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>> Mayor Reed: Good morning. I'd like to call the San José city council meeting to order June 15th, 2010. I'm sorry we're late, trying to be early. We are starting earlier than usual because we have a very long agenda today, and we'll do it again next week to get all of our work done before the July recess. Started with the closed session. We'll have a report out of the closed session in a moment. First we need to take up the orders of the day. Have a couple of changes from the printed agenda. Items 2.3A and 2.3B rules reports for May 19th and 26th will be deferred for one week. Item 8.2 on the redevelopment agency agenda, amendment to the inclusionary housing policy, will be deferred one week. One other change in the order of business today, 11.6, the Diridon station supplemental environmental impact report, will be heard first in the evening. And we hope to be done with the afternoon session. No promises, got a lot of stuff to do here. Any other changes on orders of the day?

>> Councilmember Liccardo: Mayor.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: On item 11.2, I'd request a continuance until August.

>> Mayor Reed: 11.2 is rezoning on the West side of north 3rd street.

>> Councilmember Liccardo: Yes.

>> Mayor Reed: And Hensley. Do we have a date in August? We can take that up at the Rules Committee meeting, we can pick a date.

>> Councilmember Liccardo: That will be fine.

>> Mayor Reed: Okay, so that will be continued until August, 11.2. Any other changes under orders of the day?

>> Move to approve.

>> Mayor Reed: I have a motion to approve orders of the day, all in favor, opposed, none opposed, that's approved. Closed session report, City Attorney.

>> City Attorney Doyle: Mayor, we -- the council met in closed session this morning pursuant to notice. We were given authority to file a complaint in one action. We will reveal the name and the title of the action upon filing, upon request.

>> Mayor Reed: City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. It gives me great pleasure to introducing to you, City of San José's new fire chief, Willie McDonald. As he's coming down I'd like to say a few things about Willie and acknowledge that his wife Barbara is here with him today. Barbara, if you could please wave to the council. Willie has more than 30 years of progressive experience in the fire service, with the majority of his career spent here in northern California. Early in his career he served as firefighter, paramedic, engineer, captain, assistant training officer, and deputy fire chief. For the last 17 years he has served as fire chief in three Bay Area communities: Fremont, San Mateo, and Foster City, as well as most recently in Scottsdale, Arizona, his current position. In Scottsdale he led and managed the city's transition from private fire protection to the city's first service municipal fire and emergency services department. He also created the city's first performance-based emergency ambulance service model with standards based on clinical criteria and performance measures. In addition, he instituted a fire department labor management team to foster a positive relationship with the fire employees. Other highlights of his career include the creation of a joint powers authority for emergency medical services which brought every city and fire department in San Mateo County together to provide advanced life support services which also led to a public-private partnership for emergency medical services across the county. Willie has a reputation for building strong relationships with community members, business and with fire department employees and labor. Notably he has emphasized to me his strong belief that a positive relationship with the fire union is the key to a successful organization. He holds a master's degree in business administration from CSU East Bay and a BA from biology from CSI Fresno. Willie is also a graduate of the executive officer

program of the national fire academy and the Harvard program for senior executives in state and local government. Willie will replace Darryl Von Raesfeld, who begins a well-earned retirement at the end of next week, after 33 years in the fire service, tremendous service to the City of San José. And Willie will start his new position with us on August 2nd. Please join me in welcoming fire chief Willie McDonald to the City of San José. [applause]

>> Willie McDonald: Thank you.

>> City Manager Figone: Willie, just a few comments for the council and the public.

>> Willie McDonald: Thank you very much and thank you for the welcome. Mayor Reed, members of the council, I can almost not tell you how excited I am to be here and how honored I am in your confidence in me to lead the San José fire department. I wanted to be here for a long time and this opportunity for me is the pinnacle of my career and I really am looking forward to joining the family and working with the incredible members of the organization. So thank you very much for inviting me here and thank you for this opportunity.

>> Mayor Reed: Thank you. We're delighted to have you.

>> Thank you. [applause]

>> Mayor Reed: Anything else from closed session report? All right, we will take up the consent calendar. Before we do that, I just want to talk about the order of business today, it's in the agenda but it is different than we usually do it. Because of all the things we have today. So we'll take up the consent calendar, and after that we'll do the redevelopment agency agenda items, including the joint agency agenda items which would be 8.1 and 9.1. Then we'll go back into the 3, section 3, which we're skipping most of everything on section 3. And work our way through the agenda as far as we can until we get time to break for lunch. We will take up the budget-related items of section 3 at 2:00 and continue working through the rest of the items on the agenda, whatever's left, there will probably be a lot of them before we recess, sometime before 7:00 so we can start again at 7:00 and we'll take up

the environmental impact report that we mentioned under orders of the day first under evening agenda, then the general plan change, the administrative hearings and rezonings. We will be done sometime before tomorrow. I'm not sure what time before tomorrow. So that's the order. It's out of order because we started earlier in the day, and we have a lot more on the agenda and we're almost into July, that's the good news. On the consent calendar, what I'd like to do on consent calendar is a little bit different than usual because of our time constraints. I'm going to take all the public testimony on the consent calendar first, and then the council can decide if you want to pull anything on -- for separate action. So Mr. Wall, you had several items on the consent calendar, so come on and talk, this is one action, so I'm going to give you two minutes.

>> David Wall: First I want to say I can see why the Arizona boycott was softened with our new fire chief. With reference to 2.3, the CED agenda, proved to cast Councilmember Herrera in a false light. She was not as late to the meetings as her contemporaries, Kalra. All being so horribly late for today's proceedings. The agreement with David Powers, 2.9 is an ongoing quasientitlement which I think the auditor should take a peek at. That says enough right there on that agenda item. Item 2.14, Senate Bill 974, I believe that the city should actually support this, because it gives more competition to the allocation of these tax credits, and as a function of education for our youth. In reference to 2.18, the low income housing credits, I think these developers have been given quite a perk with the City of San José for all too long. Each time they get these tax credits, they benefit immensely not only for the housing credits, but also pressures then put on the back door not to allow for the funding of public parks that are required for these projects. So neighborhoods suffer because of these things. There's a tremendous housing glut already, and I say there is enough low-income housing tax credit. And closing on that issue, governments need some tax revenue instead of giving it to developers. I believe that concludes the consent calendar issue. Thank you.

>> Mayor Reed: All right. Is there anything the city council would like to pull off of the consent calendar for further discussion? Councilmember Liccardo.

>> Councilmember Liccardo: Just very briefly, mayor, item 2.13 and item 2.21.

>> Mayor Reed: All right, 2.13 is the downtown property based improvement district and 2.21 is the traffic control program for outdoor special events. Anything else from councilmembers? We have a motion to approve the balance of the consent calendar. All in favor? Opposed, none opposed, that's approved. Items 2.13, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I just wanted to direct council's attention to this item briefly. We -- of course we will be considering the downtown association's budget allocation from RDA shortly and the success of this public-private partnership is really due to the leadership of the downtown association leveraging city and RDA property taxes along with city baseline funds with a significant amount of private sector assessment to pay for everything from the groundwork services to the planners, the vine beds, the murals, everything else we see throughout the downtown that has so beautified the downtown over the last couple of years. This is now going into the third year. We have seen 90% approval from the rate payers in the PBID. This is an extraordinary success. It's become obviously a model for the rest of the city, as other districts are now looking at this model. I wanted to commend Jim Ortbal and Janet Kerns for their hard work. I know they are members of this effort, I want to thank Scott Knies and all those from the downtown association for making this happen. I move to approve.

>> Second.

>> Mayor Reed: Motion to approve item 2.13. All in favor, opposed, none opposed, that's approved. Item 2.21. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor, I just wanted to briefly thank the folks who have been really instrumental in making all this happen on Paul Krutko's team, Kerrie Adams-Hafner and Tammy Turnipseed, for their efforts to try to move this forward to help some of our downtown event producers be able to produce without as substantial -- lessening the substantial charges that they're currently paying the city. I really appreciate their efforts to move this ahead quickly. I move to approve.

>> Mayor Reed: Motion to approve item 2.21. All in favor, opposed, none opposed, that's approved. That concludes the consent calendar, we'll now take up the redevelopment agency agenda. Take a minute for staff to change positions. First item on the redevelopment agenda is the consent calendar. Any -- having a request to speak on the consent calendar, none. Anything councilmembers wanted to pull for discussion?

>> Move to approve.

>> Second.

>> Mayor Reed: Motion is to approve the consent calendar, all in favor, opposed, none opposed, that's approved. Item 3.1, approval of agency budget actions.

>> Move to approve.

>> Mayor Reed: We have a motion to approve. Further discussion? All in favor, opposed, none opposed, that's approved. 3.2, it's an agreement to with San José downtown association for promotional and marketing consulting services. We have a motion to approve. I'd just like to add a little bit to the staff report. As a part of the communications working group that Michelle McGurk leads, the downtown association has been an excellent participant figuring out how we are spending our money, not just for the downtown association but for all of the organizations that are somehow involved in marketing. I do note that the proposed budget anticipates a 20% reduction from the '09-10 contract and that of course will cut into their marketing but they're working to raise additional funds from their members and sponsors, hope to maintain the level of work that they've been doing. But they've identified their key goals and metrics for the year ahead is to retain and attract tenants to fill downtown office space, facilitate selling or leasing downtown high rises, bring visitors to downtown for special events, generating sales tax revenues which we love. You can see their detailed communications and accomplishments for '09-10 that's posted on the city website, the downtown living campaign, the dine downtown San José campaign, downtown ice and music in the park are some of the more notable ones, as well as how they spent the

money. That is available as part of the report that Michelle McGurk prepared or the communications working group. So we have a motion to approve. Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to emphasize, despite this 20% cut, my understanding is, the downtown association's gone to their board, and they're going to do everything they can to fill the gap through additional commitments from private sector partners, from concessions from admissions, all the other activities that they're engaged in, they're not letting up one bit in the recession. We're very grateful for their leadership. In the last couple of weeks we've just rolled out through the downtown association, dine downtown, the downtown doors awards, starlight cinema, music in the park, and farmers fresh Fridays, that's not bad for a month's work.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First of all I want to recognize the downtown association for all the wonderful work that they've done and I appreciate the fact that the mayor outlined several of their accomplishments. But I think as we go through budget discussions and we have to as individuals, as each of us represent districts that have certain needs, we have to make tough decisions on what we're going to be placing as our priorities and where we're going to be casting our votes. So I will not be supporting this motion as of today, because for me, priorities tend to be more around Public Safety, gang prevention and intervention services, and spending money in the SNI areas. So I will not support the motion. Not saying that you haven't done great work, but I think through tough, difficult times we have to make difficult decisions. And so I wish you all the luck in continuing to promote in the downtown area. But my priorities really do at this point lie with the neighborhoods. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed, decades ago this city chose to reenhance and make a downtown core something special that we can be proud of. And I think we've come a long way in that regard. Certainly our city has many challenges, many areas that we are involved in based on our city charter but I

think clearly the Renaissance or the reevaluation of the downtown has been a pro, for our image, for our economics and several other factors. I really appreciate Councilmember Liccardo's stewardship of the downtown, coming after Cindy Chavez and David Pandori. I appreciate all the work that the downtown association has done. When I look at money spent, I don't know of many other groups that can make the money go further. So I'll be supporting the motion. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Mayor Reed: Also want to echo Councilmember Oliverio's comments and commend Sam Liccardo and his leadership in the downtown and the downtown association and just say that the events that were detailed there, helped create the soft scape as Kim Walesh often says that is very critical to a great city. I think it's important with all the investment we made in downtown that we really see the results of that and these kinds of relatively when you compare them to other kinds of expenses are not the greatest amount of money we've spent really create a lot in terms of improving life quality of life and really attracting excitement and hopefully more businesses and vitality to our city. I'll be supporting the motion, thank you.

>> Mayor Reed: We have a motion to approve. All in favor opposed Campos opposed so that passes on a 10-1 vote. Item 7.1. Approval of capital equipment assistance agreement with SolFocus Corporation for acquisition of capital equipment. We have a motion to approve. I have a couple of requests to speak. First, let me disclose that I have had quite a few conversations with Mark Crowley, the CEO, and Jim Kineen around this company, a company that's committed to relocating its corporate headquarters in an R&D prototype development facility to a vacant building on Zanker Road in North San José. And we're very happy to have them moving into our city with an additional solar company here, and I know that they're going to grow. Not only are they going to stay here, they're going to grow here, and we really appreciate that. This is a company that has grown quickly from its founding in 2005, rapidly from startup to a emergency growth clean technology company spurred by commercialization of its solar energy system. We have other solar companies in the city. We're not trying to decide who's going to win. It is a highly competitive marketplace. SolFocus has got a great product and a great company, and we appreciate their interest in being in San José. And I'd just like to note that they've been able to

take advantage of our special tenant improvement program, and they're not the only one. Since January, there have been -- the staff has handled more than 500,000 square feet of development for companies like Harmonics, Align, Spectrum Semiconductors and Western Digital, and SolFocus is just a more recent one. And that's really good, and I want to thank our executive director and John Weis and Abi Magamfar, Don Burris, Nancy Kline and Chris Burton for their efforts. Getting these headquarter companies is one of those big prizes for us. We do a lot of work at it, and it is great to see a successful company move into San José like that. With that, I do have a couple of cards. I'd like to hear from Mark Crowley, CEO of sole focus.

>> Thank you, Mayor Reed. Councilmembers. It's a great opportunity and we won't waste it. I'd like to thank the RDA team, all the hard work that's been done over a pretty long, pretty long time to get this up and running. Councilmember Chu, for helping us out through the process, to make sure we found an opportunity to move into a LEED certified facility within the city. We're excited about that and then the opportunity to take it a step further by actually putting solar in the parking lot, to help us go forward and hopefully achieve LEED platinum which is the kind of leadership we want to be able to bring in. Over the last couple weeks, we've been able to deploy the largest concentrated photovoltaic field in North America down in Southern California, and we're excited about the opportunity to leverage San José's solar America city capability initiatives and all the support that we believe will be mutually beneficial to growing our company as we go forward. We'll be consolidating from other cities in the Bay Area and then leveraging the size of our new facility to create an opportunity to grow the business. So with that perspective, I really want to say that we understand that responsibility, and we understand the benefits that we, hopefully, can bring to the city, economically as well as to our company as we go forward. Thank you very much.

>> Mayor Reed: Thank you. I had one question. I'm collecting superlatives about our solar company, and you just said one. I want to make sure I got it right. The largest solar installation --

>> The largest concentrated photovoltaic installation in North America.

>> Mayor Reed: Okay, I know I got all the adjectives in there. That's good. We like to be first in lots of things. So let me see if there's anybody else has any questions for Mr. Crowley? Do we have council questions for staff and questions? Thank you very much. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I just wanted to echo this is an excellent strategic use of redevelopment money to garner headquarters here to San José employment. SolFocus is successful in that they also export their product outside of this country, to Europe and Australia. And that is a good thing for us to have those types of companies. And I also believe by locating these corporate headquarters here that we also build that organic growth. We are not going to be able to invest in every company, but when companies -- other companies see the buildings filled with nice logos of other companies that they might be more inclined to stop off in North San José.

>> Mayor Reed: Councilmember Chu, soon to be the proud representative of another solar company.

>> Councilmember Chu: Definitely. Thank you very much. I just wanted to welcome you coming into San José. I did get a chance to visit your site in Mountain View. I'm 100% positive you'll be much happier in San José and I'm look forward to a ribbon cutting ceremony. Thanks RDA folks for helping out too.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks Mayor. I just wanted to thank Mr. Crowley for his company's investment in San José. I just had a quick question for RDA about knowing what we know about look to the five and the solar industry and a lot of European subsidies are on the wane right now. I know there's a lot of concern what's happening in Germany and Spain with subsidies and how that might affect demand, and we have got a lot of different technologies competing to sort of be the winning horse here, whether it's solar concentrators or thin film or or PV cells. How do we -- I know we're not in the business of picking the winning horse, but do we have any help from venture capitalists or folks in the industry who can tell us about which category we really ought to be investing in?

>> Abi Magamfar: Councilmember Liccardo, members of the board, yes, we do. As you pointed out, we received quite a bit of requests for financial assistance at various different companies. We go through a rigorous process. We do have advisors in the capital and venture capital community and industry that we consult with. And I'm happy to report that all the investment that the redevelopment agency has made in the field of solar so far have been all successful.

>> Mayor Reed: Great, thanks for your great success.

>> Abi Magamfar: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Ash Kalra: Thank you. I think this is a great win for the City of San José, and I think for SolFocus as well, I think we have a great opportunity here to continue to cement San José, and I think this does cement San José not just as regional but global leader, in terms of the technology, particular solar technology that we house in our different industrial parks. I did get the opportunity to visit SolFocus. And I want to thank Mr. Crowley for hosting me there and getting an opportunity to see the technology, which I do think unique. I think that although we are likely to see the different technologies that are competing narrowed down to two or three different types, I think that this concentrated photovoltaic certainly sets itself apart from the thin film and provides an opportunity to have an anchor company, anchor industry in our city. I want to thank Harry Mavrogenes and his team, because I know they've been working very hard over several months. I want to thank Mr. Crowley for his faith in San José and for working with our team and really making this happen. I want to thank Councilmember Chu, who I know also was very interest in seeing this happen and putting in his time and energy as well.

>> Mayor Reed: That concludes council discussion. I've forgotten if we have a motion or not. We do have a motion to approve. All in favor, opposed, none opposed, that's approved. Taking us to our next item which is the joint consideration of item 8.1. Acceptance of the report, Alameda, a plan for the beautiful way.

>> Harry Mavrogenes: Mr. Mayor, members of the board, we have a brief presentation on this. Richard Keith will take us through a couple of quick slides.

>> Richard Keith, director of business development. Back in April -- actually January 2008, the community got together and wanted to apply for a grant to beautify the Alameda, which is part of grand boulevard, El Camino, and I think the crown jewel of the grand boulevard. And we were awarded the grant and the agency board contributed \$50,000 to match the \$250,000 we received from CalTrans. We had a -- once the project started we had an extensive outreach process. In addition to the task force members, five which are here of the nine members, we had a steering committee, and also, conducted seven focus groups with residential and commercial association. The consultant also mailed the survey to 5,000 residents. Three very well conducted meetings, thank you, three very well attend meetings, over 100 people were at three workshops, and there also was a final meeting that concluded and summarized all the findings. Which we have several recommendations that came out of the report. We have additional crosswalks, that were also safer crosswalks, planted medians that included safe harbors for pedestrians, lighted medians especially in the historic way, and the potential to lane reduction to one lane. I'll get back to that on the next slide. As a result of all of this activity, D.O.T., our city Department of Transportation submitted for \$5 million in grant applications this April, and hopefully, we will hear this summer whether we will be able to implement some of the programs based on receiving -- being awarded that grant. One was with VTA and the other was with VTA -- I'm sorry, MTC. The project study area went from the arena all the way to I-880. There were two sections that the consultants identified, the black and the shaded area, our typical neighborhood business district called the town center in the plan, and from downtown college prep to -- sorry -- downtown college prep to I-80 as the historic way. The single major finding of the report was that the -- both the residents and the constituents and the business association identify crossing the Alameda as the biggest impediment to keeping the business association and the business district healthy and economically viable. So as you can see, every intersection had a pedestrian crossing improvement as detailed in the plan. This is the typical cross section in the town center, what the plan, if we get grant funding, would do. It would widen the median to 12 feet, and allow for that safe harbor for pedestrian crossing, still allowing the two through-lanes of traffic and parking on both sides of the street. We think -- we at the agency and D.O.T. think parking is an essential element

to have in a neighborhood business district. The second option would be as I mentioned before, one lane. The nice part about the entire plan is that we can implement the first option, keeping the two lanes, and doing that project, if we're funded. And then later on, do an analysis, if the one-lane option work. The one-lane option gives you even a wider median in some places to have an even safer harbor for pedestrians but also would allow for a bike lane in both directions and keep the 20 foot sidewalks and allow for park. This option would require extensive environmental and traffic analysis. Finally, this is just a detailed plan view of a typical area that shows bulbouts to help pedestrians across the street by widening the street, the wide medians and crosswalks that are accentuated by other D.O.T. activities. That end my presentation. D.O.T, the consultant are here to answer any questions.

>> Mayor Reed: Thank you. I have a couple of requests from the public to speak on this of course. A lot of people have been engaged on this. We'll get to that for a minute. First, Councilmember Oliverio, I've seen you at a couple of these meetings Councilmember Oliverio so I know it's taken a lot of effort by the community.

>> Councilmember Oliverio: No, it's been great mayor, as was told by staff, you know we had well attended meetings. Community was very active. What we're doing today is accepting the report which is the culmination of the community feedback, professional back from the architectural firm and we're accepting that report with no decisions being made by the council nor any money. The community's helpful of going where they've gone before which is active in the grant process. I was very candid that these are beautiful things that I would love to see but I also have the reality of where our finances are as a city. So we're hopeful that the energy will be continued to going to the grant side of the fence. We will have a beautiful 4th of July event on the Alameda, really our only event for 4th of July this year, I would invite everyone to come out and this is part of the larger vision of the grand boulevard task force which I sit on which sits from South San Francisco all the way to San José, making this road special, all the cities are involved in designing working with CalTrans, building density of housing and commercial that makes this really a grand boulevard and this is the portion of the Alameda that builds into our downtown and goes through some historic areas. I'm sure some of the speakers will speak to the history of the street but it does have major significance. I want to thank agency staff, both Eva Clinger, Walter Rath, Manuel Pineda from DOT, so many of the redevelopment agency, as well as the steering committee members, some whom are in the audience, Larry Clark, Dan Cochran, Chet Lockwood, Elizabeth Monoly, Joseph Piazza, Lisa Ruter, Bob Sipple --

I don't see him -- Betty Slater. And so with that, thank you for the opportunity to make comments. Sorry, I'll make a motion to approve, accept the report.

>> Mayor Reed: Motion to approve. I'd just liked to add I've been to some those meetings, meetings are well attended. The neighborhood is really engaged in this, with staff. Knowing full well there is no money, nevertheless there are grant opportunities that we are hopeful for. Councilmember Constant.

>> Pete Constant: Thanks. I just wanted to add my compliments to Pierluigi, the community, and of course redevelopment agency for another good business district plan. We have a bunch of business districts. I'm glad I finally got one to join the rest of you guys and it's great to see all this work and planning because we know these cycles come and go and are having the plans made in the down cycle really make us ready to go in the up cycle. So I'm thrilled that you guys are doing it. I'm going to be there on July 4th to have some fun with you guys and look forward to be there as we continue to build out the Alameda and our other business districts.

>> Mayor Reed: I'd like to take the public testimony at this time. Larry Clark and Betty Slater are going to speak.

