank you.

>> Mayor Reed: That means the people from District 6 can walk over there to shop, right, on the trails. Right? Good. Okay, we have a motion on the floor. Finish our testimony. All in favor? Opposed? None opposed, so both the general plan amendment and the rezoning are approved. Anything else we have to do on this item, staff?

>> Joe Horwedel: I'm sorry?

>> Mayor Reed: Rezoning and general plan both are approved.

>> Joe Horwedel: Yes, got the vote.

>> Mayor Reed: All right. Then we'll move to item 11.1 that's the consent calendar. There's only one item on the consent calendar, that's a project at toy lain and Kettmann road. Motion is to approve. All in favor? Opposed, none opposed, that's approved. Last item is the 11.2, administrative hearing and consideration of appeal of the Planning Commission's decision to deny a conditional use permit in determination of public convenience or necessity.

>> Joe Horwedel: Mr. Mayor, this is an appeal of a denial by the Planning Commission and as the council is aware, our zoning regulations do require denials for offsale alcohol in certain situations and this is one of those. Staff is recommending approval of the offsale license, essentially upholding the appeal. The Planning

Commission in their deliberations recognized the commercial use of the grocery store use is important to the community. That is the position that staff has taken. In looking at offsale licenses, that we do recognize that certain areas of the city are much more sensitive about offsale alcohol. Staff's standpoint is that we have been very supportive as you've heard us say for full service groceries and that Mi pueblo is a full service grocery. They have a very good track record of operating grocery stores around the city so staff is recommending approval of the offsale license.

>> Mayor Reed: Thank you, I have cards from people who wish to speak. I don't know who the applicant is, or if there's somebody here who is representing the applicant. The applicant gets some extra time since they're appealing the decision. We'll hear from the applicant, we'll take the public testimony and we'll let the applicant have the last word.

>> Good evening, mayor, Vice Mayor, councilmembers, staff. My name is Berla Rodriguez, I'm vice president of public affairs for Mi pueblo center. We are a Fannie Mae family grocery center, founded here in the City of San José. We currently operate five stores in San José and as of this week, 21 stores in Northern California with over 3,000 employees. As you've heard from the staff report our stores are full service grocery stores and they're known for the variety of fresh departments including fresh produce, meat, seafood, bakeries, Delis a whole variety of fresh items and this evening we'd like to ask for that same opportunity that other grocery stores here in the City of San José have, which is to be able to sell alcoholic beverages for offsite consumption as a convenience for our customers who want to do all of their shopping in one convenient location in one particular store. Their local neighborhood store. The location that we're talking about, this evening is a location that we opened in November of this past year, 2010. It's located on story and white road. We celebrated the opening of this store hired over 100 new employees here from the City of San José, and invested several million dollars in bringing this property up to par. Before this location was a Suviaanda market and unfortunately failed and before it was an Albertson's who had a not so good track record and failed. Both of these grocery stores sold alcohol for offsite consumption as every other grocery store here in the City of San José. Unfortunately during the long lapse of time from when Suviaanda closed and Mi pueblo opened, the license wasn't able to be transferred and that's why we're here this evening. This evening you'll hear from a number of residents in the community that support Mi pueblo. Because of

our service to customers and service to the community at large, we are known as being very family oriented, very, very safe and you'll see from the testimony this evening that there's ample support for this particular license because people feel that they need to have a one-stop convenient shopping location. In the past, over the last few weeks, through the Planning Commission meeting as well, the city has received other letters of support from the Lynndale neighborhood association. The Alum Rock business association, the national Latino peace officers association, as well as the owners of the shopping center who feel that it's very important to support our store because we are the new anchor tenant. The message that you'll hear tonight I think is fairly simple. I'll keep it to three things. One, Mi pueblo is a very responsible operator that supports the community. We have a good track record with the police department and other organizations. Members of the community number 2 believe that the grocery store is actually a preferred location. If they were to buy an alcoholic beverage they would prefer to buy it at a grocery store than they would a liquor store or another establishment. In district 5 there was recently an online poll that demonstrate they had and showed ample support for this particular issue and Mi pueblo. And lastly you will hear from members of the community that they'd like to see the shopping center thrive. They've seen it struggle, bring that stability that we've brought to other shopping centers. In closing, you know, these are tough economic times, for local governments, for small businesses, for businesses like Mi pueblo. We've seen a lot of grocery stores struggle and fail over the last year or so, a few examples, the closure of PW markets, the closure of Cosentinos and just the past week the closure of two save marts. Most important we ask you to support this request because of our customers and them wanting the convenience of being able to do all their shopping in one location. Thank you very much. For your time. And I'm happy to answer any questions that you might have.