>> We're so pleased with our plan because we worked so very hard on this. And I think they've already introduced the steering committee members. But three of the committee members, Mark Morris, Larry Clark and I were on the original group that decided to draft the plan in the first place. And then there became the RDA interviewed and chose nine people to represent the area, four from business, four from the neighborhood, and one representing the nonprofits. Eva clinger was the driving force to help us secure the CalTrans grant and the RDA joint funds so that we were able to go ahead with this viable project. Under Eva's guidance everyone was heard and everyone had a say in the work. Eva pushed, cajoled and praised us all along the way and if we didn't know how to tackle the problem she helped us find our answer. It all came in within time and on budget. The BMS design group had never worked with such a large committee before but they graciously accepted the challenge. They found we were very dedicated and often of one mind. But none of this would never have happened except for one person, a total history buff who had the unique vision to see the potential of what The Alameda could actually become. Larry Clark urged us onward with the admonition, this is not going to sit on a

shelf for ten years. So along with many humorous stories of the buildings and people on the original avenue we were inspired to keep the task force moving along and to completion. One of the things that Larry's insisted upon was that we be an award-winning group so he applied to Sacramento and received the historic award and it was the first time that it was ever awarded to a business group. So we thank you very much.

>> Mayor Reed: Larry Clark.

>> How embarrassing, Betty. What we did, probably about five years ago, as the Alameda business association is, we decided that the Alameda was more than just a street. It was a place. And our objective over the last five years is to find that place. As Betty alluded to we published a book, the Alameda, the beautiful way, that became the name of this grant and became the moniker that we used to promote the Alameda and also garner the grant. The two things that we were trying to do again was place and also participation of the community. Typically there is a divide between these people and the residents who live within the district. We wanted to make sure that didn't happen. Our committee was made up of both residents and business people. And the other caveat that I thought was very important was that we wanted to make sure that we didn't do a fancy well-bound book about the planning for the Alameda without any idea of how we're going to implement this. And so our direction to BMS, our consultant was that your job isn't done until you identify those opportunities for grants that we can pursue to make a shovel go into dirt. And that's what we're actively doing D.O.T. now thanks to the RDA they're moving ahead and I think we actually will have actual grant money to do some of the things that you've seen on the pictures that have been presented. Taking you back just a little bit, it began with a book so we could establish the history of the area, the Alameda was the connection between the mission Santa Clara and the downtown then pueblo San José and we moved then to a -- we constructed a tour, a historic tour down the Alameda. We have plaques that are in place, and people can take a self-guided tour based on the book. We had fairs and festivals, history based that were very well attended over a couple of year period including a farmers market. This culminated into a parade. I just handed out an invitation to all of you to come to our rose white and blue parade. I think seven or eight of you have been in the parade or come to our parade events.

>> Mayor Reed: Sorry I'm going to have to cut you off. Time is up.

>> Our selfless pitch is, please join us again this year. Thanks.

>> Mayor Reed: That concludes the public testimony on this item. Motion is to approve. I don't have a card, but come on down, Ross.

>> Ross Signorino: Thank you, Mr. Mayor, members of council. Even looking at this slide and being there individually I've been there many times on the Alameda, it's very comfortable there now. It looks very beautiful, inviting the people going there. And as a matter of fact I was just there yesterday, see my insurance agent some State Farm. And it's too bad that years ago, the redevelopment agency wasn't around or maybe not as active as it is today, Falstaff beer wanted to build their brewery there, and that's a St. Louis company. I like Falstaff beer. It's too bad they're out of business. I don't know if any of you know the name, but nonetheless, that would have been nice had they gone there, maybe if the redevelopment agency had been around there to help push them to be there. And it's just a beautiful street. You're almost stunned when you go there and there's one floral shop there right across the street from the coffee shop it's just beautiful to go in there to see that florist shop. So I would say to the redevelopment agency so far what I see throughout the whole city not only the Alameda, the redevelopment agency has done a good job. Overall. Thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I just wanted to congratulate Councilmember Oliverio and the community for polishing this jewel of the city. I think this is going to be wonderful as it rolls out. The question I had relates to BRT. The bus rapid transit corridor I know is planned, although this is a later phase in the rollout of BRT citywide and countywide. My question was, to what extent has VTA weighed in as to whether or not there will be any segregated corridors in the right-of-way here along the Alameda that may interfere with any of the plans we have? Thanks, Hans. Just want to make sure everybody is on the same page between DOT, VTA, RDA, and any other acronyms I can think of.

>> Hans Larsen: Yes, Councilmember Liccardo. Hans Larsen, acting director of Department of Transportation. Actually, the VTA has been an active participant in developing this beautiful plan. So this is a collaboration between the community business district, redevelopment, DOT, and VTA. I think the option of downsizing the street to one lane in each direction and how that fits into BRT is something we would need to study further but we are all working together to paddle in the same direction to build a great part of San José here.

>> Councilmember Liccardo: Great, that's what we love to hear. Thanks Hans.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to say this is one of the best gifts any economic development commission could have or committee can have. This, I am hoping one day, will be part of bus tours in San José to show off the wonderful heritage that we have right here. I'm kind of a history buff too, so this really warms my heart, and thank you very much for all the hard work that you've done, and thank you, you, too, Councilmember Liccardo. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: First of all, Councilmember Oliverio, a very nice car you are driving in this little picture. I know it's not yours but it's a nice car. Larry Clark and the group, I really want to commend you for your commitment to say that your concept, and that the vision was not going to sit on the shelf. Because it really takes the will of a group of or political power to make sure that communities' visions do not sit on a shelf. So you really are to be commended. And I think it's really exciting that you've been able to capture the history as you move forward in building out this great avenue that will not only benefit the residents, but I think that it will become a future destination place in the City of San José. So congratulations and I will be supporting the motion.

>> Mayor Reed: We do have a motion on the floor to approve, all in favor, opposed, none opposed, that's approved. Congratulations. Now you begin the hard work, finding the money. We will turn now to item 9.1. Third amendment to the reamended and restate San José arena management agreement. We have a motion to approve. We have some folks who want to speak on this as soon as I get to the right place in the agenda, we'll do that. I'm sorry, this one is on the council agenda as a joint item with the redevelopment agency. So we're taking it up now as a joint item. Before we get started on this I want to disclose I've had quite a few conversations and meetings with some of the principals in this, Greg Jamison, Don Grelnick, and other executives of San José Arena Management and San José Sports Authority, and I'm recommending that we approve this amendment to the arena management agreement. And there's a memorandum co-signed by Councilmember Liccardo, Oliverio and Pyle and noted in that memo some of the economic impact of the HP pavilion, most notable, got \$5 million a year coming to the City of San José. Lots an lots of visitors, one of the most successful buildings in the country in terms of the events that get put on there, in aggregate. It's not just the hockey, although we do love the hockey, there are many, many other things that happen there. And when we began looking at the Diridon area, it became clear that there's a lot of things happening there, a lot of things that we're very excited about, like not just light rail which is already there, but high speed rail, BART, possible baseball stadium and other private economic development. A lot of things to be excited about but at the same time, the HP pavilion is our building, our facility, that's managed by Silicon Valley sports and entertainment. They do a great job of managing it and I thought this was an opportunity that we view it as an opportunity that we protect our building, protect our investment, protect our interests in that building which certainly coincide with the interest of Silicon Valley sports entertainment and San José arena management. Trying to put together this agreement to modify our arrangement, to protect our investment, a win win for everybody. I want to thank Rick Doyle, Bill Hughes, Paul Krutko, John Weis, Abi Magamfar and Jim Ortbal for their participation in trying to get us to here, and of course Greg Jamison, Don Grelnick, and Dan McFadden representing San José management in the effort. And with that, I would call upon Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I've also had conversations with Don Grelnick and Dan McFadden. I just wanted to thank San José arena management for their patience. I know this is something that they have been pushing for for many years, to find a way to accommodate what we know will be a rapidly growing

area in the Diridon. And certainly this is one of the ten most heavily attended entertainment venues in the entire world in terms of interior buildings for nonsporting events, so this is certainly a treasure that we need to protect. I wanted to thank our negotiating team. I also wanted to mention I've had extensive conversations with leaders in the Delmas park area about the location of this parking structure, if it is in fact built out. They're supportive of seeing parking happen north of the arena. They've certainly been collaborating with the city and the arena for many years in terms of dealing with parking and traffic impacts for the last several years, and because we have a very effective traffic and parking management plan in place we've been able to reduce significantly the complaints that come from that neighborhood, and I'm grateful that we've got a solution that's really going to work for the neighborhoods as well as for the business.

>> Mayor Reed: I'll take the public testimony at this time. I've got Dave Jamison and Don Grelnick are here to speak.

>> Mr. Mayor, and members of the council and the board my name is Don Grelnick I'm general counsel for San José arena management. First San José arena management wishes to acknowledge as you have indicated the staff from the city who have worked and the agency long and hard on this amendment. They were very professional and very effective. Second, SJM supports and agrees with the staff report and recommendation and urges the council and the board to adopt the amendment. Third, keeping our customers at HP happy is our principal goal. No pun intended. And this amendment achieves that objective. I'm happy to answer any questions.

>> Mayor Reed: Any questions for Mr. Grelnick? I don't think so at this time but we'll hear from Mr. Jamison.

>> Thank you.

>> Mayor Reed: If we're going to cross examine anybody it's going to be Greg Jamison.

>> Mr. Mayor, city council, I'm almost in shock when I heard Don Grelnick try to do a pun up here at the platform and it was almost funny. But he always tries. We are honored to have a partnership with the City of San

José. We've done a lot of collaborative efforts together and we believe that this is another effort that will be successful for the city, and a very positive thing. The Sharks and SCSC are very happy to be involved with two buildings in this area, HP Pavilion and obviously sharks site of San José, which I love to say, it rolls off the tongue very well. You've heard it a thousand times, but it's the largest ice skating rink West of the Mississippi, it sounds so good, and it's right here in San José, California. All along our goal was to make sure that the Diridon was done well and prepared for the onslaught of potential projects. I am ecstatic to hear not only are we prepared for new projects to come in, but it's actually going to be very beautiful now from our building all the way down around the Alameda. So we will take that walk many more times, and it's probably inside of the fact that it is an area that is waiting for continuing development. And with the advent of the potential baseball stadium, BART and high speed rail, we think that this plan, this amendment, allows us to be prepared in a very positive way, to take these projects on. We want to thank the mayor very much and the city staff. We want to thank the RDA and the City Manager's office for their help in this, so I echo what Don says. It worked well together, and we're very pleased. We believe this amendment helps set the stage for future development. Finally, this is a vibrant community. People have noticed, more and more people are taking a look at what's going on here, and with these projects coming down here, being prepared the way we are prepared, working together, we think it can be very successful in the future. Thank you.

>> Mayor Reed: That concludes the public testimony. Any further council discussion? I know that some of the electronic equipment is not working properly. You may have to wave at me if yours isn't. We have a motion to approve, all in favor, opposed, none opposed, that's approved. That concludes the agency portion of the agenda for now. May be something later but I'm really not sure. We're going to turn to item 3.1 on the council agenda. The report City Manager.

>> City Manager Figone: Mr. Mayor I have no special report today.

>> Mayor Reed: 3.16 on the city agenda, report on bids and award of contract for the for the Downer-Canoas interceptor rehabilitation project. Okay, we have a motion -- there is no staff report on this. I have no questions. All in favor, opposed none opposed, that's approved. Item 4.1, the sign ordinance, was noticed for the 1:30 time

frame for the afternoon, so we will pass that and come back to it after lunch. Should be able to get that in before 2:00. I think there's only -- three ceremonial items on, so we can take the sign ordinance then. 4.2, historic landmark nomination and mills act historical property contracts. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 5.1, community center reuse policy amendments. We have a motion to approve. Councilmember Liccardo.

>> Councilmember Liccardo: Quick question for Albert. Sorry Albert, you're way up there. As you're coming down, throw it out there. I understand that as we are revising council policy 7-12 we are going to require city approval for higher for-profit fee structures to avoid possible outpricing of low income residents. And I certainly appreciate the intent behind that. What I'm trying to understand is, how does that city approval work? Is that pretty much a decision you'll be making as head of the department or does that come to council or how is that going to work?

>> Albert Balagso: Councilmember Liccardo, Albert Balagso, director of Parks, Recreation, and Neighborhood Services. In the reuse policy it allows the director to execute the agreements. One we have that list of reuse sites that we can work with. We will be -- we have in the past bought back, when we have had significant issues with the community and trying to resolve them, brought them back to the council so that you could hear them. That was the situation when we brought back the last six back in May -- March, excuse me. We actually had approval to execute those, but we thought the council should hear those before we brought those forward.

>> Councilmember Liccardo: The reason why we ask, there are times when we hear there may be barriers to reuse. That could be worked out with maybe a little more collaboration if some services are provided at this location, other services are provided at that location, it would just be helpful if you're on the verge of saying no if there are some kind of means four to make contact with the council office just so we're kind of checked into the conversation because often we're hearing about it after the fact and trying to figure out hey wait did we have an opportunity we missed here? If there was some kind of protocol that you could develop internally that would enable you to kind of check in with folks if you're about to say hey, no thanks, is that likely?

>> Albert Balagso: Absolutely, we can do that.

>> Councilmember Liccardo: Great, thanks Albert.

>> Mayor Reed: We have a motion to approve. All in favor? Opposed, none opposed, that's approved. 5.2, nature education facilities grant program applications. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 7.1, agreements with carollo engineers, CH 2M hill and black and Veatch for capital improvements projects at the water pollution control plant. Motion to approve, all in favor, opposed, none opposed, that's approved. 7.2, setting the wholesale discount for recycled water industrial use. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 7.3, agreement with reclamation or reimbursement of South Bay water recycle phase 1B costs. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 7.4, report on bids and award of contract for the motor control center phase II replacement project. We have at least one card from the public here. There was a protest or something.

>> Mr. Mayor, David Sykes, assistant director of Public Works. Yes, there is a protest on the project so I thought it might be helpful to provide a little bit of background. The project actually is to replace some of the motor supports at the plant to increase the electrical reliability. Our recommendation is to award to the contractor that submitted the third lowest bid. We have found the two low bids to be nonresponsive, because neither one of them submitted an assigned addendum with their bid, and that addendum was material to the bid. And historically we have found material addendums need to be submitted with the bid documents. The contractor who submitted the lowest bid is protesting that decision. We do not believe that that protest has merit and we are recommending to award to the third lowest bidder. I'll be standing by for questions.

>> Mayor Reed: All right, I'll stay the public testimony at this time. Jim troop.

>> City council, my name is Jim troop. I'm vice president of construction with Monterey Mechanical in Oakland, California. Monterey Mechanical did submit the lowest bid on the MCC2 construction project. Monterey was advised our bid was nonresponsive and the City's position on that is they have to be consistent with past

practice. The staff has recommended award to the third lowest responsive or the third lowest bidder which will cost the city approximately \$50,000 more than our bid submitted for the same project. I don't claim to be fully knowledgeable of the City's financial situation. But I know in general, what the public agencies are throughout the country. At any time, to spend more money than is necessary, I guess doesn't make sense to me. Honorable mayor and city council, we know, and we respect, this decision is ultimately up to you. I'm not going to take this further than this testimony here, presentation here. However, I think it's important for you to know that staff's position on this is not quite as straightforward as it may seem. The notice to bidders for all projects in the City of San José require the city to provide copies of the addendums to all registered plan holders, Monterey mechanical did not receive a copy of that addendum. Our major electrical supplier, equipment supplier on the project did receive it and after bid acknowledged that he had included all cost of the so-called technical addendum in the contract. I touch on that for a minute just because it is a design-build contract. And the contractor has the ultimate responsibility to comply with the plans and specifications on a design build contract. We were not provided the addendum. In follow-up to that we were told by city staff that in order to save postage the addendum was sent to us with an addendum for a completely separate project. We're going to save postage but we're going to go spend \$50,000. Doesn't make sense. The staff accurately quoted only part of the language in its supplemental addendum, supplemental memorandum to you dated 6-7 with regards to the addendum. What the language that was not reported to the council said was failure to return the signed copy with the bid document shall not relieve the bidder of the obligation to include the addendum in its proposal. Before the remedy was set forth in the City's issuance of the addendum, you're responsible contractor, whether you sign it or return it or not you're responsible. We're responsible; we acknowledge we're responsible.

>> Mayor Reed: I'm sorry, your time is up.

>> Okay.

>> Mayor Reed: That concludes the public testimony on this matter. Councilmember Liccardo.

>> Councilmember Liccardo: Dave, I understand the supplemental is sent fairly recently, so I haven't had an opportunity to review the supplemental as I read the original memo. With regard to the assertion that the way that the addendum was received was only with other materials that were relating to another contract, is that accurate?

>> Councilmember, some of the issues raised by Mr. Trout are new. They were not included in the protest letter that was filed. The merit to the protest is they acknowledge they did not submit the signed addendum and that that was a mistake on their part. And that we have the discretion to waive it as a minor irregularity. That's the basis of their protest, and that's how we've responded. Our response is that it is not a minor irregularity. That the addendum was material to the bid and needed to be considered in the bid package.

>> Councilmember Liccardo: I certainly agree with the conclusion that an addendum would be considered material to the bid. I guess my question was about the conveyance, and I guess you're saying that's a new allegation that's been raised that wasn't raised initially?

>> That's correct, that's the first I've heard of that issue. If it would have been submitted as part of their protest we could have looked at it to see if it had value or not. At this point I do not know the accuracy at all.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: I had a question about -- is there more than one way to get plans and specs? The bidders only get them because we mail them to them? Aren't they posted and available, would the addendum have been posted and available?

>> Yes. I'm not sure exactly the process they're describing in terms of why they didn't get the addendum. Typically addendum are always given to all the contractors that have pulled plans and specs from the city.

>> Mayor Reed: Okay. Any further questions? Seeing none, do we have a motion? I don't think we have a motion yet. We have no motion. Anybody like to make a motion? We have a motion to approve, Councilmember Nguyen had the motion. Approve staff's recommendation. All in favor? Opposed, none opposed, staff recommendation is approved. Item 7.5, the report on bids and award of contract for switch gear M 1 M 2 and M 3 replacement design-bid project. We have a motion to approve, opposed, none opposed, that's approved. I think that's as much as we can do at this time. It's also 12:00, would be a good time to break for lunch. After lunch we'll take all of the budget related items, we have the sign ordinance which was noticed for later in the day. Anticipate that could be short enough we can get it done before 2:00 after the ceremonials. We'll reconvene here at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting back to order. This is the middle session. We started this morning at 8:00. [No audio] I've got mine again. All right, well, as long as I've got one we can go ahead and get started. We will -- doing an unusual day today in terms of the schedule and the agenda order because of all the things we have on the agenda. We will start this afternoon session as we traditionally do with an invocation. Councilmember Oliverio will introduce the invocator.

>> Councilmember Oliverio: Thank you, mayor. San José stake, three congregation of Latter Day Saints who worship in the building, they are the Willow Glen ward, the actuary glen ward and the dry creek ward. Blood drives for the American Red Cross and the headquarters and meeting place for the boy scout troop 225. Today we have bishop Geddes from the dry creek ward to offer the invocation. Bishop. Glare most kind and gracious eternal father. We your children gather together this day in this chamber of the San José city council to discuss matters that pertain to the interests of the members of the San José area. We are thankful for living in this fine valley, for the beautiful weather we have and for the health and well-being that we have in this area, and for the love that thou has shown unto us. We ask this day as we meet into the chamber this day, as we discuss budget matters that are of concern to the citizens and the councilmembers and the mayor of this fine city, that Thy spirit might be done, in a kind and reverent and spiritual way, with cooperation and agreement will be reached that those members who have opinions may discuss them and present them in a way that would be pleasing to them, that they might be heard, and be received, and understood. As they put forth their positions. We are indeed in troubled times at this time as thou art away, as financial responsibilities and obligations that need to be met, are difficult to meet. And we have concerns about our libraries and our fire departments and our policemen, and our community services and programs that we have had in our area that have benefited the community. We know that some things must be changed. But with that change, would thou bring us hope and belief in the goodness of the people and of the area that we will unite together and meet the challenges that are going to be presented here this day, in a way that will help us to grow together, in love and fellowship among one another as we continue to be a fine city, and such a diverse population as thou knowest of thy children. May thy spirit bring us a conclusion, we ask in the name our beloved son, Jesus Christ, amen.

>> Mayor Reed: Thank you for the invocation, now we will do the pledge of allegiance. all please stand. [pledge of allegiance]

>> Mayor Reed: We have a couple of ceremonial items on this afternoon's agenda. I'd like to start by inviting Councilmember Chu and members of the Morrill middle school girl's varsity basketball team to join me at the podium. We're going to get the coach, too?

>> Councilmember Chu: I'd like to first thank my colleagues and the mayor to join me to congratulate the Morrill middle school girls basketball team for reaching a record-breaking goal of 37 wins, and no loses, for their 2009 and 2010 basketball season. Coach John Wilkinson has led the after school program since 1966, by offering a safe haven. No one was safe from a very trying economy. the Morrill middle school school girl's varsity team started the 2009-2010 season if not most of their tournaments cancelled due to budget. However, coach Wilkinson was able to seek out invitationals for the teams to compete in. By the time the season was over, coach John Wilkinson took the girls' varsity team to a discover 27 to zero. We are joined by girls basketball team and coach John Wilkinson as well as principal Chris Moseley. Here to accept the accommodation is coach Wilkinson. Coach. [applause]

>> Mayor Reed: Wide angle. Congratulations. [applause]

>> Mayor Reed: Next I'd like to invite Councilmember Herrera and members of the girl scout troop 60007 for their hard work, dedication and sense of service to the community. Councilmember Herrera has some of the details.

>> Councilmember Herrera: Thank you, mayor. I'm very excited and proud to acknowledge the efforts by the girl scout troop 60007 with Mayor Reed today and as they're coming up behind me here. As everyone is aware, the girl scouts of the U.S.A. is a worldwide distinguished organization. This organization has had more than 50 million American women participate in it since 1912. Their mission, to build young women of courage, confidence, and character, to make the world a better place. This troop was started five years ago, with eight girls and now has

grown to a troop of 16 eighth graders from various middle school in the Evergreen community. These young leaders are part of the 3.3 million girl scouts and 928,000 adult members working primarily as volunteers. Their troop is actively involved in the district 8 community collectively organizing neighborhood cleanups, volunteering at the local senior living home, conducting fire safety clinics for youth and working with the open houses. I first met cadets Anile Minele and Kelly Fernandez, when they invited me to be a guest at their career women fair at Laurel middle school. I was really impressed at how good they organized the career fair, earning merit badges. Assisting at that time Children's Hospital fundraising to purchase supplies and toys for the humane society, donating 480 coats to one warm coat drive, creating sacred heart and supplying a library in India with educational items i'm very proud of your dedication and commitment to public service, congratulations again on your remarkable accomplishments, and keep up the great work. And with that said I'd like to invite to present a commendation to this girl scout troop and to Jeannie King, the Troup leader.

>> Hotel everyone, Kelly and I are honored to be representing our group at City Hall. We want to thank thank the councilmembers for honoring us and having the truly here. Troop 7 has been active in the Evergreen community this year and we hope to do more for youth.

>> As Juliet Lowe, the founder of girl scouts once said, scouting inspires you to do best. Stephanie fish our assistant troop leader.

>> Mayor Reed: Now I'd like to invite Councilmember Pyle and superintendent Don Iglesias to join me at the podium. And Councilmember Liccardo. [applause]

>> Mayor Reed: Many of you know superintendent Iglesias for his lifetime of dedication to the students of San José. Councilmember Pyle has a good chunk of her district in this school district and so does Councilmember Liccardo. And so we just want to take this time to recognize Don before he moves on to his full time surfing career.

>> Councilmember Pyle: What a pleasure this is. It takes me back to some very, very fond memories. Don, you've had quite a wonderful career. He's been a public school administrator for over 25 years and currently positioned as superintendent of San José school district south Bay's largest student with over 32,000 students from kindergarten through 12th grade. During his years of deputy superintendent, assistant superintendent of instruction, director of curriculum, principal, vice principal, as well as an elementary and secondary teacher. And to date, the San José unified school district has received 32 -- excuse me, one second here. I left a very important point out. During Don's time at the San José unified school district, the district's academic performance index has centered 119 points and is now ranked 753rd and that deserves some claps ladies and gentlemen some so proud. As received 32 distinguished school wawshedz and two silver awards from the California council for excellence. Coy please ask you to come on up, too, as a school board member? Yes, Leslie. the district has also earned 11 national school board scoostles 97%, i'll say it again, 97% for all graduating seniors. And I think another round of approval here is in order. [applause]

>> I just -- I just want to say, our mayor, Mayor Reed, I want to thank you. And one of the things he said many times is great cities have great schools. And we're interrelated. It is a partnership, and I want to thank Sam and Nancy and all the other councilmembers I've had the honor and privilege to work with over the years. We've done great projects together and we need to continue to do that. In challenging files, the more we do together, families benefit, children benefit. I will be at the beach, but the best of luck to City of San José, great leadership I appreciate the recognition.

>> Mayor Reed: As I said, today's agenda is a little out of order because of all the work we had to do. We didn't finish all the work from this morning. We still have item 4.1, the sign ordinance and we have some additional work on our closed session agenda. So I'm going to have to reconvene in closed session before we take up the sign ordinance. I don't know how long it will going to be. That's what we're going to do now, we're going to reconvene in closed session. [Closed session]

>> Mayor Reed: Good afternoon again. Time to reconvene the city council in open session after our coming out of closed session. We have nothing to report out of closed session at this time. We will pick up where we left off

which would be with our sign ordinance. Item 4.1. We've had quite a few hours of study on this, it is a complicated topic, it does deserve some explanation after where we ended up after a lot of consideration so I'm going to turn it over to Joe Horwedel to bring us up to speed what's in front of us today.

>> Joe Horwedel: Thank you, Mr. Mayor. Staff is coming forward with the ordinances that implement the direction of the city council. We did come before the city council on a number of meetings and had walked through a number of important issues. Today we are coming, asking the council to approve freeway signs for large shopping centers, establishing the operational requirements for electronic programmable signs. freeways modifying the requirements for our fin signs and vertical projecting signs in the doubt. Creating a new signs district in the San Pedro urban market area, allowing some modifications for large commercial and industrial areas called an architectural sign cluster, allows us to do more creative signage and then some additional regulations on message. The one thing I do want to point out to the council is that as a part of the freeway sign provisions, that was one that was very much in interest of a number of our major shopping centers. We've been work with them as a number of these proposed regulations and a week earlier had met with the members of Westfield, they asked that that provision be continued as they were still working with design. We've talked with the other shopping centers and they would like these provisions to move forward at this point. Our commitment to Westfield is they're still working with design, if there's something. regulations that we come up with that comes up with a better looking sign that we would come back to city council with part 2 of our owners. We are scheduled to come back to the council after the summer recess with the next chunk of sign ordinance changes so staff is asking to move forward with the sign regulations as proposed today.

>> Mayor Reed: Thank you. I had one comment on the Westfield request for delay on that freeway sign thing. I prefer not to delay. I know they're thinking about a sign but we have other projects that are underway under construction ready to go and we need to get this ordinance approved so they can finish what they've already started pip one is the at first project with the target store. I would prefer to move ahead and if there are weeks it would be a better way do it so I support staff recommendation on that . Councilmember Constant.

>> Pete Constant: Thank you. My comments were very similar to what you just made. I think it's important that we continue to move this along. My office, we have also been in contact with Westfield and we understand their concerns. And I think there are ways to get there. My concern is just slowing this down now, given the opportunities out there. My concern is we've spent a lot of time, it's still a really good sign ordinance, still room to expand in the next few years so I have a motion to approve oops.

>> Mayor Reed: Motion to approve. I have one request from the public to speak. Ross Signorino.

>> Ross Signorino: Sorry it took me too long to get down here. Mr. Mayor, members of council, regarding this particular sign ordinance you're coming up with in shopping centers and so on facing the freeway with the signs, I hope the lighting will not be offensive in any way to drivers going by. That's very critical if there's a safety hazard here. But I think it's a good idea as far as the sign and at the same time, you know and I know, that we keep talking this to death. I think it's time to go ahead and move along on this thing. I think you talked it, you understand it, now let's move on with it, approve it once and for all. Thank you.

>> Mayor Reed: That includes public testimony Councilmember Liccardo.

>> Councilmember Liccardo: At the risk of talking it to death Ross. I'd like to raise one question, Joe. The council, memorialized in attachment A exploring regulations relating to relocation. Of billboards. And I know that we have separate categories here for freeway signs and billboards but I imagine there's overlap, relating to freeway signs. Is that something coming down the pike?

>> Joe Horwedel: Right, I think it's in the packet. There's attachment A in the staff report that we went through each of the issues that we walked through at the council and what were the main decision points the council made. For third bullet explore measures, or second bullet was provisions to allow relocation. That's one we still have more work to do. So we broke this into three chunks of things that are easy to do, that's today, we've got others that Rene and Carol Hamilton are working on the next wave off that list. Some more we're going to have to do some real work on it to figure out how to get on it that will be later but we are tracking it.

>> Councilmember Liccardo: Thanks.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to say thank you very much for all the hard work that you put into this. When I saw the fact that we're going to allow attached signs to face a freeway and we're going to allow signs for large freeway signs for large shopping center, my heart leapt. I've got to tell you this has been a long time coming. This will have a very dramatic impact on development. Thank you thank you thank you.

>> Joe Horwedel: Those thanks go to Carol Hamilton and ReneÈ Gurza. They did the heavy lifting on that.

>> Mayor Reed: I think this concludes council discussion. We have a motion on the floor. I forget who got that, the clerk got that. All in favor, opposed none opposed that's approved. Great work staff taken you a long time to get here and a lot of work but it's looking really good. Our next area to get into are the budget-related items. And we need to modify the order a little bit, from what we have on the agenda. Item 3.7, approval of terms of an agreement or implementation of terms in the last best final offer to legal professionals of San José known more as ALP. Want to take that one first. But Alex Gurza's and his staff are not here at this point. They're still working on some things. We may want to take a little bit of a break until we can get all of our staff here for that. Because I don't see them and I know they had some things to do before they were ready to take up these budget items so we're going to take a short recess until we can get all our staff lined up and we will take the Alp matter first. Bathroom break everybody, we'll be back. [Short recess]

>> Mayor Reed: It's time to try to get started again, try to get all the councilmembers back to wherever they have scattered to. We were prepared to take up a series of actions in the 3-point section. We have six matters dealing with last best final offers. We're going to take them slightly different order but before we take up the individual items for discussion, I'm going to turn it over to the City Manager for some general comments and remarks and some information from the staff. Around then we will start with item 3.7, the lawyers.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. Total compensation reduction for all employees in March, 2010, due to changing circumstances, where the City's budget shortfall had increased by almost another \$20 million, that direction dhiengd a 10% total compensation reduction. Let me just note that I know that a 10% reduction is a big impact regardless of valuate of our city employees. It is a reflection however of the challenging times that we're facing and the need to get our structural deficit under control. A 10% reduction in total compensation makes a focus on pes enough in the five year forecast which already assumes some modest revenue growth, we're still in the red. And we also need to remember that the forecast does not include any dollars at this time. So clearly, the need to fix this problem is imperative. And with that I'm going to turn it over to Alex Gurza to make some additional comments.

>> Alex Gurza: Good afternoon, mayor members of the city council, Alex Gurza directors of employee Aricelli Rodriguez who was the lead negotiator. city council asked us to focus on total compensation and trying to reduce total compensation by 10%. As we all know, base pay, but it is by far, not only the only amount. As you can see here almost 70% of total compensation is in pay, and sort of the cash compensation. Then you have retirement benefits write is the next largest slice of the pie which is approximately 22% of total compensation is the City's contributions to the retirement plans. And then you have health and dental benefits which is approximately 8% and the others are a little less than 2%. It's that whole picture that constitutes the cost to the city and total compensation. And our goal then was to reduce the average cost per employee by 10%, the total costs. This is the slide we showed to the council previously. In 2009-10, this is again a citywide average total compensation. A lot of times, people look at these numbers and say I don't make that much. But it is really a composite of pay and benefits. \$118,418 then as we projected forward looking at the base budget for 10-11 that was projected to go up to 132,962. But that did not include any wage increases, unless they were already previously negotiated. So this significant increase in cost going from one year to the next was primarily due to the significant increases in the City's contribution rates to the retirement systems, as well as health benefits. If we were to achieve citywide now reduction in total compensates you can see it does bring it back down but it's almost equal going from one fiscal year to the next. What that dramatizes really is the impact of the significant increases the city has seen in retirement cost. So even with the 10% total comp restriction, cost to the city is almost the same going from one

fiscal year into the next. I think I'll turn it back to the City Manager City Manager who is going to make introduction comment on the.

>> City Manager Figone: Thank you, Alex. I'm pleased to indicate to we do have significant news, in that this morning we reached a tentative agreement with reduction Alp as the group is known, has ratified coming forward, with a proposal that achieves the 10% total compensation reduction, and again, I'm very happy to be presenting this agreement to you today. And with that I will turn it over to Aricelli Rodriguez.

>> 10% total compensation reduction. First by 10% ongoing reduction includes a base pay reduction. It includes changes to health care, disability leave and the second 5% which is one time includes 12 unpaid furlough days and an additional one time base pay reduction of 1.90. It does have some concessions that we would restore three filled position represented by ALP and a reopener had in the event the city council were to approve a 10% total compensation reduction of less than 10% with the groups listed on the slide, they are able to reopen the contract. It is a one-year contract. I do want to acknowledge the Alp negotiation team. It was Bill Clark president of Alp, Brian Doyle, a representative of Alp and Mike Dodson and on the City's team it was Heather Ruiz from the human resources department and Dan tong from the city attorney's office. So we do recommend your approval.

>> Mayor Reed: Thank you, City Manager. Had some opening comments I wanted to make. We got started down this road of seeking concessions from our employees back in November when we're looking ahead at next fiscal year which starts in a custom weeks. And could see a huge gap, huge shortfall. In November, the council approved direction to the staff to seek 5% ongoing reductions in total compensation from all of our employees did a lot of work on the budget had a lot of meetings and in February when we had our study session, with the council, as part of that budget process it was pretty clear that 5% was not enough, that the gap was about \$116 million, and in March, march 23rd, we had the March budget message debate. The council approved directing staff to request 10% reduction in pay and benefits, it's phone as the 5 and 5. While there was a debate and difference of opinion on how to get to 10 the council unanimously said 10% should be what we're seeking. And I personally supported that. I personally thought that seeking concessions was the best way to deal with a very difficult situation. Because I think it's better for everybody to share the pain, and there is a lot of pain to go around,

than to have a smaller number of people get all the pain by being laid off. I do not want to do layoffs, and I think that pay reduction is preferable to doing the layoffs. Now, because we haven't been able to get 10% concession from everybody, we're still going to have some layoffs. But whatever concessions we can get are going to save jobs and services to our community. And I know it's difficult for employees to take a pay cut, many of them are on the edge. There's no doubt about that. We've heard that in the testimony. But we also know that getting laid off is a lot worse than getting a pay cut. And that's why I've supported the effort to do some rebalancing through pay reductions. The more ongoing the better. Because we do have problems next year and the year after that and the year after that. But if we can do a combination of ongoing and a combination of ongoing and one time that will help us through this year and we'll immediately have to start working again towards the problems next year. And while it's not easy to insist and try to negotiate for 10% reductions in pay and benefits, it's preferable to doing layoffs and cutting the services that goes along with that and that's why I've supported this direction. I'm pleased to see that the legal professionals have come to an agreement. I appreciate their engagement on this. I know it took a lot of work from city staff as well as the leaders of Alp to do that, it's a very important step and I appreciate their sacrifices that they're stepping up to take to help save some jobs. Councilmember Constant.

>> Pete Constant: Thank you mayor. I too wanted to add my appreciation to the association of legal professionals. This is something as the mayor said that we've known a long time we had to achieve and it's been a lot of work. I appreciate the newest union being first up to bat. It reality says how hard you have been working I want to make sure we thank Alex and the team because the last six or eight months has been tough, as Alex pointed out more the team than Alex, I think that's what you were just signaling. It's the last six days I'm glad I'm not you guys. It makes campaigning seem easy, comparing watching what you guys are doing. We really appreciate it and I know definitely that the members of my district really preejt the fact that we've made so much progress in this area and I really think it sets an example for everybody. So thank you very much, and with that I'd like to make a motion to approve.

>> Mayor Reed: All right, we have a motion to approve the agreement. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to echo my thanks also to the city negotiating team, as well as the negotiating team from Alp. Obviously what we've have asked since March was not easy. And I know that it takes a lot of pain, and sacrifices, for all of us to come to the table and to come to this agreement, so for that we just wanted to show our appreciation and our gratefulness for coming to the table and being one of the first bargaining units to accept the 10% cut in compensation. So thank you very much. We really appreciate all the work you've done for the City of San José and our residents .

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Want to join in the praise for Brian Doyle and the negotiating team. I think we talked about earlier they gave up 2.5% last year in order to save some positions there and maintain services and I'm grateful that they stepped forward again this year. I know there's an incredibly hardworking group of people, I know because I get e-mails returned at 10:00 and 11:00 at night. They are working all hours because they know their first obligation is to their client. I just had a conversation with Brian and he said frankly the reason we did that is we didn't want to be in a fight with our client. I think that says an awful lot about the character of people who are willing to come forward. I know it's incredibly tough for a lot of people right now to come forward and I don't pretend it's easy for anyone but thank you very much.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to add my thanks to Alex's team and Aricelli for the hard work and Alp's bargaining team for coming together. This is one at the end of the period last minute pleasant surprises so I'm really, really glad that this is able to be achieved. This helps us in our goal of saving services, preserving jobs and it's very good news and I'd be happy to support this, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. You can hold your heads up high. You did a great job! And the bargaining team, as well. Thank you so much for all you've done. I would like you to know that I think we have the finest attorneys in the city. And that you do a yeoman job of keeping the city safe. In fact you have some of the best track records in reference to the number of law cases that were settled in our -- on our side. So many, many thanks for that. We appreciate it tremendously.

>> Mayor Reed: Councilmember Kalra.

>> Ash Kalra: Thank you. I want to you know thank the attorneys as well, as someone that's worked in government as an attorney I know how much the dedication is to public service, although the compensation is a part of it, the reality is that for most attorneys that can definitely be compensated considerably more in the private sector than work in the public sector. So the fact that you're coming forward with 10% means a freight deal. Thank Aricelli. I think Alex had to formally recuse himself, so Alex makes sure that's directed not rest of the team. So Aricelli played a major role in had. We want to thank Aricelli. The one aspect that was a little bit troubling to me was the reopener clause. Given the fact this newly formed bargaining unit makes as much as in some cases three or four times the amount that some of the employees make in some of those other bargaining units, connected to those bargaining units, I think it would have been nice if that wasn't there. However, that being said, it doesn't take away from the fact that the sacrifice is being made and the agreement was made in time for us to accept it and appreciate it.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I too want to say thank you to Alp. You are the newest in and the newest to the process. Talking to others in and around the process, I know the process is extremely painful. Let's not kid ourselves. It is dysfunctional. The fact that it is held in secret it beckons the fact to open up the negotiations to public and allow everyone to stop having an aneurysm and really focus on what's important. Employees and the services they provide to the city and how much money we can afford to pay. There's that happy medium, we don't have to pull our hair out. And Alp you're new to this experience and I

think you'll probably admit that ideally there could be a better way. I hope we get there at some point in the future at if city council where we can have the negotiations held as public so there is no games and everyone can be candid and honest and we can downsize the amount of time and cycles we spend on these types of things. Again I'm very appreciative, thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: So I'm going to direct my comments to Aricelli because everyone is recognizing her and what I want to talk about is one of my colleagues said this was a pleasant surprise. And when we think about why it's a pleasant surprise is because it was something that came in kind of last-minute. And Aricelli you had the foresight to say, I'm going to work through this and I'm going to figure out how we can come to an agreement so that we can -- so that you can bring it to the full council. And we would not have to impose. And I think that's a skill set to be able to have those skills, to be able to say, make a call that way, that within -- I think you said 8:00 in the morning or at some crazy hour you were wrapping this up to bring it to the council. So -- and I bring that up because through these difficult times, it really takes that type energy. That if something comes in, we need to not just say, I'm not going to look at it and I'm just going to, you know, throw it away, and say that it's just too difficult and I don't think I can get the deadline. We are in difficult times. And we need to be open, to all options that are coming forward. And not continue to put blame and say no. And I think this is evidence of not saying no and not putting blame and saying I can work it out so I can bring something to the full council. And I want to recognize you for that, for your -- your work, and your foresight, to continue to stay engaged in make sure that you could bring something to the full council. And to the residents of the City of San José. And to the legal profession. I think you should be recognized, as well, for staying at the table and continuing to be engaged in this process, so that you could also help the residents of the City of San José. I will be supporting the motion.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I too wanted to add my heart felt appreciation to the negotiation team, as well as the members of the Alp. Thank you very much.

>> Mayor Reed: I have some requests from the public to speak on this item 3.7. I take that now. Brian Doyle, David Wall and Clark Williams.

>> Brian Doyle: Thank you, honorable mayor, councilmembers. I appreciate your remarks. My name is Brian Doyle. I am one of the negotiators for the association of legal professionals. This was indeed a very difficult process and I do agree that there is room for improvement. I would like to take the time right now to thank one other person who hasn't gotten any thanks and that is our City Attorney, Rick Doyle. This was such a difficult process, and, you know, Rick really helped keep the lid on things when we got pretty excited on things. I think Rick was instrumental on things. We do appreciate his calmness and his good wisdom in it. I do want to at least acknowledge and state that it's very unfortunate, in this process, that it appeared at one point that the residents were against the city workers, the city employees. I think that was just a very unfortunate scenario that seems to be having appeared. And particularly with our group, you know because as you acknowledged, the men and women of the city attorney's office are hard working dedicated competent professionals. We defend the citizens and the taxpayers every day in court, in contract negotiations, in writing ordinances and resolutions and policies and defending open government and all the policies that you want to carry out. And I think it's also unfortunate that some came to call us greedy in this process because we're not greedy. Nothing could be further than the truth. Last year we did give 2.5% for which we were unable to get any acknowledgment this year. This year we gave the full 10%. It was difficult for ourselves and our members but it all we ask is that you know when we begin our negotiations next January I hope you remember this generosity and our willingness to work with you. And we certainly hope that we can -- that this start will continue in the future. Thank you very much.

>> Mayor Reed: David Wall Clark Williams and Ross Signorino.

>> David Wall: Share the pain. Why? Time after time, our attorneys have proven their salt. They have made money for the city. They have defended the abject incompetences of the Attorney sacrifice. No I reject that as a taxpayer I believe that the pain shouldn't be shared. The attorneys should be restored to their status. And as a taxpayer, I have a right to say that. But let's look at the whole big problem of this issue. This issue lies in councils,

not just this council but repeated councils congenital incompetence when it comes to organizational theory. You know the struks twiddle led and twaddled your thumb looking the other way until the Faustian bargain you have made now required your souls. Now you say thanks to people for taking money that they have to give back. They shouldn't have to do that. For example, Mr. Mayor, you refused steadfastly to eliminate redundant systems. Your entire staff is a redundant system as compared to the office of City Manager. If it was done and open all negotiations were done and open as Councilmember Oliverio wisely has said, all of employee relations is a redundant system. You don't need it. So this is just the first salvo for today. I applaud the attorneys for who they are, what they have done. Not what you have hoisted in a dictatorial fashion upon them. And there will be consequences. Thank you.

>> Mayor Reed: Clark Williams and then Ross Signorino.

>> Yes, thank you, Mr. Mayor Reed. My name is Clark Williams. I'm a resident of North Willow Glen and I want to also thank this bargaining unit for negotiating in good faith with the City of San José. As a resident, I was -- I've been concerned about the way that this -- the budget process has been occurring in the last few months. All the editorials in the Mercury News, the letters to the editor, accusations amongst yourselves, complaints about bargaining units, a lot of blame of our city employees. And as a resident I'm concerned because I think it's a violation of our community values, the values that I know are so important to each and every one of you. We recognize these are very challenging times. But our city workers are not just some faceless group, some nameless group, a bunch of letters. They're actually our neighbors, they're our taxpayers. They're the people that you know I see at the playground, when my daughter is in playing in the local park. They are a vital part of the fabric of our city. And so when I came down here today I was anticipating that the council was -- seem to be willing to impose terms on a bargaining unit, and as a resident I think that's a violation of the values of this community. So I'm very hopeful that as a council, that you will continue to work with the remaining bargaining units, that you will reject any call to impose terms on any bargaining unit in our city, and that this be an example of really the very best of our city, of all these groups, really coming together, to serve the people. Thank you.

>> Mayor Reed: Ross Signorino. [applause]

>> Ross Signorino: You are not heartless people. There's no question about that. But keep in mind not too long ago, you gave yourselves a pay raise. You, mayor, refused it. Lot of you did, and I don't remember who did, whatever the case may be. But nonetheless here we are asking everyone for a 10% decrease in their salary. It's going to hurt, there's no question about it. Rather than giving -- and losing jobs, the auto plant in Fremont that closed down not too long ago and thousands of people were laid off, they gladly would have taken a 10% cut in their pay, in order to preserve their jobs, and their fellow workers' jobs but it didn't turn out that way. They didn't have that chance. Here in San José, we have that opportunity to take that pay cut and preserve the jobs of their fellow workers and we seem to be running into a great deal of obstacles on being humane for some reason or another. If you have to impose it you have to impose it since they won't do it voluntarily. We are proud of our attorney's office there's no question bit. We just mentioned how many lawsuits they won for us and bring money to the city but they also you yourselves put us in a position where we had lawsuits and we lost money on those lawsuits at the same time. So I urge you to look at things carefully, what we're doing right now, and you are right. By asking a 10% cut in pay, in order to preserve the services that this city's able to give and been giving well throughout, that preserve our police department, our fire department, and all the other services that come along with it. Thank you.