>> Mayor Reed: We'll have to come back if there are any questions. You've saved a little bit of your time. We'll let you come back after the public testimony is done so thank you.

>> Thank you.

>> Mayor Reed: Alofa Talivaa, Christina Duarte and Myra Nava.

>> Good evening, mayor, City Manager and city council members. Alofa Talivaa, representing the Sierra neighborhood association. And I'm here to speak in favor of supporting Mi pueblo food store. And I personally went to this store on white road and take a look around, inside and out. It was clean, free of graffiti, and it was like a welcoming, warming, you know when I step in, in the front door, of this store. You know they have that you know welcome you know inside the store, and I like the vie vibrance, the colors in the store the things that Mi pueblo stands out for, celebrating the 680 SNI, National Night Out, they're there for us. If they're there for us, why not me being here for them? They are providing scholarship. This coming week over 100 young ones that they are providing scholarship for them. And that is what it's all about, you know? Businesses, they know how to give it back to the community by rewarding the young ones by providing you know the scholarship for them. That the family cannot afford to do for them. The other ones too, they participate in donations over 100,000 to Haiti, when they got hit with the hurricane over there. These are the people they know how to give and the more you give the more blessing that you're going to receive. And these are the people that would love to support and you know they do everything there for the community. They know how to give it back, especially the young ones, you know, they're there when we needed them. And I'm here, you know to urge you you know to please do the same. Vote yes in supporting you know Mi pueblo food store. And what a better way? Because the owner of this store he was a teacher himself.

>> Mayor Reed: Sorry your time is up.

>> I have letters 1161 petitions of the port. Thank you mayor.

>> Mayor Reed: Christina Duarte, Myra Nava, frank Cortez.

>> Good evening, mayor and councilmembers. Hi my name is Christina Duarte. I'm ten years old. I live in the neighborhood. I'm supporting Mi pueblo food store because they do care for young people like me. In 2011 the Mi pueblo scholarship program will provide \$200,000 in the college scholarship. This is what it's all about, education. I want to go to college. Please vote yes for Mi pueblo. This is what it is all about. Education. Thank you.

>> Mayor Reed: Myra Nava, Frank Cortez, Elsie Arranda.

>> Good evening, mayor, Vice Mayor, City Manager and all councilmembers. My name is Myra Nava and I'm with the Asian American center of Santa Clara County. In the community we're known as ASK. We're here I'm going to cut straight to it. Support of Mi Pueblo. You've nail Chavez, because of his support we have been able to see 300 students in the past nine years to become nurses doctors police officers, supporters employees of the city council. Supporters of the community. That man has nothing but respect and honor for the community. He has employed over 500 of our adults and families, he teaches to give back and not to forget where you have come from. This year I've had a lot of criticism, I'm not saying I've crossed over but I'm now working in district 7. I have been asked and appointed to help with a gang problem that there is ownership there. I've worked for the past 30 years in the east side foothills, been very successful with what we do. Now I'm in district 7 and it's such an honor to be working in the Franklin McKinley Oak Grove school distribute. We are having great success. We're getting slashed with our fund being but we're not going to stop what we're doing. With Mr. Chavez's help and support, he is such a supporter of antigang violence, child presentations in the community he has provided us with everything that we need when we ask. He has opened his doors to the Asian community. If you go to the torts you see a lot of the Asians that go there. Because what we want to do is build a bridge with the police department --

>> Mayor Reed: Sorry your time is up.