>> Mayor Reed: Kimberly Brady.

>> I was going to speak later but I think this may be a better time to speak on this issue. Couple of weeks ago I heard a woman get up and talk about she was a single mom and she had a limited income and cutting her pay 10% she said if you cut my pay 10% you might as well put me on the streets. I wanted to turn my car around so fast and come back and say, try losing your job altogether. I would have if I got laid off in September, nine months ago, I would have gladly taken a 10% cut in pay to keep my job. This is a time when we need to give back a little bit. Some of us are giving back more than others. I gist hope that you guys serve as a model for everybody else to follow suit so we can start to rebuild and get this place back on track and get the city back on track so we can all get back on track again. We are all having to give a little, including a lot of us who are giving more than that i'm a single mom, I am fighting very hard to save all I've earned all these years, we all need to give a little.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve. Any further council discussion? Item 3.7. All in favor, opposed, none opposed, item 3.7 is approved. Now we will go back to item 3.2. We have five last best final offers with five different unions in front of us. We'll take -- when we get to the public testimony I'll be taking public testimony on all foof of these at one time if you want to talk on any one of them or all of them this will be the time. We have one set of council discussion and debates. And then when we get to the end of it we should be able to take a single motion on all five of them. So at this point I'm going to turn it back over to the City Manager.

>> City Manager Figone: Thank you, mayor as you said these items before you now are implementation of the terms of last best and final offers . Let me just make a few personal comments. One of the most difficult things that I've had to do in my 41 years in public service is to develop the proposed budget that the council received on May 3rd. A close second is the recommendation before you to approve last best and final offers for the five bargaining units that have been mentioned. These are challenging times. I want to just pick up on what Brian Doyle said. I do not agree with the anger that's been directed at our public employees. But I do understand it, having been the target of that anger, as I've been out in community meetings. There is frustration out there. But our employees are highly valued and as I said in my previous comments, this is a fiscal issue that we need to confront together. While implementation of terms is not easy on anyone and I'm not happy that I'm here today recommending this to you, I do believe it's necessary at this stage of the process, and I need to emphasize, at this stage of the process. Labor relations is a very process, procedural driven phenomenon, and Alex will talk a little bit about process later in the presentation. I would have preferred nothing more than to bring you a recommendation today based on mutual agreement that reached the 10% reduction that you just received from Alp we did receive related to additional retirement contributions and because of those proposals we have incorporated this concept into our recommendation related to the additional 1-time 5% total compensation reduction. For the first 5% ongoing total compensation reduction as we were directed to achieve, our recommendation is the same as what the city council approved in April for ABMEI and unit 99. With with those background comments I will turn it over to Alex Gurza for the detailed presentation.

>> Alex Gurza: The entire last best final offer is attached to each council memo and the City Manager gave a summary of those. I don't sphaoand go over those again. Clearly, the last best and final offer is a very difficult and significant step but I want to at least briefly let you know about some things about what implementation is and isn't. Implementation of terms of a last best and final offer does not create a contract. It simply implements the terms and any changes in wages and benefits. The other most important thing is that it establishes a new status quo. So in other words, if the council votes to implement the changes, those changes take effect. And that becomes the status quo that future bargaining starts off from. So when a public agency implements its last, best and final offer, it suspends but does not end bargaining. So the question then becomes, since you don't have a contract, you know, what can make bargaining resume? Well, barking mean, well, a change in circumstances can be triggered by either the employer, the city or bargaining unit. To be able to ask the other to come back to the table and resume bargaining. So resume bargaining can happen at any time, after imposition of the terms of the last best final offer. It can happen as soon as tomorrow, next day, a week from now or the next or your last, it really depends on whether either side has a reason to come back to the bargaining tame and resume bargaining. So what can resume bargaining lead to? One thing most importantly is a contract. Clearly without having a contract, the goal would be at one point to resume bargaining so we can have a contract with that bargaining unit. But it can change the new status quo. So it can result in bargain changes from what the council may decide to implement. And again either side can ask for that, usually to either sit down again and meet or a new proposal comes in, and you sit down and try to see if there's significant movement there that might lead to resumed bargaining. Again wanted to make sure that that part is clear. The last thing we wanted to talk about is, again, these concessions of savings from these concessions. What would it be used for? The mayor's June budget message did outline what the savings from these bargaining units what it would be used for. So what we've done is recreated the chart in a simplified form from the mayor's June budget message. So as you can see here, the savings from the concessions from these bargaining units would restore very important jobs and services to the community. Over 100 jobs would be preserved and you can see the kinds of services range from branch library hours, community centers, park rangers, antigraffiti program, et cetera, down the list there. So again we would be happy to answer any questions that you may have.

>> Mayor Reed: All right, I'm not going to repeat my comments about why I took the lead on asking for concessions. But it's those remarks and I think the other councilmembers' remarks about the difficulty of coming down this path are the same whether we end up with a consideration or imposition, it's still real money for real people and has real impacts. We know that, we've heard that loud and clear. I think I want to take the public testimony at this point. We have people who want to speak. We are considering all of these in one hearing. You can speak to any of them, all of them. Please come down when I call your name. Fred Hirsh, Nancy Ostrowsky. McKenzie and then Larry Pegram.

>> Good afternoon, Mr. Mayor, and members of the council. My name is Fred Hirsh. I'm a member of the executive board of plumbers and fitters local 393. And delegate to the South Bay labor council and I'm here representing myself. I know of course there have been changes that have taken place in the last few hours. And it looks to me as if there's a game being played. I think imposition of the last offer may not mean a contract, but it sure does mean something to the paychecks and the conditions of the people of the workers involved. We've seen the publicity on these issues, leading to a division considering the workers or considering the community. And I think it's fair to say and I know it's fair to say that the workers of the community and the community are the workers. And there's a third party in this. I think this pay be a contest to see who's boss. And it's not workers and it's not the community. And it can be this city council. But if left to the recommendation, it will be that power in the city which is diminishing in its effect and its influence and it's the San José Mercury News. Please, do not impose what you are considering. And please, those of you who support the community and the workers in your history, stand firm. Thank you.

>> Mayor Reed: Nancy Ostrowsky, Kay Denise McKenzie.

>> Nancy Ostrowsky. IFPTE loam 21, represent being A and CAMP today. Please don't make a decision to impose on us. We have one week and we have brought to you the proposal you asked for, 10% total compensation, 5% ongoing, 5% one time. I draw your attention to the City's own last best and final offer that they gave this unit. In the event the additional retirement contribution did not be implemented or is ceased for any reason, employees would instead have their base pay reduced by the equivalent amount of 5% total

compensation. Do not implement or impose on us today. Give us a chance to get to the table and ask the city how this works for us. We answered you. We gave you what you wanted. 5 and 5 total compensation. You're telling you legally you don't know if you can do it. Your own language has given you an out for it. Give us a chance. We're asking five days. Give us that chance. We have answered what you have demanded. Thank you. [applause]

>> Mayor Reed: Kay Denise McKenzie followed by and Max Reger.

>> My name is Kay Denise McKenzie, CAMP almost 400 member bargaining units in the City of San José just this morning CAMP together with other bargaining groups submitted a proposal to the city to reduce our total compensation, which means pay and benefits, by 10%, comprised of 5% ongoing and 5% one-time components. This proposal represents true pain for CAMP-represented staff. You heard some of the stories of our members at your meeting last evening. But the city has just recently notified us that this offer, even though this meets what the city has asked for, has been rejected. We understand staff thinks there may be issues that they need more time to research. So why not defer this imposition for a week, to allow us to work it out? On behalf of CAMP I ask that you do not impose on us. Defer this imposition for one week. Do the research and thoughtfully consider and work with us to make this proposal acceptable for next Tuesday's council meeting, June 22nd. Thank you. [applause]

>> Mayor Reed: Larry Pagram, followed by John Max Reger and Don Dietrich.

>> The city has an obligation, you have an obligation and that obligation is to provide the citizens of this city with services. The budget shortfall as we all know is real. And so you have two options. The first is salary give-backs, or the second is a reduction in services to layoffs. Those are the choices. That's the conundrum. I urge you to implement the terms contained in the City's last, best and final offer. We need to protect our employees against layoffs and we need to protect and preserve services for our citizens. Thank you.

>> Mayor Reed: John Max Reger.

>> My name is John Max Reger, environmental inspector with the city for 18 years, ooment negotiator. I respect want to show my support, OE 3 support for our CAMP brothers and sisters. Also I'm asking that you defer this item for a week. Give us a chance to discuss it, we've given you a 10% total cost reduction, I also concur with some of Mr. Wall's comments about the impact these cuts will have. You may want to consider providing services to your employees who are going to lose their homes because of this 10% cut, thank you.

>> Mayor Reed: Don Dietrich, Albert Young, John Merkar.

>> Don Dietrich representing operating engineers and I tell you I'm flabbergasted. I looked at what you agreed with with the attorneys and operating engineers made a proposal that exceeded that. We've made a proposal that at least matched it. And we've been rejected. Not for good reason. Not for any real explanation, just rejected. And, you know, because of don't have any other answer, I have to wonder, did the attorneys get their deal because employee relations director's wife is in that bargaining unit? Is that why they got that deal and nobody else got one? It really starts to cause us some concern. We have put a legitimate offer out there as a consortium of unions that you have that gives you what you want. And we are told today that there might be legal issues with it. I can tell you I work globally, I work with lots of public agencies. What we've proposed with you works in other places. It's hard to believe it won't work in San José. So we're asking you to defer the decision to impose because we'd rather negotiate with you and I really hope that you as a city council want to negotiate with us. The principles of the Meyers Milius Brown Act is to meet and confer in good faith to come to a mutual agreement. We're trying as unions to do that and we're getting blocked. So I'm asking you to please defer. Give us an opportunity to continue and meet. The ball's in the city's court. They're saying it's a legal issue. We're saying it's not. If it is show it to us. There's no fact to what we've been told. Thank you.

>> Mayor Reed: Albert Jung. Followed by John McCarr and Roger stores.

>> Good afternoon, honorable mayor and members of the council. My name is Albert, I'm a resident of AEA a resident of the City of San José. I was many that attend last night's public hearing. After hearing the testimony I

cannot remain silent as I feel and share the pain of many of my fellow co-workers. Therefore I stand before you to solicit for your support of this coalition of unions for the councilmembers to be voting against imposition I personally compensated an apology for your continued support and efforts. May the lord bless you and your family. Every decision that will be made will either produce good or bad fruit. For example, if you plant a fruit seed you will get a fruit tree. But if you plant a cactus seed it will yield a cactus with thorn and thistles. Every decision the councilmember will make will be accountable before others and for our father in heaven and will affect hundreds of people if not thousands. What you sow today will later reap the consequences of your decision. For there is a saying that says you reap what you sow. The challenge is with you, do you want to engage in this political fight or do you want to remember as one who was inducted in the hall of fame for being a councilmember who stood up for what is right, one who upheld the truth, for justice, prudence, dignity, honesty, righteousness, these attributes are priceless that no money can purchase here on earth but they are far more valuable and precious than all the gold and silver combined. In conclusion I bless each one of you to vote no for imposition but to give us an extra week to work this out together. Thank you for your time.

>> Mayor Reed: John McCarr, Roger stores and Diane ah butcher.

>> Honorable mayor and council, my name is John Carr I'm the president of I architects in the city. Last night you heard from our members and the hardship they're going through and what this will cause them. Today, with coalition with six other groups we proposed exactly what you asked for, 10% of total compensation package, 5% ongoing and 5% as one-time. Exactly what you asked for. This proposal affects all the employees the same. Today we heard that they needed more time to figure this out so I really encourage you not to impose on us, and postpone it for a week. We are willing to come back, if this doesn't work we will take 5% total compensation from the salaries and work through this, we are confident we can work through this -- during this coming week so postpone it for one week, I encourage you to do that. Don't drive this wedge between the employees and the council any deeper than it is. It's only going to be a week and you already have this lined up so just take this decision. Thank you.

>> Mayor Reed: Roger stores, Diana butcher, Cameron Cleland.

>> Good afternoon, honorable mayor and council. I'm Roger stores, an employee of Public Works and a member of AEA local 21. We've begin what you you've asked for. We put a proposal on the table that meets the 5% one time and 5% ongoing compensation. We understanding you have challenges potentially and we are asking for a week deferment so everyone can have an opportunity to look at this and straighten things out and determine that it's feasible. I would like to point out a couple of additional pieces of information regarding my bargaining unit. AEA bargaining members will be \$194,000 in the General Fund. That's pennies on the dollar. We are taking a huge hit. Okay? Then you look at the slide that was up there talking about the positions that will be restored as part of the Mayor's Budget Message. None of our members are on that list. 10% of our members are proposed to be laid off and another 10% are proposed to be demoted. I can only ask, what more can we do? Thank you. [applause]

>> Mayor Reed: Diana butcher, Cameron Cleland Mar Brogan.

>> Good afternoon, I am Diana butcher first vice president of AEA. We have work diligently to negotiate fair and reasonable concessions from our members. The city council's asked for 10% total compensation which is about a 15% pay cut, not 10. The City's last best and final offer to our unit exceeds that 15%. We have submitted an offer that will take the requested 10% final total compensation amount from our members. City council needs to seriously consider the details of our last proposal. Any decision to impose needs to be deferred to the June 22nd council meeting to allow for the appropriate time to fully understand and consider our proposal. Remember that only one-third of the City's employees are being considered to share the pain today. One-third. Thank you.

>> Mayor Reed: Cameron Cleland, marg Brogan and then .

>> Good afternoon, mayor and council, I'm Cameron Cleland, it is more than we can afford. It pains me to imagine the effect this will have on employees. At the very least I implore you to defer this item, while the attorneys figure out the legalities. Please do not impose. Thank you.

>> Mayor Reed: Mark Brogan, Karen Capaldo and Victor Chen.

>> Mayor Reed, members of council. I'm here for CAMP 21 and I'm also a resident of District 8. And a resident of the city, wowbl. What I'd like to point out is, you'd asked for 10%, we had offered 10%. You declined. Our offer of 10%. I'm here today to ask again, please do not impose. Allow us to negotiate a little bit further with you. And it would be nice if you gave us more than 1 minute to speak at the evening event. Thank you very much.

>> Mayor Reed: Karen Capaldo, Kirk Tore Chen and Bill Pope.

>> Mayor and councilmembers, my name is Cara Capaldo, I've been a city employee for 26 years. I'm a member of CAMP, I'm on their board of directors and I'm on their negotiating team. We're trying to work with you. We only had five bargaining sessions before and you have not accepted it. We all need to work together, in order to save city services and jobs. We are ready to continue negotiating with you, we're ready tonight, to continue negotiating with you. Please defer your vote for one week and direct your staff to come back to the table with us so that we can all work together to make a good solution. Thank you.

>> Mayor Reed: Victor Chen, Bill Pope. Bob Leninger.

>> Mayor, city council members my name is Victor Chen. I was here last night talking to you guys, too. And again, you asked us to give up 10% in your March budget message. But however, if you look at this best final offer, some of the main items, the 5% ongoing pay cut, that's 5% and then we were asked for another, not asked, we were demand to give up another 7.5% to contribute to our retirement fund. And that alone is 12.5%. And there is roughly 1% from the health premium that would give an additional to each month, switching from the 90-10 to 15 and 85%. That's 1%. If you just add those three items United States already 13.5%. It's 3.5% more than you asked for mr. Mayor, I mean if you allowed this to happen you are allowing your City Manager's office to demand this additional amount on your employees, which is unnecessary. And exceeded what you asked for. And this is what you told us, and you're not living up to your words. And I hereby ask you not to impose onto unions. Thank you.

>> Mayor Reed: Bill Pope, Bob Leninger, David Wall.

>> I'm responsible for your infrastructure. This what you have what we presented this morning is not a Sacramento budget trick. It is real, hard dollars. That comes out of our members' pockets. So I urge you whatever the issue is that is a stumbling block, let's defer this a week. We once put -- the labor groups once put a medical plan in, in less than 30 days and that's with RFP and everything. So we can do it. You need to help us get it over the finish line. Thank you. [applause]

>> Mayor Reed: Bob Leninger, David Wall, Al Gonzales.

>> Bob Leninger, president of the federal retirees perspective that you do not pass this action today but give it some more time to be working. My perspective was 27 years as a negotiator in the redevelopment agency all the way back to Fairmont deals and the rest. I look at a group that has come forward in good faith. The other side cps good faith alternate proposal. It is a good one and deserves to be considered for a little while longer. It disturbs me that the actions would negotiations. When much strongly as you do about about services and maintaining those you should give them the right since you said you value their services as employees to have the right to put this together and see if we can strike a deal. I think also unfortunately what's been proposed in the last best and final has a lot of unintended consequences on those least able to pay. And I've talked about it many times before but that's true for many of the low income active as well as retirees and I think the alternate proposal is much better and much fairer and more equitable. Defer this. A deal's in the making. Work with these people. Direct your administration and the employee groups to work together and let's put a deal together as one city not as a adversarially situation, thank you.

>> Mayor Reed: David Wall Al Gonzales and Phyllis Schultz.

>> David Wall: For this snippet of a discussion. Let us turn on an argument, General Fund employees versus restricted use fund employees. How can you justify let's stay operation engineers number 3, OE 3, most of the people work at the plant that I know of. They're on a restricted use fund so why should they reduce themselves

10% since you can't use the money anyway for the General Fund. In particular throughout the city have employees often transferred from one fund to another that have restrictions on them and their retirement derivatives are calculated open those. But the bigger issue here about this argument for restricted use fund calculations is, prop 218. Later on today we will discuss sewer service and use charge. So are we going to get a rebate from these employee concessions of 10%, who are funded for that fund, out of that fund? Let us also talk about the waist of money. \$1 million of late. What could a million dollars do to each of these bargaining units and the million dollars could be broken down into two categories. Roughly \$60000,000 spent or wasted office of NERC and another \$500,000, a gamble on Mercado Suvienda in reference to the people who you charge and adamantly refuse to consider changing the city charter, modifying the city charter section 411. Innovate, the organization, instead of inducing people to their entire work lives for you to pull the rug out whenever it suits your purposes. But this restricted use fund business with prop 218, this will come up later today, in today's discussion.

>> Mayor Reed: Al Gonzales, Phyllis Schultz. Brenda Hoffman, Dan Rodriguez.

>> Hi I'm Phyllis Schultz from AMFP maintenance supervisors. There are only about 80 of us in our bargaining unit but we are part of the group who have put forward this new proposal to accept 10% of the ongoing -- on the pension liability. We understand that we need to -- you need some time to at a find out if this is legal -- legally we can do this or not. We at this point think it is. But if it's not we want to be able to have some time to meet with you, next week, and bring this back to council next week. So at this point, we just want along with everyone else we're just asking to defer this for one more week to give us time to look into all the issues. Thank you.

>> Mayor Reed: Brandy Hoffman and Dan Rodriguez.

>> Good afternoon, honorable mayor and city council. My name is brandy Hoffman and I'm a member of CAMP, local IFPTE 21 I urge to you reject the city's imposition on our working conditions and our compensation. The proposal being offered by our unions saves tens of millions of dollars. That money can be used to fund parks, libraries, police officers, firefighters, and avoid layoffs. Why are you rejecting our offer? Our unions have stepped up. And now, it is your turn. Thank you.

>> Mayor Reed: Dan Rodriguez. [applause]

>> Good afternoon, Mr. Mayor, and members of the city council. I'm Dan Rodriguez. I'm the business representative from the international brotherhood of electrical workers and I'm here to first of all thank you for listening to us. Although most of you have already made your decision, probably all of you have made your decision, what we're saying here may not mean a lot of press, but the city has not completely thought out the possible negative impact that it will have on the city operations and morale of the city employees. You're not going to get a whole lot of happy people because you forced this contract down their throat. The 10% reduction of 30% of the employees accounts to about 3% of what you're going to be saving out of total compensation for all the employees. The rest of the employees that you could possibly get on board right now will not get on board. Police and Fire had offered concessions and you refused that that was a lot of money you could have had and a lot of positions and services you could have saved. But instead you apparently have decided save any positions for anybody in any of the bargaining units. Thank you for listening.

>> Mayor Reed: Tony Sebock. [applause]

>> Hi, thank you for listening to plea. I'm Tony Sebock, a member of camp for 21 years. I'm asking you not to impose. I think our union only had five bargaining sessions. I'm not sure how much bargaining the attorneys have had i don't think we had a chance. We had some good proposals that I don't think were listened to. And the City Manager started out by saying the first 5% is the same as ABMEI and unit 99. It's not. I just printed this. For unit 99 it says health in lieu for city employees. For us it is health in lieu changes for city retiree. i'm not sure why it's different but there are some differences there. I ask you give us another week, work with us. We haven't -- we had five session and the city declared impasse. We really haven't had a chance to put all our proposals out there. Thank you. You want Tao a copy of this?

>> Mayor Reed: Hand it to the clerk, please. [applause]

>> Mayor Reed: That concludes the public testimony on these items, 3.2, 3, 4, 5 and 6. I'll bring this back for council discussion and action. Councilmember Constant.

>> Pete Constant: Thank you, mayor. As you indicated, 10% concessions is what we need. We've known that for a long time. We need this not only to save our services to our residents but we need it to save jobs for our employees. And I know there's been a lot of call for deferral, or let's see if we can address this next week. But quite frankly, we need to do this today. We've pretty much run out of time. We have an obligation to balance our budget and to pass the Mayor's Budget Message and all the different things that are contingent on that. And we've known the deadlines for months. And what's important to know is that this is not simply closing the door, as has been indicated by several of the speakers. Quite frankly, it immediately opens the door to negotiations, which I hope will begin very quickly. In fact, we know that conditions change all the time. And Alex Gurza had gone through what that means, and if conditions change, what can be done? So I do believe that we really have an obligation to take this action today. I know some people feel that implementation of terms is a hostile act. I don't think it is. I think it is merely playing out what is codified in law in the Meyers Milius Brown Act and we have to go through that process. So at this time I'd like to make a motion to implement the terms contained in the last best and final offers for CAMP, IBEW, AEA, AMSP and OE 3 and direct staff to be available immediately and on very short notice if necessary, when and if changed circumstances present them cells.