>> Frank Cortez, Elsie Arranda.

>> Good evening, Mayor Reed and members of the city council. My name is Frank Cortez. I'm president of the Alum Rock business association and as a small business owner in the Alum Rock area, I know how difficult it is to succeed. Small businesses like Mi pueblo are challenged to be profitable in these days. I ask you Mi pueblo Mt. pleasant customers should have the right to get everything on their shopping list. Mi pueblo is a generous business other than in the City of San José. The city should demonstrate the same generous spirit and grant them the use permit which allows them the convenience of one stop shopping that customers expect. Mi pueblo is

excellent example provide good jobs for many. Please show Mi pueblo foods that the City of San José appreciates them and wants all of their stores to be full service and successful. Thank you.

>> Mayor Reed: El Sea Arranda, Frank Castillo and James barns.

>> Good evening, mayor and members of council. My name is Elsie Arranda, I'd like to take you back to the invocation by the rabbi. You are here to protect us to champion our causes. Hearing Mi pueblo good community group to work with, they are, they absolutely are. But community collaboration does not demand payment back, when your integrity and what you stands for comes into play. You all know where we live. Just on that corner that they have, you can cross the street and get liquor at nine other locations. Across the street. Not down the block, not get in your car and drive away. They've got king and story sells alcohol, they've got McKee and capitol sells alcohol. They are asking for 3%, the memo that was put out last month gave them up to a maximum of 5%. When we contacted them to come to our NAC meeting to speak on this they said they didn't really rely on the sale of alcohol to make their money. The question that was put to them, if that doesn't impact you so much why is it that important to have it? We have an excessive amount of alcohol sales in East San José. We all know that most acts of violence start or precipitate some sort of alcohol use. Our problems are not just our problems. Our problems drive into your districts. You are all feeling the effects that we have been feeling for years. I implore you to vote to keep one more permit identity of east side San José. What is the price of competition? Drunk driver? Someone getting hurt, someone getting killed? What is the price? Where do we put a limit at? This is -- we've stood the same place for ten years. At our NAC meeting in June we discussed it with the presidents that were there. We have Casel neighborhood Dorsa --

>> Mayor Reed: Time is up.

>> You guys got the letter you know who supported it. Thank you.

>> Mayor Reed: Frank cast teal oh, Alex harm,.

>> My name is Sammy Castillo. I have a meeting for the mayor. Aaron has had a catastrophic problem, and he's asked me to take his place today. And he would ask if I could speak a little bit longer. And this was like caught me by surprise so I'll try my best.

>> Mayor Reed: Two minutes.

>> Two minutes I can't have anymore?

>> Mayor Reed: Two minutes.

>> Okay, okay. Number one, I don't have a problem with Mi pueblo. They are a good store, they sell good products. But at the perimeter we made a study over a mile there's over 100 people that sell liquor around the area. There was other studies made around the United States that where the Latino population have -- they have more problem with their liquor than anywhere else. And would I like to see the license not issued out, because we have enough liquor already being sold. It's not about Mi pueblo doing a bad job. I agree with everything that other people said about Mi pueblo. They're a good store. They don't seem to be struggling, by not selling alcohol. And I don't believe they need the liquor license. And I would love to see the east side of San José be like the west side of San José where people can actually walk in peace, and harmony, and also, this also reflects to the family values of the community. I don't have anything against anybody but I would -- I don't need any more liquor license. And with that I'll just leave my whatever I had to say. And I really don't agree with it. So thank you very much.

>> Mayor Reed: Thank you. Frank harms, Alex Hernandez, Ernesto.