>> Mayor Reed: All right, we have a motion on the floor. I'd like to add that even though we don't have a council meeting scheduled any time soon, that in the appropriate circumstances if circumstances change, I can and will call a special meeting of the council, that can be done on as little as 24 hours' notice. In the event that circumstances change, that council would have an opportunity to react and do whatever needs to be done if circumstances change, and I'm certainly willing to ask for a special meeting. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. Alex, can you talk about the terms of the proposal that was brought by the coalition? Obviously we heard from the speaker but I'm not really sure if you know what's contained in the proposal. Does it equal to the 10% that has been expressed by a lot of the speaker?

>> Alex Gurza: Councilmember Nguyen we received it at approximately noon. The details are short. It's contained in a very short e-mail. I did have to ask follow-up questions. It does appear to be 10%. It's all in retirement contributions. There is some question about what equals 10%. the proposal that the unions had been making is 7.5% of base pay into retirement system. It essentially doubles that, so 15% of base pay going into the retirement systems in addition to what the employees are otherwise blicted to pay. So from the information we have it does equal a 10% total compensation reduction.

>> Councilmember Nguyen: So simply put they are giving us what we wanted?

>> Alex Gurza: Yeah, as been referenced before discussed it with the city council, I informed them in a meeting hi with them a couple of hours ago that the city council was not accepting their proposal although we appreciated it because there were some legal issues that did not allow us to be able to accept it as it was being proposed.

>> Councilmember Nguyen: Okay, thank you. And then the speakers also talk about the different legal challenges. Can you address that for me? Or I'm sorry --

>> Alex Gurza: Probably defer to the City Attorney on that.

>> City Attorney Doyle: The legal challenges with respect to the offer or with respect to the process?

>> Councilmember Nguyen: With respect to the offer and the process.

>> City Attorney Doyle: First with respect to the offer, I saw it the first time today at 1:00 just immediately prior to the council meeting. The legal issue is one of, it's a city charter issue. The retirement contributions under the charter are to be split 8-3. There is a exception for prior service deficiency. we had been working with staff on prior offers and I think contained in that discussion is one where whether a -- I think Alex admits this amounts to a 10% total compensation savings in dollars. The question is, are there any legal concerns with respect to those dollars that the city can take. Is the offer really legally sufficient. And so that's something that we've not had the

time to really vet and we need to come back. The second issue is on process. Because this is the 11th hour, because you're at imfast. Because you have issued a last best and final offer, in order to -- you either implement that last best and final our send the negotiators back and you break impasse. And it really is a dilemma for the city at that point. So do you have the possibility of deferring it but at the same time, there really isn't any negotiation that can take place while the last best and final is out there. And you may remember last year, we were in a similar situation. And you directed staff to at least meet with the bargaining group and the bargain group came forward but there wasn't an ability on the part of staff to have a negotiation and have a dialogue. So to the extent that -- well, again it may sound counterintuitive. To the extent you can implement the last best and final, staff assuming there's changed circumstances is free to go and have further dialogue. If there are changed circumstances at some point in the future but you know we're really trying to you know deal with something here at the 11th hour.

>> Councilmember Nguyen: Thank you. Alex, has this offer been ratified by the membership? I understand that they've come to us at noon today so I assume the answer is no but I wanted to make sure we're on the record.

>> Alex Gurza: Normally, ratification occurs after the city and the bargain unit have reached agreement so that process has not gone through yet .

>> Councilmember Nguyen: So if we defer this item and we direct staff to go back and make sure that the unions go back to the membership, ratify the proposal come to us and take this vote next week, why can't we do that?

>> Alex Gurza: I think first and foremost I think the issue that needs to be resolved is the underlying legal issue. Then we could go back to bargain and draft all the language, right? And again depending on the bargain unit procedures let's just say they could go back and either ratify or not but it's possible that one may not ratify or one or more may not ratify.

>> Councilmember Nguyen: What I'm hearing from the various members, of the unions, the speakers who just spoke, they are ready to negotiate, they are ready to talk. I heard one speaker say she's ready to negotiate and talk with staff tonight. And it seems like that the union members are ready to come back next week. Nobody's talking about June 23rd, everybody is saying they're coming back next Tuesday. I assume they're ready to come back next Tuesday. Here's the problem. I came to this meeting ready to impose if I didn't get the 10%. What I'm hearing is they're giving us what we wanted. I feel it's just very disconcerting to me to reject something that we've asked and we've asked over and over again and I know that this came at the last minute and came -- but that's how negotiation works. Let's not kid ourselves. These kind of things impact people's lives in every way possible. We can't expect people to come to the table a custom weeks before we're ready to vote on it. I don't buy into the kept or notion we don't have any time to figure this out. Here is an opportunity to go and figure it out and it's just another week. So aide like to make a substitute motion for the sake of discussion for my council colleagues to defer this item one week, give staff an opportunity to go back and talk with the unions, if we can get ratification of the unions to bring this back necessary Tuesday for a full vote.

>> Second.

>> Mayor Reed: All right we have a second to the substitute motion, we have a substitute motion on the floor to defer a week. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I appreciate I think I could feel that the -- there was great sense in the voices of those who came to speak and I don't doubt that the offer is a genuine one. We are all now trying to figure out the procedural quandary that we're in knowing that the people that come to speak before us today may represent the union members but certainly can't assure us that all the unit members will in fact approve whatever's put in front of them. In fact we don't know yet what language is going to be drafted and I think we're all trying figure that out. The question at the top of my mind and really is probably a question for Rick and I know we spent some time discussing this in closed session but it would be helpful for us to understand this better now. Is if there is any involvement by our team, whether it be city attorney's office or Alex's team, in helping draft the

language, so that it is in a form that is acceptable to the city legally, operationally, it can work, does that break impasse?

>> City Attorney Doyle: Well, I'll invite Alex to give his two cents. But to the extent you are having back and forth and sharing language it is. It would be a problem and you are at that point negotiating.

>> Alex Gurza: I concur. And it's possible we could then get to the point where we have to get to impasse again if we end up with a problem we can't resolve.

>> Councilmember Liccardo: Right. Question was raised about Alp. I don't know if they were at impasse or not. Forgive me sometimes I can't keep it all straight in my head.

>> Alex Gurza: Again, I will refer to Aricelli.

>> They were at impasse.

>> Councilmember Liccardo: Did we language?

>> Their language did not have fully ten agreement together it was presented and they accepted it and took it back to the membership.

>> Councilmember Liccardo: Okay but we didn't have a role in arranging that language in any way?

>> We did but there wasn't any negotiations back and forth. It was presented and they accepted the language to take it back to their membership.

>> City Attorney Doyle: Just for the record, the -- as I understand it, the attorney submitted a one and a half page letter which contained all the elements of the offer. And --

>> Councilmember Liccardo: That is, the bargain unit presented it when you say the attorneys?

>> City Attorney Doyle: The bargaining unit. And the O remplet staff from there crafted what they presented to the city council as final language.

>> Councilmember Liccardo: Okay whatever we crafted ultimately was taken to their bargaining unit for a vote, but because there was no back-and-forth we believe there was no negotiation.

>> City Attorney Doyle: I -- I think that's correct. I think it was just clarifying, putting into final form, which was already confirmed in a page and a half letter. The contrast here you just have a very brief offer 15% without any meat on the bones. And I think that's really where the -- I mean councilmember, I am the last one who likes to get hung up on process. This is form over substance. And yet, I think that's the dilemma we face and we want to make sure we don't cross that line. And so to the extent that we have the ability to get clarity, that's one thing. To the extent that we have a negotiation, that's something else and I think that line can be very, very close.

>> Councilmember Liccardo: Okay, and for those who -- I mean I know this whole process was a mystery to me until I took this job. The consequences of breaking impasse are that we are then back in negotiation, we lose the ability to impose in any way prior to the need to adopt a budget. And as a result, this could drag out in future months without any ability to impose until you've gone through the process again, mediation, impasse and then imposition and we would be forced essentially to take a contract -- well, not engage in a contract but take terms as they currently exist with no savings and we'd have to simply lay people off. Is that a fair recitation of what is likely to happen?

>> City Attorney Doyle: Again, Alex is closer to this than I am but that's my understanding that theoretically that could happen and it could drag out.

>> Alex Gurza: Yes, the city had changed circumstances. Meaning the city council's direction changed and so we had already gotten to the point of impasse with them before the circumstances changed so the city in that case broke impasse. They notified them of those changed circumstances, actually engaged in mediation over again but we had plenty of time at that point to see if we could even after those changed circumstances still reach an agreement. So we redeclared impasse after those changed circumstances, did not lead to an agreement, reengaged negotiations over again and then issued a last best final offer. Those process steps we have to allow time for that if the city council were to direct us to reengage in negotiations. It's possible that an agreement could be reached very quickly. It is also possible that we may not.

>> Councilmember Liccardo: Right, either because the language is -- we can't agree on language or because membership won't ratify, whatever the bargaining unit's leadership is proposed. Is that right?

>> Alex Gurza: Correct.

>> Councilmember Liccardo: Okay. All right. I think I understand a little better, thank you.

>> Mayor Reed: I just wanted to follow up on that. It seems to me that the way it's been laid out here by the legal constraints and procedure constraints that it's really necessary to impose terms, so that if circumstances change, we could start -- restart negotiations. And those changed circumstances could be a lot of different things and it could come as early as tomorrow. But in order to negotiate, to authorize the staff to negotiate and get into negotiations, we need to impose those terms. If we don't and we start negotiating again we have lost where we are, we have broken impasse, we are rebooting and you have to go through the whole process again which has taken us months to get this far. And the risk of that is that we end up with nothing in the way of concessions and the libraries and the community centers that we would fund with the concessions that are in front of us would -- money wouldn't be there to keep those community centers and libraries open. So that's it seems to me the downside risk. But if people's objective is to negotiate, imposing is the first step. And then if circumstances have changed we can reenter negotiations on changed circumstances. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. So I think one of the questions is, are we -- do we really need to go back to negotiate or are we close enough to a proposal that just needs some fine-tuning or some assistance to put it into an offer that can be -- a tentative agreement that can be brought back to council. So Aricelli, you were work withalotyp and that was the question, they were in a similar circumstance, they were at impasse as you indicated, they there was some fine tuning, I think, I don't want to put words in your mouth but can you describe how long were you working with them, how were you working with when you helped put that tentative agreement together?

>> We received 4:00 to understand the elements in their proposal. And then we went -- I went back and developed tentative agreement, spoke with them, at 10:00 last night, to meet with them this morning. And showed them the language. They were fine with the language. They took it back to their membership. And it was ratified by the membership.

>> Councilmember Herrera: How many hours did you work on it last night did you said putting it together?

>> It was a while. But again there was no legal implications in the proposal they provided. It was based similar changes to what was implemented for unit 99 and ABMEI. So there was not -- there was no legal issues that we had to address.

>> Councilmember Herrera: So one big hurdle we have here is a legal issue, understanding whether or not what's been proposed is something we can legally do, that's one I'm just trying to dissect what we have here, that's one issue. And then the other is so if that -- if we knew it was legal, then you -- then it would not be breaking impasse to help formulate that into a tentative agreement?

>> Well some of the -- all of the items that were in the proposal were discussed at one point during the negotiations as well. So there was back and forth discussions and we had some of the proposals developed already. So some of it was taking that language that we had previously proposed and putting it into the tentative

agreement. If you look at the agreement they provided, it accepts city's numbers and it's the exact same language. It wasn't that difficult to put together. Because the discussions had already occurred before, correct.

>> Councilmember Herrera: However today Alp was on the agenda as impasse? I mean as implement, or we had a possibility of accepting a different outcome which we ended up doing.

>> The item on the council agenda weighs approval of agreement or implementation.

>> Councilmember Herrera: Or implementation.

>> Yes.

>> Councilmember Herrera: And we were able to approve that agreement. So I'll probably let other people ask questions but I really want to make sure we explore what's in front of us. Because the fact that 10% has been brought is not a small thing. I'm -- I'm very moved by that. And moved by the fact this group has brought forward a proposal like that. I know it's small, it's not very many words but the substance is what is most important to me, the fact that it's 10% and I have a lot of questions, and I don't know how much can I say without the City Attorney telling me you can't -- we might be crossing the line here. But I heard a speaker stand up and say that this was not earmarked to go to their bargaining unit which means that this money could be used to save community centers and libraries. That's another really important data point that we've heard today. So I'm going to lin to some more comments, those are mine for now.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all, I want to thank all those people who are here and that was here last night to talk to us and I have received many phone calls, e-mails, as well as snail-mails, regarding this issue. I truly truly believe that our bargaining groups have made a good-faiths effort when they have come to the table and demonstrated their willingness to work with us during this very difficult budget time. While I voted for

imposition last year I don't feel it's fair to impose and rely on the concession of five bargaining groups left to balance their budget this year. As we continue to face tough economic times, I believe it's critical to ensure a sense of fairness and equality to our employees as we continue to work together to solve the long term budget issue. My objective is to respond to the City's budget challenge in a fair and balanced approach. I did a little -- my math, a couple of weeks ago I received a check and symbolically from the coalition that added up to about almost \$15 million. And if we impose all those five contracts here we probably will get less than \$7 million. So if the objective is to really save the city services I think we should work closely with the union and that more cooperation we get, the better it is for our city. The budget realities we are facing today are not really new problems and it will not be solved overnight. I believe it's unfair to our employees to act in this manner. So I will support Councilmember Nguyen's substitute motion to just postpone this discussion for another week. If we can do it for AIP, we should be able to do it for these bargaining units. And what I understand, their proposal is very straightforward one. 15% reduction to -- for their retirement cost. And that's pretty much -- I can say it in one breath. I know there's some implication there. But to draft an agreement, with some escape clause, if you can do this we can do this I believe is doable. So I will be supporting the substitute motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. First I'd have a couple of questions. Legally, how long will the decision take? The decision to find out whether this is a legal problem?

>> City Attorney Doyle: I think in the next 48 hours we would have, you know, the answer. Much of the answer I think -- we have a lot of the information now because it is something that's been talked about as part of the last best offer. It's just a little bit different format and there's some additional issues that are implicated. So -- but I think within the next 48 hours to answer your question.

>> Councilmember Pyle: If you are talking about negotiation are you talking about no negotiations on any side both sides? In other words could they do their separate negotiations and come back to us? There are no internegotiations happening?

>> Alex Gurza: Councilmember Pyle I'm not sure what you mean but if parties engage in renegotiations, there is no set amount of time that is made for negotiations but you have to allow for sufficient time if allow sufficient amount of time whatever that happens to mean. There isn't a set definition, whether that means a week or a month or --

>> Councilmember Pyle: So they've asked for a week.

>> Alex Gurza: Or four months.

>> Councilmember Pyle: I'm assuming a week, that seems reasonable. We're basically going to reboot what's been started. Put it another way. The cake isn't baked yet so we're going to wait for it to get baked and then bring it back in a week. Now I can't imagine that we're going to get ourselves in superduper legal trouble if we do that. A side story. But we are talking about six unions unless I'm not counting properly, CAMP IBEW, AEA, OSE 3 and unit 99, correct? Beg unit 99 is not part of this proposal.

>> Councilmember Pyle: Destructions say oochtion it is confusing. Beg unit 99 is on your schedule but unit 99 you've already implemented the first 5% that's ongoing. So what's before you today for unit 99 is separate from these.

>> Councilmember Pyle: I do have some comments when we get to unit 99. But I just can't find it in my heart to stomp on somebody when they're trying to do what they can to get that cake baked. And we need to to allow the proper time to let that happen. [applause]

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: If you're just gathering information, you're not actually negotiating, that doesn't constitute negotiating, isn't it just getting information? You're not actually in conversation with --

>> Alex Gurza: Right so for example when I got the e-mail from Ms. Ostrowsky I did have a couple of questions. To make sure I understood what the proposal was. Again one of the things, if the council were to send our negotiating teams back it would have to be clear what the intent is. Are we rebuilding negotiating for this or are we simply doing more listening to make sure we understand the full proposal and then waiting for the City Attorney to tell us whether it was legal or not.

>> Councilmember Chirco: My hope would be that it is not sending your team in to do negotiations. My hope is so that, our position, stay, but you're getting the information to bring to the council, say, next Tuesday. And then -- then we have a better understanding of what is being presented. Is that -- that doesn't violate at this point the last best and final offer, it's just bringing more information, and getting clarity on the legalities?

>> Alex Gurza: Yes, I mean a proposal can come in at any time. So in other words simply seeking to understand someone's proposal, you know, that's something that could be done. That's something that I did just a couple of hours ago.

>> Councilmember Chirco: I know it's frustrating and I don't want to set your team up to go in and do negotiating. But to gather information and get clarity on the legalities of it, to know what your position is it's not to put new a catch 22, it's to gather information so we as a council have a better understanding of what we're committing to. That's not violating anything correct?

>> Alex Gurza: Not that I'm aware of, no.

>> Councilmember Chirco: Then I will be supporting Madison's motion.

>> Councilmember Pyle: All right, what a theme. What a theme.

>> Councilmember Chirco: And all of your leaders know, that labor negotiations are very intricate and they have very ritualistic and legalistic constraints on them. Because the last best and final offer has been made. My hope is to get better understanding, clarification, and if Rick slaps me on the back of the head I know I've exceeded what I'm allowed to say, that we have all of the parameters with which to operate. So yes, I will be supporting the motion. And so Nancy, could I ask you to come down for a question?

>> Yes, thank you.

>> Councilmember Chirco: You know what I said, it's very ritualistic, legalistic, last best and final and what that does. So my question to you is, do you feel that you understand the restraints that our team is operating under? They can't negotiate but what they can do is get clarification and understanding of the offer, so that it can come back to council?

>> We understand, we understand it's a coalition. We respect that. We also have more language. We know that we're -- we're giving the 10%, there's no problem with that, right? So we understand and respect and it's the what if? And when Alex Gurza asked for clarification and our attorney's working on language, let me just see if I can --

>> Councilmember Chirco: You don't have to be --

>> Just to mention, because I know somebody here had asked, City Attorney waiver on waiving any impasse procedure. According to our attorney Chris Platten yes, there can be. Whatever works, we certainly want it to work and we respect that. So thank you, Vice Mayor.

>> Councilmember Chirco: I look forward to a resolution and a solution. So thank you.

>> Mayor Reed: Let me suggest that maybe instead of deferring it to the 22nd that we defer it to Thursday afternoon or Friday afternoon, that that will be at least the 48 hours the City Attorney thought he would need to figure out the legal issues. Would give anybody who has any clarification questions that Alex needs to ask he

could do that. And that way we're still in a position where we could deal with the budget message, the budget, and then be able to, on the 22nd, do what we need to do to wrap that up, in order to get into the next fiscal year. Because the first pay period starts open the 27th. So rather than defer it for a whole week, I have no idea what the calendar looks like on Thursday or Friday afternoon. But we could defer to that. We may have to notice a special meeting to do that or if we're just deferring, I'll let the City Attorney and the clerk talk about what it would take if we were to defer to just 48 hours or 72 hours.

>> City Attorney Doyle: We'll have to set up a special meeting and set it up with the clerk on that.

>> Alex Gurza: Mayor, if the City Attorney is considering a special meeting, you might set up a closed session as well. Threshold issue by then we might talk about that and see where that's at because it seems like it's an important issue to know the answer to.

>> Mayor Reed: City Attorney says we can certainly do both. Whether it's by special meeting notice or otherwise. And I would suggest we do it on Thursday, and if that's not somehow available or possible then we do it on Friday and by then we'll have a little bit more information that will help some of our frustration about trying to make a decision about things we don't know about under circumstances that really limit our ability to find out. So Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I think that's an excellent suggestion. I think everybody's anxious to get to the table and bring some closure to the agreement. So whether it's Thursday or Friday it's fine with me. We just have to figure that out and make sure it fits in everyone's schedule.

>> Mayor Reed: A couple other issues. Of course any time we start changing things around the budget office gets a little bit concerned about the calculations and the balancing of the budget so there's a lot of issues that follow from any action that we take. And so those, of course the budget office will need some time to figure out how to cost things out and depending on what the council does so that we're still prepared hopefully on the 22nd to wrap it up after we take action on a budget message Thursday or Friday. And we could have a closed session

before that, like we usually do and whether that's in the morning or the afternoon, I think we'll have to work with the City Attorney to set that. And -- but let me just clarify. As I understand the motion, it is to give us some time to get answers to legal questions that we have which we would do in closed session, to give Alex some time to ask some questions about the proposals, but not to direct Alex to reengage in negotiations and break impasse. Because that's a pretty high risk, dealing with this many bargaining units, if not -- well ending up with nothing. So if there's Nancy Ostrowsky talked about a waiver of impasse stuff, that's all stuff that's interesting but we don't have a waiver. We haven't had a waiver. That's not where we are right now. We're still at impasse and we need to maintain our position so that we can do what we need to do. But I think if we take 48 hours to get the information, and to get the legal issues answered, at least the decision we have to make will probably be easier to know what the right thing is to do. So the motion is to defer till this until Thursday, or Friday, depending on what we can book.

>> Councilmember Nguyen: Because I think if it's in the afternoon, I think it has to be on Friday because I have a Public Safety committee meeting on Thursday. So Friday would --

>> Mayor Reed: We might have to move some things out of the way.

>> Councilmember Nguyen: That's fine. I don't have to attend a committee meeting, this is definitely more important. I just wanted to state that for the record.

>> Mayor Reed: Any time we set a special meeting there's going to be conflicts on the schedule. I for one will be happy to miss a VTA meeting. We need to clear the time in order to be able to do it. The other thing I would suggest is we'll get to the budget message later. We'll have to consider on what impact it has on what we can do on the budget message meeting later today. We'll get to that after we decide what to do on this. Councilmember Liccardo.

>> Councilmember Liccardo: It seems to me we probably have representatives, heads of the various bargaining units in the room today. Rick, if we had folks come down here and convey to Alex in writing or verbally on the

record that there was a waiver of impasse procedures, would at least enable us to -- what I'm concerned about is we're walking a tight rope right now. And we want to enable communication to happen without breaking impasse. So would it be effective, a waiver if folks were to waive any breaking of any allegation of breaking of impasse, through this exchange of information that's been contemplated, so we're not getting ourselves stuck down the road and we can at least freely communicate without engaging in negotiation?

>> City Attorney Doyle: Councilmember I'd like to think it is but I want to have that conversation directly with Chris Platten. It is great to have their attorney say they are willing to do that but I want it ironclad that we could have a conversation with their attorney.

>> Councilmember Liccardo: Perhaps it would help if we actually get those communications regarding the waiver before we engage in the communication.

>> City Attorney Doyle: It wouldn't hurt. So --

>> Councilmember Liccardo: Yeah. Would the maker of the motion be open to that friendly amendment?

>> Councilmember Nguyen: Absolutely. Nancy is coming down.

>> Our attorney, Chris Platten has already put together the language for waiver and our parties are here today and we'll sign it for you. Thank you. [applause]

>> Councilmember Liccardo: For the maker of the motion would you be willing to accept that friendly amendment?

>> Councilmember Nguyen: Yes.