>> Good evening, mayor, good evening councilpeople. My name is frank harms. Basically on December 1st, the truck drivers from Mi pueblo won an election to organize and to put in a union. Unfortunately, you know, he does not like unions. That's why I feel that maybe Cosentinos, Linardis and everything have gone down, due to the fact he pays his people a butcher there approximately gets \$10, a union shop he gets \$20. Do the math. If he comes

in and we give him a liquor license, it's going to be a monopoly at the end of the day. Please think about it. I urge you to vote no. Thank you.

>> Mayor Reed: Alex Hernandez and Ernesto.

>> Good evening, mayor and city council. I'm here representing the community and I want to say no more the alcohol license in district 5. So right there on the corner Mi pueblo is located at story. They have a CVS, they have another restaurant the shopping center that's selling alcohol. When I go another across the street they have a Safeway, CVS, liquor store, like eight people selling alcohol license in that area. So I don't think we need more alcohol license to problem of to Mi pueblo. So they have a lot of humbling in that area, they have a lot of crime, in San José they have 27 crime already what's going on with the crime? Alcohol that's the problem. So as we here we say no more to alcohol license so I would appreciate it that you support the community so listen the to the community we are the people that don't need a alcohol license. We support the community and want to say no more alcohol license, that we say, and one of the promise that Xavier Campos saying, no more alcohol license in district 5. What's going on? He say he support the people to Mi pueblo to selling alcohol license. Where is the promise? He say no more alcohol license in the campaign in out, so thank you.

>> Mayor Reed: Ernesto that's the last card I have.

>> Good afternoon, mayor and every member of the council. And I hope you understand my English, not that good but I mean, we don't need anymore license for alcohol in the east side please, because you see, especially on the weekends and every single day. I don't know you been around the East San José especially in story and white and all those ones. This creation of drivers every single day and we have kids and they dangerous. I mean they -- and big, big trouble with those, I understand you know the food service and everything that's fine. But I mean they don't need alcohol license to do that. I'm pretty sure their business they don't need that and I accept to you guys and it's in your hands because a lot of things happen like that in all over San José now. And that going to give no more license for alcohol anywhere. Thank you.

>> Mayor Reed: That concludes the public testimony. Did the applicant want to use the last 45 seconds of time to comment on the public testimony?

>> Clarify a couple of points. Ms. Elsie Arranda talked about only 3% of our square footage of the entire store is devoted to the sale of these alcoholic beverages. That is correct, 3%. I want to point out somewhere between two to 4% depending on what the stores we're talking about that is the total of what the sales might look like only 2 to 4%. While it is not significant the reason it is important to have this particular use permit is customers will shop at a store because they believe they can buy everything they need in one particular shopping trip. And so the importance is behind that ability to be able to do all of their shopping in one location. Not so much because of the dollars or the sales that are coming into the store. It's really critical for any full service grocery store to be able to capture that customer. And without it, we truly won't be full service.

>> Mayor Reed: Okay, thank you. That concludes the public testimony and the applicant's presentation. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. And first of all I just want to thank the community of District 5 for coming out tonight. And voicing your concerns. I think as my colleagues can see, there are very many members of the District 5 community that have differing opinions on this. And those of you, including the director, probably remember, my position with alcohol in general as a Planning Commissioner. But one of the things that I've always looked at is there are places that are, if we had to put a scale on appropriateness of selling alcohol for consumption, you know, we have to look at our full service grocery stores. This is a 40,000 square foot grocery store. I think through this process, and when I was on the Planning Commission, we found some flaws in our process. And this is one of them, the automatic denial for everyone, if you have census tracts that are at their threshold of licenses or even beyond their threshold of licenses, and this is one of those census tracts. What I am concerned about is that we send a bad message to businesses that are looking to make San José, expand in San José or make San José their home, large retailers such as, in this case in Mi pueblo or a save mart or Safeway. If this is part of their product line that they are going to run into this roadblock and it will send more of a message that San José is just not business friendly. And I don't think that that's how we see our city. And I think that there