>> Mayor Reed: Okay, we have a motion to defer, to Thursday, hopefully, I mean it's really important to the budget office to have it sooner rather than later because there's lots and lots of work going into getting the numbers straight. Thursday is definitely the preferred date, with time for the City Attorney to do the legal analysis, for Alex to do and waivers before you start asking for information. That's the motion on the floor, it's actually a substitute motion. On that motion, Councilmember Campos.

>> Councilmember Campos: Thank you. Nancy, before you sit down I'm going to ask you to come down one more time. Probably just have your name on the front seat right here. So Rick, this is very encouraging and I think that we have made more movement in the past, what, since 1:00, and it's almost 6:00, than we've made in months. So it's very encouraging. So Rick I'm going to ask you a question then I'm going to ask Nancy. Now that we know that the attorney has provided language for the waiver, if the unions sign that waiver, before we leave today, how long will it take you and your shop to verify that from a legal perspective so that the unions and Alex's team can start engaging in a conversation? We're real crucial for time.

>> City Attorney Doyle: It's tomorrow, tomorrow. I mean, given the fact that it's almost 6:00 and we have a night meeting, you know, tomorrow --

>> Councilmember Campos: So tomorrow morning we know that before noon they can start --

>> City Attorney Doyle: By noon, how's that?

>> Councilmember Campos: I don't mean to push the envelope Rick but this is really crucial I think for everyone and I think it's really crucial for the livelihood of where the City of San José is going to go. And I know that the unions and the employees are so eager to make sure that we save those services that are so vital for our community. So I think the fact that we've had this open discussion and we've been able to move through the uncomfortable issues but I think my colleagues have asked some very, very good questions. And I want to thank Madison for making the substitute motion. And Vice Mayor Chirco for your questions and your tough questions that I think move the discussion from where we're at right now. So Nancy, I would encourage you to be the point-

person, to gather all those signatures, so that we can start discussion on this tomorrow before noon. So I will be supporting.

>> Thank you. Really we do thank you and we are available as quickly as Alex Gurza calls me. We will assemble. We will be working on it already tonight. Thank you.

>> Councilmember Campos: And mayor, Vice Mayor and I on Thursday have a healthy neighborhood venture meeting we're willing to move that to accommodate any meeting on Thursday.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor. I will be supporting the substitute motion. I am hopeful that this will bear fruit and we will have yet another pleasant surprise in all of this and things will move forward. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Ash Kalra: Thank you. It sounds like based upon how Alp was resolved, that this is something Alex that can almost be resolved in a similar fashion. One of the speakers made reference to the fact that even in the essentially the terms that are subject to our implementation right now, regarding the additional retirement contribution, even that has an out in case, for some reason, the retirement board doesn't approve it or any other reason, in the event -- actually the way it states in the event these additional employee contracts are not implemented for any reason by September 1st, 2010, it goes on to say, basically it will be taken out of the wages. So outs are there. And I think the most important thing is that we have an opportunity to really create a win win win situation here. Both a win for us, I think, in doing something serious, and tackling our deficit in a serious fashion, a win for the employees, in that they're coming forward with something that they can live with even if they're not happy with it, I don't think any of us are happy with any of the decisions we have to make and most importantly a win for our residents, we have an opportunity to save our services without the divisiveness that implementation would require. In terms of legal implications what have you, I'm confident that we can find a way

to resolve those issues. If -- and I'm confident we can find a way to resolve and come to an agreement with our bargaining units, if that's truly where we want to end this process. I really want to thank all the employees that -- and the bargaining units and the leadership that's come here today. This is huge. This really is huge and I'm really proud of them for stepping forward. I also, and I think earlier, I didn't give Aricelli enough credit. She did a tremendous amount of work on Alp, that only now we recognize the amount of work to get this done and clearly there's a lot more work to do in the next few dates. I have some concern with the two-day turn around in that I think for the most part we're going to want to -- I think we'll all feel comfortable and want to know there is some kind of agreement that has time to be ratified and what have you. So I'm concerned that we're creating a time line that's very short. But the fact that we're moving away from implementation today I think is very encouraging. You know the last few weeks and even months, it's been very discouraging and disheartening to see how much anger's been directed towards our employees. And a lot of it was created by people in City Hall. And by the media and by folks that are in some cases very understandably frustrated. You know, I don't blame residents for being frustrated with what they see as dysfunction occurring from the halls of government. But the reality is that I think that we've done a disservice to our community by fueling some of that fire. And I think we have a great opportunity to start healing, and we have a great opportunity to bring everybody together at this point. And I'm really hopeful that we can do that. The way that the employees, I mean, the ones that are before us today, certainly have been included in the group that I think has not been given due respect in the public realm. I know our police and fire have not been given due respect in the public realm as well. I believe our employees earn every penny they get and they have to sacrifice and by doing this and showing the desire and the leadership to try to come to a resolution at the table and not implement, that not only do we encourage greater dialogue on some of the long term structural issues we all talk about, as well as dealing with future deficits, but hopefully that will be a very encouraging sign to our police and fire as well that we're willing to step back from the cliff so to speak in order to create a compromise that brings us together. And so I'll be supporting the motion. And I'm hopeful that we can make this happen. [applause]

>> Mayor Reed: Councilmember Constant.

>> Pete Constant: So my question I guess is a little bit of process here. So before we vote on this can we discuss how this affects the budget message, and all the issues that we have coming right after this?

>> Mayor Reed: Well, what I would suggest we do is, that we -- if this deferral is approved, that we defer the rest of the budget related items, to the same meeting, basically do this redo kind of a day, except for item 3.17, employee retirement contribution ordinances which requires a second reading because it's an ordinance. We should go ahead and approve that today with any changes the City Attorney thinks need to be necessary for between now and the second reading. But everything else I recommend that we defer to that Thursday meeting. Because they all need to be done in appropriate order to make sense around the budget.

>> Pete Constant: Okay. I forgot my other comments so I might ask you to come back to me in a second.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. We had a very colorful closed session discussion and sadly and unfortunately we can't share that discussion and I think everyone knows my viewpoint that we would save a lot more time if we could just discuss this out in the open. And we have made a lot of progress today quickly and I think we made it quickly because it's -- we're quasi-in the public today. And I feel constrained on what I request say based on what the City Attorney told me I don't want to break impasse and I don't want to be mentioned in unfair labor practices based on my saying something. I'm very other side of the fence I need to follow the processes I've been informed in capturing what I can to retain jobs and provide the open libraries and community centers. To me, that means imposing not shove it down your throat imposing but imposing saying let me take it and come forward with something as we are going with this waiver. I know some people interpret that way and I can't change your mind about that. I don't dislike our city employees. I think a majority of them do an outstanding job, I'd say 99%. There's always that person that doesn't do it but that's the way life is even in the private sector. But what I find disruptive is that a lot of this doesn't come down to employees, it comes by those who represent them. And we in this country and this world have the ability to have collective bargaining. But I think done in private, done in the way we do it today, is really a disservice to the employees. Because you're waiving

this employee in the wind who's having to deal with meetings that are private, and they're having to be put in the public light when that's not the case. The case is, those workers do a good job. But this is a system we have and I pray and hope that we'll make a move off of that. So with that I cannot support the substitute motion, I'll be hopefully optimistic that we come to some happy ending but in the end I'm kind of carrying the message from the residents that want to see some hard decisions made not on the backs but on the understanding that we need to move forward. I respect every councilmember up here, I've said that multiple times, we may disagree on certain things, I appreciate disdainful or say any mean words, we're going to have to disagree. I want you to understand my position. I like to say as consistent as possible. For as far as I can tell, I've been as consent as all I can be. We'll hope for the best.

>> Mayor Reed: We have a motion here, substitute motion which is to defer action on 3.2, 3.3, 3.4, 3.5, and 3.6 to Thursday and perhaps Friday. That's all we'll do we'll take up the items on deferral as we get to them. Further discussion on that opposed Constant Oliverio opposed so that passes on a 9-2 vote. [applause] [applause]

>> Mayor Reed: There are some other things we can take action on, I want to get those out of the way before we adjourn for dinner. We have to come back at 7:00. Item 3.8 is compensation and benefits for unit 99. I know the City Manager had some comments on that.

>> City Attorney Doyle: Yes thank you, Mr. Mayor and I'm going to recommend that council defer this item and I wanted to tell you why. You know, before you is the second 5% for unit 99. The first 5% was approved on April 27th. Just as a reminder, unit 99 are unrepresented employees, primarily managers but not exclusively. And I will have to say they do not have bargaining rights. And although I brought you a recommendation with their consent and knowledge and input, they also are trusting me to bring forward something that treats them fairly. They have the same concerns as other employees. And so given the actions today, the Alp agreement which I fully recommended, and now this evolution here, I want -- would like to defer this item to evaluate what is currently in the unit 99 proposal to ensure that if there are any changes that I should be recommending, in order to ensure equitable treatment of unit 99 I'd like the time to do that. So that would be my recommendation, to defer.

>> Mayor Reed: We have a motion to defer. I think Councilmember Liccardo had the motion to defer to Thursday on the same schedule as the previous items. All in favor opposed none opposed, one opposed, Councilmember Constant opposed. 9.2, mayor and councilmember compensation to be heard in a joint session, I recommend we defer that until Thursday. Motion is to defer that to Thursday as well. All in favor, opposed, none opposed on that one. That's deferred. Item 3.9, 10 and 11, I understand, is okay for us to take action on today. They're not -- don't require budget approval first.

>> Pete Constant: Excuse me mayor, I'm sorry for some reason I thought you said 3.9. So the one we just voted on, was that our salary one?

>> Mayor Reed: It was 9.2.

>> Pete Constant: Register a no vote on that one for me too.

>> Mayor Reed: I miscounted the vote on that one. 3.9 the parcel tax rates, 3.10 sewer service and use rates, 3.10, municipal water rate increases are all things we can take up now. So staff want to have anything to say about this or are we just going to pick it up? On 3.10 and 11, there are open hearings find out if there are any protests et cetera we'll do that appropriately. 3.9, library parcel tax for 10-11, any comments on that, have one request to speak from the public, Mr. Wall.

>> David Wall: First of all I want to make it clear that every single one of you is an outstanding person and none of you wants to have anyone lose anything now to the issue at hand, the library parcel rate, in my understanding started back in the hammer administration it's grown ever since i'm not certain because of the ravages of age whether or not prop 218 applies to this rate. Because I'm not certain on how this parcel tax is used either for structural operation side of the ledger or for employee compensation or a combination thereof. Therefore I think it would be prudent for a slight discussion prior to a vote as to what this fund is used for and Coyote be directed into a restricted use fund, with possibilities of increasing it even more than it is right now. But then again, also, how it

is calculated at the current rate. So that would be, I would hope to have some form of discussion with you, as to how this fund is used and can be recalculated. Thank you.

>> Mayor Reed: That concludes the pibility on item 3.9.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: I have a motion to approve the staff recommendation. All in favor opposed, none opposed, that's approved. 3.10 is sewer service and use charge rates for 2010-11. We need to have some extra language around this I think because we have to find out if there are any protests. So I'm going to open up the hearing. We'll take public testimony. And can we start with the City Clerk letting us know if there have been any protests that have been filed.

>> Lee Price: Yes, thank you, Mr. Mayor. Subsequent to the environmental services memorandum dated June the 8, 2010, the City Clerk's office received valid written protests, of 646 for the proposed sewer service and use charge rates .

>> Mayor Reed: All right, public testimony. David Wall.

>> David Wall: I filed my protest, to the rates prior to this hearing. Once again, the use of employees on a restricted use fund, specifically the sewer service and use charge has profound implications under proposition 218 with reference to the budget and the 10% proposed reduction. The issue then turns, is there going to be a rebate to this fund, since you're force an employee a cost which is very significant for the sewer service and use charge application. So that I don't think has been thought of. Most of which, too, is the rate structure itself. Year after year, the rate structure since out the single family home as being the greatest use of flow to the plant. Personally, I think that the rate structures to derive from the interpretations of the final resting places of dried chicken bones thrown from a dice cup. These rates are very suspect on how they're calculated. And this goes also to the storm drain. This does not underestimate the need to rebuild a completely new sewage treatment

plant and collection system. But the rate structures itself is a material issue, as well as proposition 218, as it applies to the employee cost of the operation. And I want misprotest to be amended to include the testimony I've just tendered.

>> Mayor Reed: That concludes the public testimony on this. I think, let me just check to see if there's anybody else here who came to protest this possible rate increase. Seeing none I'm going to close the public hearing, the clerk can give us the count and let us know whether or not we can consider this.

>> Lee Price: Sorry thank you Mr. Mayor. So therefore the total of the protests received during the public protest period represents less than one half of 1% option therefore the council may consider staff's recommendation for sewer Service and use charge rates at this time .

>> Mayor Reed: Okay we will do that at this time. Is there a motion on the staff recommendation for increases? We have a motion to approve the staff recommendations. Councilmember Constant.

>> Pete Constant: I just wanted to make a statement for the record here. Everything we are doing related to this budget, whether it's deciding to or not to impose terms, and what we're doing with different pay, including our own pay, ultimately gets paid for in one way or another by the taxpayers and residents of the city. We spent a lot of time talking about that, and deferring to make our employees happy. And then just rushing off to raise fees everywhere else without even giving it a second thought. And I just think it's something that bears mention and I know that these fears necessary, given the budget and given the fact that we are going to have to budget, Friday now that we're going to vote on that.

>> Mayor Reed: Thursday.

>> Pete Constant: You hope Thursday, I hope Friday. I got plans on Thursday, if I say Friday enough maybe it will just sink in. So just -- I just wanted to say that because I to the it had to be said and I'm going to just register a no vote on just being stubborn on the next two.

>> Mayor Reed: All right we have a motion to approve staff recommendations. Councilmember Oliverio.

>> Councilmember Oliverio: I won't be voting no but I will say this is one of the few things I vote on in the council that I actually think I'm getting something. No offense to every other city service but it is such an unforgotten about thing, these sewers. The day these torn working the day you're going to be getting more calls that happen you ever expected. So this is very tangible, thank you .

>> Mayor Reed: Anyone else, it is almost time to go to dinner. We have a motion to approve the staff recommendations. All in favor, opposed, Councilmember Constant is opposed so that passes on a 10-1 vote. Number three.13 municipal water system water rate increases for 2010-2011. .

>> Ash Kalra: .

>> Lee Price: Thank you, Mr. Mayor, subsequent to the Clerk's office received valved written protests, the total number of valid written protests is 103. For the proposed municipal water system rate changes.

>> Mayor Reed: All right, let's see if there's anybody else who has come to protest. I have one request to speak, David Wall.

>> David Wall: By the municipal water system, so I have no protest one way or the other. My concern on the rate increase is predicated on previous arguments on proposition 218 and specifically any and all employee cost that this rate increase is based on. Because all of these rate increases should be deferred until this budget mess is squared away. And that will conclude my testimony. Also, one last thing. It would be somewhat disingenuous to raise rates, one thing about employee costs. But also on the other hand, if you are seriously thinking about leasing out the municipal water system and/or selling the municipal water system because rates could dramatically change as a result of those actions, so I think it should be very prudent, looking at the Muni water system as completely separate from all the rest of the rate increases, not that the other things aren't important

that I've mentioned but the closed door sessions about leasing it and or selling municipal water which I don't support on either side, should be calculated on the people who use this system. Thank you.

>> Mayor Reed: That concludes the public testimony, I believe. Let me see if there's anybody here to protest the municipal rate increases for 2010-11. Clerk, I don't think we've changed the count on that one so can we consider this?

>> Lee Price: Yes, Mr. Mayor, the total written protests are less than one half of 1% so the council can consider staff recommendation.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just had a quick question for John. How does that compare to the rate of the area served by San José water?

>> John Stufflebean: The current rate is, a 76% I believe of the Muni -- of the San José water company rate and I believe that they are looking at a more ever -- a higher rate increase than we are so we'll be even lower after the rate -- after the first of the year.

>> Councilmember Chu: Thank you.

>> Mayor Reed: Is there megs?

>> So moved.

>> Mayor Reed: We have a motion to approve staff recommendations. All in favor, opposed, one opposed, Councilmember Constant opposed still being stubborn I believe. That concludes item 3.11 that's approved. We have 3.17, the employee retirement contributions ordinances that we need to get in place to do some of the things

we're trying to do with the budget. City Attorney has some changes I think we want to consider before we approve it.

>> City Attorney Doyle: This is to implement the retirement contribution provisions whether through the implementation procedures or there's an agreement reached. I'm going to let Alex note two changes that are proposed that would come back between the first and second reading.

>> Alex Gurza: There are as Rick mentioned there are two issues in the police and fire plan. The way that it was drafted right now, it only would allow additional retirement contributions for the unrepresented employees in the police and fire plan. So really that would be the unit 99 employees. And we'd like to get the flexibility that if we were to reach an agreement with either police or fire meaning local 230 and the POA that it would also cover them. The other issue is that the attorney's office drafted both ordinances so these additional retirement contributions would only be for one fiscal year, this coming fiscal year. So if it turns out that it's possible to have it ongoing as has been proposed then we would propose to remove that to at least allow the flexibility if it turns out that that is legal to do it on an ongoing basis.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Mayor, would it make sense to defer this a couple of days until we get the legal analysis done?

>> City Attorney Doyle: No, we would recommend you take legal action, whatever you need is that one week turn around if we did it Thursday.

>> Councilmember Liccardo: So moved.

>> Alex Gurza: And just the other thing for point of clarification. It doesn't make them so so it would only be in case you actually implemented or reached an agreement. It puts the plan changes in place to allow it to happen.

>> Councilmember Liccardo: Understood. Thanks.

>> Mayor Reed: We do have a motion and second. Further discussion? All in favor opposed, none opposed, those are approved with the modification second reading on the 22nd. That takes us to the open forum. Mr. wall. And then we'll be resting for brief dinner break, starting again at 7:00.

>> David Wall: This is in reference to an article in the San José Mercury News. About the mischaracterization portrayed in the independent police auditor's office, somebody feeding information to the Police Officers Association, allegedly. I contend this is a whistle blower. According to the Mercury News there are allegations of skulduggery and misconduct. I emphasize allegations. If there is any information that has been withheld concerning falsely accused San José police officers by the office of the independent police auditor this is very series business. And then it raises another issue on who audits the office of the independent auditor for being truthful, who holds accountable all the scum that are arrested, that then raise fraudulent complaints against the San José police, and there's no accountability? I have run public record requests on the fact that they're not sworn to tell the truth and given testimony to the -- about San José police officers. And this bothers me greatly. But what should bother you is the fact that this whistle blower has uncovered something very serious about falsely accusing San José police officers of wrongdoing, and then excusing this conduct as nonchalant. I contend this also goes to the issue of creating a de facto hostile work environment for San José police officers who have to endure any and all aspects of the office of the independent police auditor. I would like to say and request and demand --

>> Mayor Reed: Sorry your time is up. Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor. This is kind of painful for me to come up here and say this but nonetheless I feel I have to say it and I will. This afternoon, or this morning, I was listening to KLIV and Councilwoman Pyle was on there talking about the contribution and the money she was able to raise for that lake. But the painful part of this is, to me, that I have to mention this, that she was saying in an interview, that she

was driving and using a hand-free cell phone. I don't agree, talking on a hand-free cell phone or hand-held cell phone while you're driving. I think it's risky. It's already been determined that many accidents and distractions are caused even by hand-free phone while you're driving. So again, what you did is very commendable, for the right reasons for everything, but you use the wrong method. Please do not use a cell phone while you're driving. Hands-free or not. Thank you.

>> Mayor Reed: That concludes the open forum. We're going to recess for 45 minutes. Take up the evening session at 7:00 p.m.

>> Mayor Reed: Good evening. I'd like to call the San José city council meeting back into session after a brief dinner break. We've been going on since 8:00 this morning. This is probably the longest meeting of the year but we might break that record next week. So we'll see how long we go on the agenda. We got through the afternoon agenda mainly by deferring a lot of stuff until later in the week.. We will start tonight with some ceremonial items and then we'll have an administrative hearing on the appeal on the baseball stadium and we'll move on to the general plan and the land use matters after that. So let me start the ceremonial items by asking Councilmember Chu and representatives from the encorps teacher program to meet me at the podium. Tonight we're recognizing the encorps teacher program for outstanding services to students in the Bay Area and in the City of San José. Councilmember Chu has some details.

>> Councilmember Chu: Thank you, mayor. I'd like to thank my colleagues and the mayor for presenting a accommodation to Jennifer Anisoft, she is coming from the East Bay. She is the executive director of encorps teachers program but we'll go ahead and recognize encorps teachers program. Beside me is Michelle Lyle, with Northwood elementary erch corps is a nonprofit organization that spearheaded the innovative public-private partnership dedicated to encouraging the encorps teachers programs provides assistance to math and science, professional transition into classroom teaching. Since the inception in 2007, over 100 individuals who been encorps educators. In recognition of our educators in Silicon Valley, the encorps teachers program and the Silicon Valley teachers association recognize teachers with their math and science achievement at their annual pass the torch luncheon and awards ceremony. This year, Michelle Lyle, a Northwood elementary school teacher from the Berryessa school district again was recognized for her effort to structure her classroom and teaching to ensure that each student is able to chief at their highest potential. It is wonderful to see a successful partnership between the encorps teachers program and our local professionals. As a result, our local professionals are able to pass on their invaluable math and science knowledge and real-world experience to our students. At this time, I would like to ask our teacher -- the mayor to present a commendation to Michelle.

>> Thank you. [applause]

>> I just wanted to thank encorps who came into my life just a short month ago letting me know that I had received this award. It is actually named the Jaime Escalante award. They actually awarded two this year, one in Northern California and one in Southern California. It's great to be recognized, after 21 years to get an award that had such a great name to it.

>> Mayor Reed: I'd like to invite Councilmember Nguyen and the keep San José beautiful steering committee to the podium. We want to recognize these individuals to their commitment of lots and lots of volunteer time to beautify property in San José. Councilmember Nguyen has the details.

>> Councilmember Nguyen: Thank you, mayor Reed. I'd like to invite from council district 10. I am so delighted to recognize and commend these residents for helping to beautify our city on a daily basis. The keep San José beautiful community improvement wards was established in 2004 and gives opportunities for citizens to nominate an individual or group that has made tremendous effort to improve our neighborhood. As the council liaison to the keep San José beautiful committee I'm proud to be standing here honoring these individuals. Helped to beautify schools neighborhoods as well as public and private properties. So if the mayor can present the first commendation goes to corrie barfield, Cory has worked on use habitats for local wildlife. If second commendation goes to the friends of willows scarring club, council district 6. They have worked hard in the community to beautify the community with flowers and tree planting projects and the last go from council district 10, these individuals have worked hard to provide clean and sustainable neighborhoods for everyone to enjoy . Thank you so much for your efforts and congratulations on achieving these awards. Thank you. [applause]

>> Mayor Reed: Understand that Jen from encorps has arrived. Jennifer, come on down. We already had a presentation for one ever your teachers but we'll give you a commendation and let's get a photo op here as well.

>> I just want to thank San José and the San José City Council for recognizing the encorps teachers program. More importantly, I'm thrilled with Michelle Lyle who is our honoree. I hop this highlights the importance of the work that our math and science teachers do every day in the City of San José. There are people working with kids making sure that they understand algebra, making sure that they understand science and how important

it is in everyday lives. So thank you to Michelle, thank you to Councilmember Chu and thank you to the City of San José. [applause]

>> Mayor Reed: Next I'd like to invite City Clerk, Lee Price to administer the oath of office to youth commissioners that are going to be here. We have two youth commissioners that are going to be here, welcome.

>> Lee Price: Come really close to the microphone. Please raise your right hand and staim.

>> I Peter Tang.

>> And I layla Foroogi.

>> Lee Price: Do solemnly aware.

>>> do solemnly swear.

>> Lee Price: To support and defend.

>>> To support and defend.

>> Lee Price: The constitution of the United States.

>>> The constitution of the United States.

>> Lee Price: And the constitution of the State of California.

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

>> Lee Price: I take this obligation freely.

>>> I take this obligation freely.

>> Lee Price: Without any mental reservation.

>> Without any mental reservation.

>> Lee Price: Or purpose of evasion.

>>> Or purpose of evasion.

>> Lee Price: And I will well and faithfully discharge.

>>> And I will well and faithfully discharge.

>> Lee Price: The duties for which I'm about to enter.

>>> The duties for which I'm about to enter.

>> Lee Price: Well done, congratulations. [applause]

>> Mayor Reed: Thank you.

>> Mayor Reed: First item of business is 11.6. The administrative hearing on the appealed of Planning Commission's final supplemental environmental impact report for the Diridon arena area. We will have a presentation to begin with.

>> Thank you, mayor and councilmembers. Darryl Boyd, Department of Planning, Building, and Code Enforcement. I would like to introduce David core who is our outside CEQA consultant and Andy Faber our outside CEQA counsel. Just so you know he's with us. We have a few slides, we understand it's a very long day, we will move through these quickly so you can move on with the agenda. Did it again. The first slide we have got this evening sort of goes through the basics. Some of these are for the benefit of the public as well as the benefit of the council. The important thing, in this case the City of San José is both the applicant and the lead agency for the project and for purchase certifying the EIR. Why we did a supplemental EIR in this particular case as the council may remember back in 2007 there was a final environmental impact report that was certified for a 45,000 seat stadium. Since that time, there was a modified project proposal that came forward, which essentially reduces the proposal that we analyzed in the EIR before you tonight, analyzes a project that reduces the number of seats between 9,000 and 13,000 fewer seats. There was an initial study that was prepared to determine what the proper CEQA clearance process should be, initially there was some thought that we could do it with an addendum but realizing that there was a previously undisclosed significant freeway impact there was a decision to go ahead and do a supplemental environmental impact report. The next slide just goes through the significant unavoidable impacts that were identified in the 2007 final EIR. There were nine freeway segments between state route 87 and I-280. There's long term air quality, there's four different noise impacts. One is with regard to traffic on West San Fernando street. The stadium events themselves, short term temporary noise impacts from construction. Fireworks to the extent that those would occur. There will be two historic resources that would be demolished, those would be considered significantly unavoidable impacts. We're not demolishing the historic Diridon station but the context of the station would be affect because of the changes in the surrounding environment so there's significant unavoidable impacts then with regard ocumulative impacts all of those stated above plus visual option resources, were considered significant unavoidable impacts in 2007. And those same impacts carry over into our supplemental EIR. With the EIR before you this evening, there's an additional six freeway segments that are impacted as well as do the narrowing of park avenue and the impact for most of us there's a cumulatively significant impact with regard to greenhouse gas emissions. This is just a quick slide, with regard to parking. I'm sure we'll talk more about it later. But essentially what we're saying with regard to parking is parking with this project is not a significant environmental impact due to the circumstances because there is a substantial A parking available downtown, to meet the demands of the project. And more importantly we do not

feel that there's been any substantial evidence put on the record that would change our mind regarding those conclusions. This next slide just identifies the public process that we've gone through. The two highlights is that in exceedence of our minimum CEQA clearance we did take the SEIR to Diridon yarr stationery planning. Good neighbor committee meeting just shortly after the EIR was put out on the street and we did hold a community meeting March 18th. The EIR was certified by the Planning Commission on May the 19th and subsequently appealed. Just by way of making it clear what constitutes the final supplemental environmental impact report it's essentially the draft document as well as the First Amendment which we provided to you and there's various other items which need to be included by CEQA, our comments we received on the draft EIR. This is the recirculation criteria, and essentially what CEQA says is that we're not required to recirculate unless there's been significant new information that's been put on the record either such as significant new impacts identified, or mitigation measures. We're not required to recirculate for just adding additional information to the record for clarification purposes and in this particular case, staff believes in the Planning Commission prior to us believe that there's no - the standard for recirculation has not been met. There's no reason to recirculate this EIR and then with regard to one last comment, for the project, there is no project before the council this evening. There's no specific ballpark proposal. There's no other council action that's being contemplated. Therefore that's why you will not have a resolution to be adopted with the findings as required by CEQA. Likewise we won't be filing a notice of determination which would really be the key for litigation purposes. So with that mayor staff is recommending that the city council certify the final EIR, based on the following reasons that you've considered and read the final EIR, that it's complete and in compliance with CEQA and it plights the analysis of the city. That completes staff presentation, mayor, thank you.

>> Mayor Reed: Thank you. This is an appeal of the certification by the Planning Commission so I'm going to take the appellant first and we'll take public testimony before we get any council discussion. So I have I believe here Ronald Van buskirk who is representing stand for San José. Allow the peanlts five minutes and then we take public testimony. We only have one appellant, stand for San José. The Silicon Valley.

>> There were three appeals. Mr. Mayor.

>> Mayor Reed: I only have one appeal here tonight.

>> The section appellant would be Mark Morris if he's here tonight.

>> Mayor Reed: I don't have a card for limb. So we'll take the first appellant who's in front of us, we can do that right now, Mr. Buskirk.

>> Thank you very much, Mr. Mayor and members of the council. My name is Ron Van buskirk, I'm a partner and general counsel for Pillsbury, Winthrop stand for San José a group of citizens and groups including the San José giants of course. Who are very concerned about the EIR that you're about to certify. I want to stop for just a moment and recognize my old colleague, Mr. Horwedel, and the deputy City Attorney. We've been through quite a few matters together in the past. The city has prepared a supplemental environmental impact report. This is in preparation of considering whether you're going to put a ballot measure before the voters to be voted on in November for the ballpark. I noted that the North Dakota in the slides, the ballot measure wasn't mentioned but of course that's what's coming next after you -- if you certify this SEIR. Our clients have two main concerns, number 1, this SEIR does not comply with the requirements of the California Environmental Quality Act. I realize you have counselors and staff that tell you otherwise, but it does not at least in our humble opinion and number two but more importantly because it does not comply, does not fairly and fully advise the voters of the environmental impacts of the ballpark project. Now, there's no doubt an EIR is required. That's not in controversy, before you can place a measure on the ballot for the voters. But let me just read you two sentences from what the Supreme Court of this said said in 2001 in another case. Before placing any such measure that may lead to voter approval of a project on the ballot, the agency, here the city, must comply with CEQA. We all agree with that. If compliance leads to the preparation and consideration of an EIR, when that process is final, the information contained in the EIR must be made available to the electorate for its consideration prior to the election. We don't disagree on that either. Where we disagree is whether the EIR that would be presented should you certify it tonight would, in fact, fully and fairly inform the electorate about the environmental consequences of this project. Now, you have lots of comment letters from a lot of people including our firm. And in five minutes I'm not about to try to go through each and every one of the things we think is a major concern about the SEIR. But just very briefly, I want to touch on

traffic because that's the big issue downtown. Number one, if you look in the traffic study at the back of the EIR it finds that four intersections will be degraded to LOS F, a very low figure as you know. By reason of this project, the ballpark, taken together with events simultaneous events with the sharks at the pavilion. And even without simultaneous events, that is not revealed in the EIR itself. It is not discussed in the EIR. Because it only considers the five to 6:00 p.m. peak hour. Under city regulations, and ignores the six to seven peak hour when these four intersections will be degraded and other will be degraded although not below LOS E. Mission to avoid the degradation of those intersections, it was suggested that years ago the city decided in its general plan update that it's okay to have deteriorated intersections. I really don't think that's going to pass muster under CEQA. I'm sure you'll hear from the staff their view why that's okay and I'm here to say we don't think that will pass muster, showing four intersections and no finding or significance or mitigation for it. That's my first problem. Number two the freeway segments. There's no analysis with regard to specific freeway segments in the six to 7:00 p.m. hour when you have the peak traffic when you have both the sharks and the new ball pash being for the A's. In the 6:00 to 7:00 hour you have less than 5 fipple so what's the beef? There is no number some of them would be degraded. There is no analysis segment by segment for the 6:00 to 7:00 p.m. hour and that's not justified. And finally on cumulative impacts, there are a number of projects in your system being proposed in the city that are not in the list of cumulative impacts that was analyzed in the EIR. We pointed this out in our comment letters. Many of them closer to the proposed park than the project --

>> Mayor Reed: Sorry your time is up. Have to allow Mark Morris, I gave you five minutes. Allow Mark Morris, as the other appellant.

>> Thank you very much.

>> Mayor Reed: Can you do that.

>> Please don't certify the EIR.

>> Mayor Reed: That was more than thank you. Mark Mark Morris is the other appellant.

>> Good evening, five minutes, what a luxury, I wasn't expecting it. I can tell a few jokes, perhaps. I think the sharks that are here tonight really nailed the essence of the environmental impact report when they described it as taking a results-oriented approach that really does everything it can to avoid identifying significant impacts that might require mitigation and that might require somebody to actually pay to mitigate those things. I'll get to some specific examples in a minute. But a larger concern is that the EIR reflects how badly the city wants the stadium. The EIR explicitly makes the stadium a priority over everything else. Over high speed rail, or BART, over any other local plans and policies, including any and all neighborhood plans. And that's the major reason the neighbors are here. Fear that we'll get trampled in the rush over a neighborhood stadium. No protection, that needs to change and other people will talk about that in more detail tonight. But if the people from the neighborhood could just hold up their signs and get some idea of the concern there is. And you have a letter expressing our concern. Okay. Some specific examples of the EIR results driven approach. A simple example first. The day game analysis makes two large unsupported assumptions. One, it assumes that day games will start at noon. Even though in fact every A's day game in 2010 starts at 12:35 or 1:05. Second, it assumes that 30% of fans will leave before the end of the game. An assumption that's just made up out of nothing. No evidence, no explanation for it. And the result of those two assumptions is that the EIR managed to avoid analyzing the effect of baseball signs on a traffic accident. I don't think that's by accident, that's by design park supply pointed out in comments, these have not been explained or corrected. Result is to overstate the parking supply by 1500 spaces. On the demand side the EIR uses a very old trick. Wherever it can, it claims that demand estimate is speculative like high speed rail and BART so therefore the demand is zero. That's the worst bobble estimate and it's frankly not very honest. The result: Conservatively is to over-- to under state the demand by 7500 spaces. The EIR concludes there's no problem with parking. But apparently, the city doesn't believe that. In the recent agreement with the sharks which I don't know if you passed today or not, the city is committing to use eminent domain to enable a new parking lot. Why? EIR says no problem exists. So the net effect of that deal with the sharks will be to transfer parking revenue from other private lots, existing lots, perhaps the money from the city, to the sharks. What's the justification for eminent domain, in doing that if there's no parking problem? Again, the city seems to believe there is a parking problem. Doesn't believe the environmental impact report and I think you're right in that analysis, there is a problem. And the shark pit protection for their fans. But what about the other

venues like the center for performing arts, San José civic, other things downtown all falling well within the one mile parking radius predicted as needed for the stadium. Are they going to get any protection for their fans? The sharks get it. Baseball starts at 7:00 before the events for all these things. Baseball fans will occupy all this parking, there won't be any available for theater and other venues. A third example. Land use decision relies on basically the conclusions from the 2007 environmental impact report. Conditions have changed radically. In 2007 there was no high speed rail there was no BART. Those two things make a huge difference, in the Diridon station area. Those are not considered in the supplemental EIR in any depth necessary to reflect the very changed circumstances. Fourth, traffic management parking program is a key part of the answer in the supplemental EIR to how problems can be solved. But question of scale and it's always the arena TPMP is cited as we're just going to do that. It ignores the question of scale. Anybody who has solved my complex problems knows a problem that works on one scale doesn't work necessarily at a scale of two to three times and that's what you're going to have with the baseball stadium. There is no explanation or exploration of that. There is also in the TPMP really a potential conflict of interest --

>> Mayor Reed: Sorry your time is up.

>> All right, there's lots more examples. The EIR is inadequate. Thank you.

>> Mayor Reed: I just let you say thank you. Okay. We'll now take some public testimony. We have quite a few people who want to speak. When I call your name please come on down so you're close to the microphone when it's your turn. Susan Hammer, Michael Mulcahy, Nick rackovich. That would be former mayor Susan Hammer if I've got it right.

>> Thank you very much. It's nice to be before you once again on one of my favorite main my favorite topic and that's bringing baseball to San José. As some of you may remember I've been around the topic of bringing 1992. Back then the A's claimed Santa Clara County as its territory and they generously gave it up for the giants. Now, the time has come for the giants to return the favor and allow San José and the A's to create a better future for team here in our downtown. While there are details remaining to be worked out the site is ideal for a

ballpark due to the proximity of public transportation, freeway access, parking nearby hotels restaurants and businesses. San José can't afford to swing and miss again. Let me repeat that. San José simply cannot afford to swing and miss again. This is our next best and perhaps last chance to build a ballpark here. Keep the A's in the Bay Area and generate the jobs and tax revenue our city so desperately needs. So my friends I urge you to certify the EIR and hopefully we'll have a decision soon from major league baseball and we'll get on with the job of bringing major league baseball to San José where it is so badly wanted and needed. Thanks so much. [applause]

>> Mayor Reed: Michael Mulcahy Nick ratkocis Dan Fenton.

>> Good evening, Mr. Mayor, councilmembers ledges of supporters to keep the ballpark moving forward. Tonight is another important step so let's certify that final SEIR. I also have some exciting news to share. Pro baseball for San José has conducted a recent poll showing strong support for the A's to build a downtown San José ballpark. Voters strongly believe that bringing the A's to San José would be good for the city. When asked if they agree or disagree with the statement bringing the assmentsdz to San José is good for the city, 79% of likely voters say they agree. A summary of the findings are in a memo that I've just handed to the City Clerk and we've got a letter submitted from San José hotels Inc. also supportive of tonight's motion. We're fired up. San José voters clearly recognize the tree impacts and benefits and added tax revenue that a downtown ballpark would create and we're ready to work with the mayor, you, city council and the A's to make it happen. While the giants owner are Mr. Newcomb continues to bring roadblocks like the stand for San José you saw tonight. We believe the priorities of our 1 million residents should take over for one map his lawyers and a PR machine. SF is a nice burrb north of San José. Upset what's best for the City of San José. so tonight I ask for the real San José to stand for San José. Nurchg. [applause]

>> Mayor Reed: Nick rackocvich Dan Fenton and.

>> Speaking on behalf of the Silicon Valley leadership group. By way of background the leadership group is a business trade association representing 312 member organizations in Silicon Valley. The companies we rent

collectively employ last April our members responded favorably to a poll asking them their position on a stadium being built in San José with over 70% being supportive. Most recently our board of directors unanimously voted to support the City of San José's efforts to attract major league baseball to San José. The location could not be better. Walking distance to the Diridon station, multimodal center piece of a vibrant bustling metropolitan area that makes San José a place where people want to live work and play. I'm here to tell you tonight that the business community is in fair of economic development and jobs that the stadium would bring to the City of San José. Thank you. [applause]

>> Mayor Reed: Dan Fenton and Jack Wimberly.

>> Dan Fenton: Sudan Fenton. there's significant support here today to move forward on this and keep baseball moving and bring it to San José and I want to talk about one quick anecdotal point, often people talk about the direct impact and the things that are going to happen because the stadium being here. Day was in a conversation with a major clients who was looking at bringing a major event to San José in the future. I promise I didn't oversell the client and mention we already had baseball. I did say it was potentially coming. When you say that they pause they pause and say that's interesting and that makes them think about San José differently. I urge you to move forward. There's a lot of benefit to this that you don't even think about will do to the future of San José so thank you .

>> Mayor Reed: Jack Wimberly, Helen Chapman and Henry cord.

>> Mayor with all due respect the hat came on here as I came up here. I'm also a neighbor having attended the Planning Commission meeting in May with the SEIR was discussed and voted on having reviewed the SEIR and public comments and appeal I find the SEIR thoroughly completely support a council resolution to support a final SEIR thank you.

>> Mayor Reed: Helen chapman, neil strut nerps.

>> My name is Helen Chapman president of the Shasta Hanchett neighborhood organization and regarding the supplemental EIR and proposed stadium apt at Diridon. To be clear our neighborhood association does not have a position on the potential stadium either for or against, but does have a position on the need to protect the interests of our diverse historic community. I hope you all received a copy of our letter endorsed by several neighborhood leaders and associations. The recent negotiated agreement between the city and the sharks organization shows the city values the sharks stadium as an asset to the city. We feel the city should also give the same value to the surrounding neighborhoods. We ask that you give the following concerns as outlined in our letter, one is highlighted in bold there. Thank you for your time.

>> Mayor Reed: Henry cord. Pleuz.

>> Mayor Reed: Followed by Neil Struthers and Stephen Kline.

>> Good evening council. Henry cord, local resident, downtown business owner. Former member of the arena authority that did a tremendous job dealing with the neighborhoods when we built the arena which is a model we're working from I think and a member of the San José downtown association. I personally want to commend the staff. I've read all the reports that the staff has done over the last six or eight months, coming to the business of the council this evening. I think they've done an excellent job addressing with regard to level F intersections, I'd love to have ten more. I think it would make this city dynamic. And San Francisco will always have more than we have. I urge you to deny these appeals by the other parties. I believe the EIR addresses all the issues and places the matter of approval before you, as our elected officials. We need to complete this part of the preparation process to solicit and promote economic development meaning a ballpark. The project within the EIR, that's our ballpark, and that's away we need for all of our citizens and all of our districts particularly as it will be an enormous benefit to our downtown. So thank you and please proceed.

>> Mayor Reed: Neil Struthers, Stephen Kline and then Carlos Babcock.

>> Good evening honorable councilmembers, mayor, Neil Struthers head of the building trades council, been here in front of you many times talking about the status of the industry. The building trades 10,000 of them approximately are out of work at the moment and have been for some time and I've told you this before and so when someone comes forward with a half a billion dollar project of private money we need to take it seriously. So it should come as no surprise that the building trades council and pes I drove down here tonight it didn't take me very long because most of the businesses on Santa Clara are already closed up. The restaurants I used to go to are no longer open. So having the couple of F intersections which I'm not sure if that's really accurate but that has to be an improvement from where we're at now. So I would encourage you to move forward and approve staff's recommendation. Thank you. [applause]

>> Mayor Reed: Stephen Kline Carlos Babcock and Matthew Johnson.

>> Nice to see the mayor and the councilmembers again. My name is Steve Kline and I'm a resident in the Burbank Del Monte NAC which is directly affected by this project. We don't have a position for or against the stadium however throughout this long day you have talked about money and budget problems. With that in mind what was the deal that the sharks obtained to withdraw their appeal? The city has provided the sharks a benefit worth several million dollars with regard to the parking structure. You are willing to use eminent domain power to grant that benefit. Oh, what a cost, oh, what a deal. What do the neighbors want? Among the many requests being made, one that is vital to be accommodated is that the city should not bear any cost, neither capital, nor operational, for the required security, Public Safety needs and traffic controls. The cost of this request to the city is nothing. And the future benefit is priceless. That would be a great deal. Your neighbors are talking. Please make the right decision, to include the neighbors' concerns in the necessary documents. Thank you. [applause]

>> Mayor Reed: Carlos Babcock, Matthew Johnson and then Jacqueline Golgio.

>> Good evening, mayor and council, I'll make this fairly short. I am with the Silicon Valley bicycle coalition I would like to comment right now that the city has an oversupply of parking and by building although we do not take a direct stance on the stadium itself there is a need to realize that there is an oversupply of parking some

parking operations right now 40 to 50% of capacity it is oversupplied, it is undersupplied, we are deeply concerned the effect it will have on pedestrians, cyclists and the neighborhood area. We want you to consider that parking and traffic will be affected by this. Thank you.

>> Mayor Reed: Kathy Johnson Jacqueline Goldsio. Paul Higgins, Tom Sawyer, please come on down when I call your name. Go ahead sir.

>> Good evening my name is Matthew Johnson. I'm a resident, I bought a condo over at access about 15 months ago. I bought it because I want to be in the heart of the action and since I bought it I've seen five or six restaurants right around my place go out of business and it really worries me and I think about I wasn't here for the fight for the sharks when that happened but I imagine a lot of these same concerns came up and I can't think of anything better that's happened to San José since I've been around. And I hope that you approve of the stadium and bring it here to San José. [applause]

>> Mayor Reed: Tom Sawyer, Paul Higgins, Jacqueline Goldsio.

>> Tom Sawyer, Shasta Avenue and I'm honored to have two minutes. The EIR in response to the difficulties, the potential difficulties of emergency vehicles, reaching calls during the time that the streets are jammed, all the -- many of the intersections are at level D or higher and a lot of that will cascade onto the freeways which by the way was not covered in the EIR. And the answer to this was there was going to be a lot of money from the ballpark. I figured I got high school math I can do a little bit of work. Taking a look at the presentation I given to the redevelopment agency, it seems that each fan is going to spend approximately 50 bucks, the long term attendance is projected a little over 24,000 and the total spending at the game is going to be a little over \$1 million or over 184 home games, roughly \$100 million bucks. Not bad. A lot of the fans live in San José so a lot of that money is going to come out of the neighborhoods and go to the ballpark, let's be generous and say about \$35 million will be transferred from the neighborhoods to the ballpark. That still leaves us with 60 or 65 million left over. My impression is that San José gets about 1% of that or \$650,000. So I took a look at one of your other

reports and it seems that we're spending about \$170,000 per fireman so I'm confused because it seems like the toll revenue sales tax to the city is going to be about three or four firemen. Thank you.

>> Mayor Reed: Paul Higgins followed by Yolanda Reynolds and Pat Saucedo.