are ways that we can provide opportunities for retailers such as Mi pueblo or other large grocery stores, to be able to not have so many roadblocks in front of them to do business. Now, with that said, I do see an issue of overconcentration, not just in district 5, in many other council districts. But I think that we need to make sure we focus on the retailers that are really good retailers, and they're doing their due diligence, to make sure that they are protecting their customers. That they are protecting their neighborhoods. And actually, contributing to those neighborhoods, and make their neighborhoods clean, and vibrant. And I believe in this case, we have a retailer that's doing that. As a matter of fact, it is the anchor retailer. I do want to spend a little bit of time talking about the overconcentration, in this particular census tract, there are and I believe I saw it in the Planning Commission staff report, that there was two off-sale licenses that were actually double counted. One was for supermercado Mexico. Which doesn't exist anymore, it is actually a Santa Fe market. The other one is the big lots, that one is still live, am I correct director?

>> Joe Horwedel: That is our understanding, it is still active.

>> Councilmember Campos: That one is still live. However when I got elected I was asking different retailers to look at -- look at not just San José, to you know, to bring business to, but to district 5. And I brought them to the big lots site and the first thing that they told me is that in their business, they considered the big lots site -- they called it a coffin corner which basically they told me you're not going to get a commercial market or retailer like CVS or big lots to come back there. Because it was in a corner, and there's just not enough traffic, not enough visibility for anyone to survive. And you know big lots is an example of what happened. So I believe that that license probably will go away, at some point, or big lots, since they own the license, will probably look at another site if they decide to put another store in San José. Which brings mi pueblo at that threshold of the census tract. I tell you one of my concerns. Would I rather see a full service 40,000 square foot grocery store be able to provide the full service of shopping to their customer, than seeing a gas station come and apply for an offsale license. And those of you that know that corner, there is a 76 station that has a mini mart and I just tell you, it will just take time for them to approach the Planning Department with intentions of wanting to not just expand the gas station, but in order to expand it they're going to make the argument that we need to be able to sell alcohol. And we've seen that throughout the city. On another note, another gas station owner approached me about supporting the offsale of

alcohol if he were to expand their existing gas station at the corner of story and Jackson. I told him I wouldn't be able to support that. So I think there are appropriate places for the offsale of alcohol and I think this is one example. I asked my colleagues to support this. And to find the -- to be able to see that the planning director has made the finding to make a determination of public convenience on it. So with that I move approval of the staff recommendation.

>> Mayor Reed: All right, we have a motion on the floor. I want to disclose that my staff met with pearla Rodriguez in preparation for this meeting and I want to thank the juvenile Chavez and the gaffs family with their investment in San José with multiple location employing hundreds of people, this center getting a live business in the center so I'm going to support the motion and second. Councilmember Constant.

>> Councilmember Constant: Thank you mayor. In the time I've been here we've had lively discussions on alcohol licenses. But the one thing we've agreed on is the best place to sell alcoholic beverages is in a full service market. I think that's probably the only ones where we've been unanimous because we've had some pretty engaging discussions about all the others here. And I think that it has been a very clearly stated council policy, by action, that that's where we would like to see them. So while I know the area out there pretty well and I know that there are a high level of alcohol outlets there, this is the type of place that we should be encouraging to have it. And the more venues like this, the less the other ones are going to succeed. Quite frankly. So I do support it. And I have to ask the same question I do every single time we do these, how do we do this instead of having the unnecessary stall that including us?

>> Joe Horwedel: It's going to be this fall.

>> Councilmember Constant: I know the answer but I keep asking it. Thanks.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. I just wanted to put a point of emphasis on Pete's point. I think I have never seen anybody on this council vote against a grocery store getting an alcohol permit because we have all been so starved for grocery stores in the city. I represent many neighborhoods that have many of the same challenges as we see here at story and king or story and white, rather. And certainly, very mindful of the problem of having too many liquor outlets, it's an ongoing challenge in our downtown that's why I've never voted for a single liquor store C.U.P. anywhere in my district or any gas station, I've discouraged it everywhere with the exception of two grocery stores. I think that's something we've been very consistent on because of the importance that grocery stores survive. I've spoken with pearla Rodriguez, I remember pearla mentioning this store's revenues have been down 25% compared to the other stores, something to do with the fact if you are able to offer the beer, folks will do the rest of their shopping there. I understand it's a competitive advantage to be able to offer everything. So I will be supporting the motion.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Just want to disclose my staff also met with pearla Rodriguez and also want to thank Councilmember Campos for working really hard to attract more businesses to District 5. Obviously this is something that more than happy to support even though I'm not a big fan of supporting alcohol. But I think that this is something that our city needs in the district.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor. I just wanted to say thank you to the community for coming out. I grew up in East San José and so I'm well aware and very conscious of the struggles in trying to -- in having so many opportunities to purchase alcohol. But I have to say in my district which adjoins district 5 we're now looking at two new grocery stores and part of the reasons we get those grocery stores is they have the ability to compete. Even though I'm steadfastly opposed to gas stations having alcohol or any of the other entities that come and want alcohol I think it's really important to have grocery stores. We lost two of them and that deprives people in communities of being able to get fresh fruits and vegetables, of being able to have the opportunity to

purchase at a reasonable price and it's not good for the community to not have grocery stores. So I think this is a way of making sure they can compete and I support Councilmember Campos and I appreciate your explanation, your thoroughness and looking at the current concentration, this will probably result in about the same in terms of other stores not having liquor licenses so I will be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. Joe, before mi pueblo moved in in November, how long had this site been vacant?

>> Joe Horwedel: Yorn. Suvianda was closing down their stores about a year ago as they were winding down their operations.

>> Councilmember Kalra: As Councilmember Campos indicated, it's important enough to have lively discussions, and I think all of us have shown time and again to look at this very carefully, in the couple of years I spent on the Planning Commission with Councilmember Campos, there was no one who voted against the C.U.P. of sale of alcohol than him. He was steadfastly against the sale of alcohol. A few of us have already mentioned, when it comes to a full service grocery store, stand alone liquor stores cause many problems in the neighborhoods including loitering, including drug dealing you name it you can go down the list and part of the problem is not just the owner of the stand alone stores, they don't have a monitor right outside the store front. But in full service stores you're not going to have that kind of activity, you're not going to have people that go in there that are going to be unmonitored. I put my Planning Commission hat on and I actually visited the store and it's a beautiful store and the first thing that really caught my eye was the progresso financeiro. In a responsible manner as opposed to payday lenders. That told me a lot about the business. Extremely clean, vibrant, because I agree that we need to reserve this for grocery stores, it also depends on who is operating them, how good responsible and serious they are about having good solid management. There is no doubt that the mi pueblo here at that site is an appropriate full service grocery store and that if we have issues with C.U.P.s we should certainly be focused more on the stand alone liquor stores, which I think all of us know in all of our districts there are probably some that have

caused issues. So with that I'll certainly support this motion and I appreciate all the community members on both sides of the issue coming out here and appreciate also the work that mi pueblo has done for the community that both sides have recognized.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. Hey Rick we had these conversations multiple times and we know we have a proliferation of these we wouldn't vote for all of it. Being that said that neighborhoods have a tremendous number of stand alone liquor stores how do you get rid of them? That's a pretty blown question, I know I support the local economy and the ability to sell, but we would have a better community if alcohol was served with food or a grocery stores. Do cities have the power to close liquor stores?

>> City Attorney Doyle: Short of finding nuisance and problems with the operation of a business, which would be true of any business whether they sold alcohol or not you would have a serious taking issue and constitutional problem and unless you're prepared to write big checks, no. So you know I think staff has really looked at this, and we do have a fairly aggressive policy when we find businesses that are in violation of you know C.U.P.es or whatever they're doing that constitute a nuisance and I think it really comes down to enforcement. I know Oakland has had bigger problems than we have and have tried certain things. But we do have a nuisance statute that we you know we can use. But you know the mere presence of the liquor store or a business that sells liquor in and of itself isn't a problem.

>> Councilmember Oliverio: Would it be considered a taking if --

>> City Attorney Doyle: Yes.

>> Councilmember Oliverio: Hold on. Would it be considered a taking if a council passed a policy where we wanted code enforcement and or a shopper program to just focus on stand alone liquor stores for underaged sales for example if that liquor store had sold to minors it would be closed?

>> City Attorney Doyle: You're exercising your police power in enforcing laws and protecting health and safety. To the extent you're telling code enforcement to be aggressive about enforcing the law then you can move on that. It's where you're just sort of arbitrarily going out and just deciding to close down businesses, that's where you get into trouble.

>> Councilmember Oliverio: Okay, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I have comments somewhere along that same line. But I do want to say I really appreciate the fact that everybody's here today because that shows you're really involved in your community, you care about where you live and you care about a good life for everybody. I have to say though that when it comes to grocery stores how do you say yes you can go ahead on the east side or on the west side, can you have alcohol in the grocery stores but you over here on the east side can't? How do you -- how do you show equity in that? I would Dave say it would be nearly impossible. But one thing that can be done is to find a way to report any transgressions on the part of the other -- I don't know how many grocery stores there are. From what I'm hearing it's quite a few. But if you are aware of situations that are not right and you can report incidences, that would make more sense to me. If people are violating their duties as a person that owns a store, then that needs to be discovered and treated. I don't think at that point that would be considered misuse, would --

>> City Attorney Doyle: No, it really gets down to enforcement of your municipal code and state law sometimes. The police deal with issues, where the ABC -- with the ABC usually where it comes to sales to minors or illegal sales. To the extent there are nuisances and the types of issues that come up from time to time, code enforcement as best they can try to deal with that issue.

>> Councilmember Pyle: I want to congratulate Xavier on the thoroughness of your work, you did a great job.

>> Mayor Reed: That completes the comments on the floor. Councilmember Campos did you get the last words?

>> Councilmember Campos: Yes, I want to disclose my staff did meet with represents of mi pueblo.

>> Mayor Reed: On the motion, all in favor, opposed, none opposed, the motion the approved.

>> Joe Horwedel: Mr. Mayor, we do need to close the general plan hearings. I don't think we did that.

>> Mayor Reed: Okay we have a motion to close the general plan hearings, all one of them. All in favor, opposed, none opposed, general plan hearings are closed. That concludes our council meeting except for open forum, Mr. Kennely, come on down.

>> Well, good evening, Mayor Reed and the city council. I'd just like to bring up an issue I have about billboards, and what I see is harm that's being done that could be done and generated by certain types of billboards that I see and I understand that there's probably laws of commerce and freedom of commerce. But there's a specific billboard that I've looked at on the corner of Ray street and the Alameda that's advertising a product a certain depiction of a product and if you look at I see this clearly but if you look at it there's another picture there but very ugly and revolting reptiles, a snake, embedded in in this sandwich. I've seen other products that have certain other depictions of harm or things that generate fear and apprehension that are put on billboards. And sort of a surreptitious and covert way. And that's why I'm here I would just like to know if the city council would like to look at that when they have time and think if it's -- consider whether it's important what it does to people when they look at it, children, seniors, the mentally ill, people with sociopathic tendencies. It's very ugly, it's covert, it's underhanded, it's dishonest, it's on the corner of Ray street and the Alameda and it's a picture of a gigantic ugly snake stuck in a sandwich. Well, look at it and seize what you think what could be done about this. Whether there could be a committee or something of citizens that could look at these billboards because I've seen a tendency the last eight months of billboards being put up to sell products that go beyond I believe standards of humor and normal standards of selling. I'm concerned about billboards, billboards that can create a lot of damage to people.

>> Mayor Reed: Sorry your time is up.

>> That's it.

>> Mayor Reed: That concludes the open forum. That concludes our meeting. While we were working summer arrived so go out and enjoy it. We're adjourned. [8:16 p.m.]