>> Good evening. My name is Paul Higgins and I'm president of the San José downtown residents association and a member of the Diridon good neighbor committee. I support moving forward in this process and ask that you certify the EIR. I recognize the benefits that a ballpark will bring not just to our neighborhood but to all of the City of San José. That's all I've written and prepared I didn't realize I actually had two minutes but I also think from the perspective of living in downtown being the 10th largest city in the country that frankly I just get a little fed up being sort of the stepchild of San Francisco. I think, you know, it's time for us to look forward and to move past what I recognize are some concerns. But I have full faith in the City of San José and the processes that are in place, that we'll deal with the issues of parking, that we'll deal with any of these other issues that have come forward. But we can't just step back and continue to not want to move forward because of some concerns. Again I have faith in our process. And I have faith that this is going to be something that will be in the -- to the great benefit of our city, to our residents, and that will give us much recognition not just in the Bay Area but across the country. Thank you so much.

>> Mayor Reed: Yolanda Reynolds, Pat Saucedo, RichardZepelli.

>> I'm not speaking as an expert but this is what I saw and read. The likely dispersal onto roadways citywide, is not adequately covered. Please take that seriously. The LOS ratings seem to be lower than those used in the City of San José impact policy. Rendering the traffic impact even more severe than those stated in the SEIR, I hope you take a look at that. Noise is unavoidable. The noise to the city is not analyzed. The suggested mitigation should be transferred from the city to the builder. The increased number of officers needed for traffic control will undoubtedly have an impact on security forces throughout the city. This likely outcome is not addressed. I urge that the city reject the SEIR until there's adequate knowledge of the full impact of the traffic, parking, noise, and even more importantly, this project's impact on the City's RDA and General Fund. Thank you.

>> Mayor Reed: Pat Saucedo, Wooters.

>> Pat Saucedo. planning Commission to certify the supplemental EIR last month. Tonight we ask the council to reject the appeal and certify the EIR before you tonight. The final supplemental EIR for the baseball stadium in the Diridon arena area meets the requirements of CEQA. The purpose of the SEIR is to disclose significant environmental effects of the project. To identify feasible ways to mitigate identified significant effects. And to describe reasonable alternatives to the project. The final SEIR before you does all of those. It is complete and the chamber urges you to certify the EIR and let's move forward and bring baseball to San José. Thank you. [applause]

>> Mayor Reed: Richard Zepelli eli wooders, glps Willow Glen recently endorsed the ballpark and we're not changing our position on that, we still stand hind that. As far as the EIR is concerned, we are not taking a position one way or the other on that. But what we're here to ask for is some consideration, there is a need for a traffic management program in Willow Glen due to cumulative effects of negative traffic issues luge Lincoln avenue and other neighborhood streets that connect with Lincoln avenue. The impacts we're talking about are mainly generated from South county that come through Willow Glen, that's going to increase now and they're going to have a bigger impact than the ballpark's going to have on us. Moreover we are concerned with the cumulative effects of other factors that could cause even more negative type traffic on Lincoln avenue and other cut through streets the. The impact on our neighborhood which results in incremental impact of action when added to the past, present and recently foreseeable future reasons for their source. We really need the Department of Transportation and the city council to help us in Willow Glen. Thank you.

>> Mayor Reed: Eli wooders, Ross Signorino, John urban.

>> Good evening, mayor and council. My name is Eli wooders, I'm member of the Diridon good neighbor committee. Tonight is not about baseball. Tonight is about a huge development in a very small spot, right next to existing residential users. Do not accept this piecemeal development because the unintended consequence of the

fiction of the SEIR would be that the high speed rail the BART and other developments in the Diridon station area will have to work around these so-called facts on the ground. You need a specific plan for the area. Also please do not accept the long list of possible mitigations listed in the SEIR without identified funding. Because the city as you know as well as the RDA are broke. Please defend our neighborhoods. And on this slide you can see the red bottled area, according to the SEIR everybody will go and find the paid parking. Whereas the yellow area identified in the EIR where you can walk to defined parking whereas people will just use street parking and park in the neighborhoods. And on the second slide you can see in the red all the identified freeway segments that will have negative impacts of this project. So this will basically be the death blow to our fragile infrastructure around town. So San José's neighborhoods are in a desperate need of meeting with city officials elected and interested parties to rationally discuss the wants and needs of this community before the community decides to put a ballpark on the November ballot. I urge now vote against this certification. Thank you.

>> Mayor Reed: Ross Signorino, John urban, Kevin Kelly.

>> Ross Signorino: It was good to see mayor Susan Hammer here again but a little history lesson here. The reason the giants didn't get here is because they tried to put a auto tax on us then. Plural, auto taxes. Utilities, but nonetheless it seems like you're trying get around that in a way saying this is not going to be any kind of tax on this or going to cost the taxpayers anything at all. Using redevelopment agency money is using taxpayer's money otherwise you wouldn't have to be putting it on the ballot. I think you need to understand that, otherwise you could be fought on that issue. At the same time, when the giants were coming here it wasn't going to be they were putting it in downtown, it was going to be way out on Tasman road. They could make all the noise shoot off the fireworks they want. Here you're talking about a neighborhood. People who have lived there maybe 30 years or all their lives. This will have an effect and you have to understand. The way to be a good neighbor if you are going to put that where the Diridon station is, the way to be a good neighbor, A's be a good neighbor is dome the stadium and you won't have all that difficulty, people complaining right now, like you have the arena, the noise doesn't bother them. I have to be honest on that, I think you have to understand the quality of that neighborhood that it must be sustained at the same time. Thank you.

>> Mayor Reed: John Auburn, Kevin Kelly, and then Scott Knies.

>> There are simple points I'd like to highlight about the stadium. It would be really really nice if the stadium and the station area be made into a specific plan for the area. From the specific plan, we'd like to see an oversight community that would have heavy representation from the local neighborhoods. We'd also like to see creation of satellite parking lots that feed both large parking lots as well as the stadium. We'd also like to see completion of the autumn Street connection before the stadium is completed, very, very vital. Currently, 880 is at capacity today. A soccer stadium is on the way. That will be feeding into 880. Now a baseball stadium. When asked, VTA has no plans to expand, no money. We need real time noise feedback from the neighborhoods for concerts, this is a real issue. They tend to crank up the noise when the planes go over. We've got to really look at that, design it properly up front. Good design. And I'd really like to see the city not pay one dime for this proposal. San Francisco did it with AT&T. Why not us? Thank you for your time.

>> Mayor Reed: Kevin Kelly, Scott Knies, and David Hendel-de Laio.

>> My name is Kevin Kelly, I'm a San José resident, I live in the Vendome neighborhood, adjacent to downtown. I was born in Japantown, I love the A's. My experience the ballpark is built the current city standard to respond to medical and other emergencies is eight and a half minutes 80% of the time. And as a point of comparison San Francisco's response time is six and a half minutes 90% of the time. The document, the EIR tells us that there will be significant traffic energies on 87 to 880, 680 during game days appendix, transportation and circulation. And we all know that whenever the freeways get clogged up everybody goes on the surface streets and they're going to go on the surface streets and they're going to look for parking. The supplemental EIR tells us that there are at least eight intersections that are going to degrade because of the increased traffic. Some of the intersections are even going down to an E or an F status. Well, the EIR in all its revisions tell us that the emergency response will remain at eight and a half minutes 80% of the time for stadium. It doesn't tell us what we can expect in the neighborhoods. And with closing of the fire station due to the budget crisis what can we expect here in downtown? In Japantown I want to mention there are at least two very large multistory residents for Japanese citizens for such high concentration of people who will need emergency response and the streets full of baseball

fans can you promise that the emergency vehicles will still be able to respond within eight and a half minutes 80% of the time, so what I request from city council is if you give yourself a yes or no vote to do rchg that I can to meet the response time at eight and a half minutes.

>> Mayor Reed: Sorry your time is up. Scott Knies is our next speaker and then Daniel Kendall De Le oarvetion.

>> Good evening, mayor, city council, Scott Knies executive director of San José downtown association, long day, a's Bay Bridge series. I was struck by a couple of things on that visit. You heard the San Francisco giants attorney talk about our four intersections that might become impacted by, I went through 24 intersections getting to the game on Friday night. And that was before I think I got off King Street and actually found a parking lot there . But I was also struck by how vibrant the neighborhood was. And the reason that China basin was trmpled is at the time it was Pac Bell park, it was SBC and now it's AT&T field now. That stadium what happened to Kerr's field and Lodo and a number of the downtowns, major cities this was the catalyst project. I believe that is going to be the case also for San José if we're so fortunate of getting major league baseball to come into our downtown. This is the first step in a very long process, you denying the appeal and certifying the SEIR tonight and I can pledge to you that the San José downtown association is going to work every step of the way with our neighbors, the downtown is a neighborhood, too. We want to ensure that we're good makes and the devil's in the details from how the trash is picked up to the walk, the experience, the traffic, we support extending the good neighbor committee or some sort of oversight committee that includes business neighbors. We're all in this together to make the ballpark work in Downtown San José.

>> Mayor Reed: Our last speaker Daniel hendel de Leo.

>> Good evening, councilmembers, I'm Dan hendel de Le oarvetion. San José is not Mayberry. Major league baseball can play a big part of that. It's not the solution for everything we need in the city but it's a big part and it can really go a long way towards helping the city. If you consider a project like little Italy, that section of downtown, this is a no brainer. This really needs to happen and I urge you to approve the environmental impact report tonight. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony. I want to see if the staff has any additional comments or things that they need to add before we have council discussion.

>> Thank you mayor. I'll make a few comments before I turn it over to Manuel to respond to the traffic with traffic concerns. I think one of the first important comments to make sort of overarchingly is that this EIR actually goes further than the minimum requirements. So you heard speakers reference the circumstances to seven analysis that was done on freeway segments and so forth. That's one example of analysis that's included in the EIR in response to comments that we got during the notice of preparation phase and there are others that we could go through so I think it's important to note that this EIR is exceeding just the minimum requirements of CEQA. Try to be responsive to the comments that we received. Just to run through quickly some of these comments. With regard to the projects, all the projects is commenters on the draft EIR, mentioned projects that essentially are identified in the EIR but in different ways. So part of it's just confusion about what the projects are. We do in fact include all of the projects necessary in the cumulative analysis. The EIR does include in the cumulative analysis quantitative analysis on BART, the BART project. We qualitatively analyzed the high speed rail project and that's because the high speed rail project is fairly early, it's at a very programmatic level. We noted in the First Amendment to the SEIR that the park numbers are changing and so forth and so it's extremely challenging to try to do very much quantitatively with high speed rail but we did do analysis with regard to BART and cumulative impacts. There were some comments that were made regarding who's going to pay for the mitigation and so forth. That's not really a CEQA issue. The project is required per CEQA to mitigate its impacts. Who actually pays for those impacts is something that remains to be seen, whether it's the city or the A's or whoever that's something that would be negotiated later but the project mitigation measures are required. Who funds for those is not necessarily a CEQA issue that's before us tonight. With regard to parking and there probably will be other more specific comments along this line but with regard to the parking issues downtown essentially what the EIR does, it relies on the marketplace to satisfy the needs that the ballpark would generate. Essentially away the FEIR says is that currently there's a lot of parking available downtown that's not opened up for events that would be under this condition. So that's really why we're saying that parking is not a CEQA impact. There's parking available. It's really more of a management and a market forces situation. With regard to emergency congestion

and again Manuel may want to speak to this more, essentially what we're saying in the EIR is, because of the City's transportation level of service policy and the downtown exemption we do -- we did do the analysis, we identified impacts to downtown but downtown intersections as identified are exempt from needing to provide mitigation. There's reasons for that, essentially we don't in some cases want to impose the physical improvements that would perhaps otherwise be required. We want a vibrant downtown, as some of the speakers alluded to, the policy assumes that congestion is good downtown and so forth. And so the policy, our city policy by design does not want us to mitigate downtown intersections, we did do the analysis but we're not required to mitigate for those. The project does not result on significant impacts on the surface streets, there's no need to providing mitigation measures, that's why the EIR concludes that emergency vehicles should not be -- should not be an issue. So I think just with that, there's not anything influence that staff's heard so far this evening that hasn't already been put on the record. The comments that were received for both of the appellants were comments put on the record previously. We've responded to these and with that I'll let Manuel address any traffic questions. Thank you.

>> Thank you, Darryl, Manuel pineda with the Department of Transportation. Just want to add a couple of clarifying notes and Darryl did a wonderful job discussing the traffic items. But just wanted to emphasize that the EIR did complete the traffic analysis, that's required both by the city council policies and the congestion management agency policies which is the five to six scenario. However we did go above that and looked at the two additional scenarios which is the six to seven and the weekday games. Operational deficiency could be better by a TPMP process but even though we have operational deficiencies, left of service just as a reminder, there is a downtown level of service exemption. As you know back in 2005 it went through a level of service policy modification as well as strategy 2000. One of the goals for downtown is to make sure we have a multimodal environment. As part of that we want to make sure we don't add left turns and multimodal balance and that is one of the goals and that's why we have an exemption policy for downtown. Wanted to add a clarifier project working on those two projection, fortunately at this point BART is focused on the phase 1 implementation which will take us to Berryessa and we are not currently working on the downtown extension so we don't really have clarity or direction, only for some options as to how BART park will be facilitated. With regards to high speed rail we're still in the process of analyzing those parking requirements. The first report we got on required 3800 park spaces

within a three mile radius so there's still a lot of flux in the numbers working with high speed rail on those but to try to assume what those numbers would be really wouldn't be appropriate at this time. Just wanted to verify that we did look at possible traffic within neighborhoods like Willow Glen and made a determination that most of the traffic in those location is really going to be local traffic of local people trying to get to the baseball stadium. And with relation to freeway segments 6 to 7, as a response to comments the city did go back and look at 6 to 7 freeway segments, we made an overall volume determination through actual count data that those six and seven than the five to 6:00 p.m. scenario. I think ReneÉ has some additional comments on parking.

>> Thank you, Manuel. With regard to parking one of the commenters noted that parking supply is overstated. There was no factual support for that but it was simply a statement that was made. I just wanted to note that in the environmental impact report that exactly the opposite is true. The parking surveys that were conducted were extremely conservative. They were done in 2005 with our park garages were much more full. We went down in 2009-2010 and did a recount in fact confirmed that the 2005 numbers were much higher in terms of the occupancy of the garages. Nevertheless we kept with those 2005 numbers so in fact there's actually more park in actuality today than what they EIR notes. I also wanted to note that in terms of average persons per car, we were extremely conservative and we went with less persons in the car than major league baseball suggested so we've probably overcounted the number of cars, so I just wanted to note that in fact the opposite is true, the EIR is extremely conservative in connection with how much parking will be available and we've probably over estimated the A parking that's available. Thank you.

>> We did want to add one more item as it relates to the transportation parking management plan. You know we are very committed as we have with HP pavilion and how successful that process is to continue to work with all the adjacent stakeholders to make sure that as part of the baseball stadium we do have a successful TPMP plan as well and I think past success shows we are capable of doing that not just for HP pavilion but for special events as well so the city is committed to that process as part of any new baseball stadium.

>> And if I could make one other fairly obvious note which is what I failed to mention some is because of the I just wanted to note that in terms of styling taig credits for either of those potential projects of course we did not

because they are speculative in some respect and so again we've been extremely conservative in terms of the amount of traffic and the amount of parking that will be generated by a potential ballpark project.

>> I need to make one more clarification, too, mayor if I may. With regard to -- with regard to my response on the emergency vehicle response, it was somewhat convoluted Joe tells me. Though not as bad as people think it would be but the reason emergency vehicle response times would not be an issue is because we have any variety of methods in our tool kit, whether it's signal preemption or the ability for emergency responders to be flexible from which station they're coming from or which route, and that's why we're saying that the emergency vehicle response is not an issue because there's a lot of flexibility in how we respond in those emergencies. Thank you, mayor.

>> Mayor Reed: Done? Okay, it's time for the councilmembers to have their say. It's not easy to keep us quiet for that long. First I do want to disclose in preparation of this meeting over many, many months really, I've had a lot of meetings with Lew Wolff, and I'm really pleased to see that San José arena management has withdrawn their appeal of this supplemental environmental impact report. There are many more that are not here they've been serving us very well looking at the issues around Diridon station, that good neighbor community is very important in making sure we figure out the problems and deal with them as good neighbors should. And that's part of what makes this interesting is everybody wants to talk about the details of the nonproject. Everybody wants to know about the transportation and parking management plan. And certainly, we do but there's nobody to negotiate the transportation parking and management plan with because we don't have a project and we're not going to have a project until the commissioner of major league baseball decides to ask the owners if it's okay to modify the territorial rules to allow Lew Wolff to see if he can put together a project, negotiate with the City of San José for a project and then after we have a project there will be more environmental review. So I'd like for the staff to talk about the level of environmental review we're doing now. I mean this is the second time we've done this. We did one in 2006 I think, this is a repeat the supplemental. But when we have a project there will be additional environmental review at the project level and if staff could talk a little bit about the difference at that level of review from what we're doing now. Because I know people have a lot of questions that will be answered later when we have a project we can address them to.

>> Thank you, mayor. Let me try to start off and then others may want to join in. CEQA -- CEQA requires us to do a level of analysis that's commensurate with the level of detail that we have about the project. And so essentially that's what we've done here. We do not have a specific stadium design. We don't have a project in front of us to deal with operational issues and so forth like we might have for instance if we had a conditional use permit. A lot of these mitigation measures that we're identifying in the SEIR would end up being conditions on the project. And so that does make it a little bit more of a conundrum or whatever words you choose to use. But because we don't have a project it makes it more amorphous in that regard. What we will first do when we have a stadium project before us, we'll look at that proposal both in terms of the physical project but as well as how it intends to operate and so forth, compare that with this SEIR and then make a decision on whether or not we think this environmental review document is in fact adequate to meet the needs of that project. In the sense that it's not, we have various alternatives. We perhaps may need to do another supplemental EIR, or it may be something more like an addendum. But essentially when we get a real project in front of us we will compare it with this document, what assumptions we've made in this document mitigation measures and so forth and go from there to make a determination on that next step.

>> Mayor Reed: Thank you. While we don't have a project I hope some day to get a project, that's in the hands of the commissioner of major league baseball. But we do have negotiating principles. I'd like to remind everybody what the council has already said for the possibility that we will get a chance to negotiate some kind of a transaction. That's a year ago. We've been at this a while. We're still waiting. I know the commissioner watches us every night on cable, maybe not cable but on the web. If he's listening I want him to know what our negotiating principles are so he can make sure we're on the same page. First the stadium positive impact on the City of San José's General Fund. Second, the team at no cost to the City of San José will be responsible for financing and building the stadium and improvements on approximately 14 acre designated stadium site. The team will be responsible for advancing all stadium operating costs related to its activities within the stadium site and surrounding area. Fourth the name of the team must include San José and fifth if the city or redevelopment agency recommends a contribution in the form of land or financial contribution for any other ballpark specific items the vote by the citizens of San José will be required on the stadium project. Those are our principles. That's not

quite a project but we aspire to have a project and if the commissioner is listening we're waiting. Councilmember Liccardo. [applause]

>> Councilmember Liccardo: Thank you mayor I'd like to make a motion first and if that's seconded I'll make comments. I'd like to make a motion to deny the appeal and certify the EIR.

>> Second.

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

>> Councilmember Liccardo: I want to thank the members of the community who came out. Both those who are supportive of the statement, those who are reluctant, concerned. It says a lot about our citizens they don't jump on any conclusions, folks are whomedding judgment they want to see more and they obviously want to understand the impacts better and they want to work with the city to ensure those impactation are minimized. I appreciate that approach. We're going to continue working with you and with the folks on the Diridon good neighbor committee. I wanted to thank also Darryl Boyd, Manuel pineda, ReneÈ Gurza, all the folks working on the EIR. This is not an easy task. We had a e-an EIR we approved in 2007 and this supplemental EIR. Responses to the supplemental EIR and we're going to have more meetings and permits and TPMPs and other kinds of efforts to review what's going on here and I think we're going to be able to say by the end of this that this is the most studied analyzed scrutinized gawked out site outside of graceland and it will be because of the extraordinary hard work of our staff and the community to make sure we have something that works for the whole city. And I think we all know something about the extraordinary benefits that the stadium can bring to our city as we look to cities ranging from San Diego to Denver, in terms of what they do in terms of revitalizing downtowns. I appreciate the very thorough responses that our staffer provided. The attorney representing stand for San Francisco or whatever it is, claimed that there were four intersections that were degraded to level of service F. That were not studied between the 6:00 p.m. 7:00 p.m. period. Of course we know from pages 9 to 10 in the master response, in fact those were studied thoroughly. In fact isn't it the case Manuel that we identified improvements both operational and physical grossments those four intersections in appendix C? Bring those back to level of service dx.

>> Councilmember Liccardo: Great, and of course this is all in the context of year 2000, our vision for the downtown, downtown strategy has been that we recognize there are going to be intersections in the downtown core that are not going to look like suburbia, we're going to have traffic and parking or at least we think we're going to have traffic and parking or else every business in the downtown is going to die on the vine. Understand we're building a downtown core here oochtion on the issue of parking I know a lot of concern has been raised around parking supply. My recollection from looking at the work that you've done is we've got 29,000 parking spaces in the downtown. Is that right? And based on fairly conservative around I say conservative, using the high range of potential spaces that we would need for a 36,000 seat stadium, we would need about 13,000, around 13,800 spaces if you use the most conservative number of persons per car, of course we know that we can probably do with far less than that number of spaces. By understanding is we've got almost 14,000 spaces just within three quarters of a mile of this site and then I've got thousands of other space but I know I think it was ReneÉ or Darryl I can't remember which that we've got a lot in the inventory that isn't used today. And could you describe what you meant by that, that we've got spaces out there that we're not using?

>> First of all when we did our traffic counts higher occupancy numbers in fact ufl there are more pace spaces available today. In fact I mentioned when we were calculating how many spaces per vehicle, we used an extremely conservative number so in fact there may be less cars looking for a greater number of spaces available. So it was an extremely conservative analysis.

>> Councilmember Liccardo: And thank you ReneÉ. And as I look at a lot of the private garages downtown I remember back in 2007 when things were moving along a little better, we were actually talking to owners of those private garages about opening them up. I know many of them are closed simply because the demand is not there. Do we have experience in watching how demand affects whether or not these parking lots will open?

>> Yes, in fact I 30 we experienced during the grand prix when there was a higher demand for parking, because some of those parking garages that don't open because the fiscal demand does not warrant it, that some of those private garages did open and began charging for parking.

>> Councilmember Liccardo: Thanks Rene. I think it's important to ensure the public that we've got park out there. It may not be obvious but when the demand is there there will be areas to meet it. Scott Knies and others would love to have a parking problem in downtown . We don't have a parking problem. Dpairm.

>> If I may add another comment, essentially what this EIR is doing is it's falsing what would the impacts of the said yum be on opening day. It is a static situation as more projects come forward downtown there will be more parking provided and so forth. And so I think it's also important to acknowledge that this isn't a static situation that it would continue to change over time and we would expect more parking to be available in the long run.

>> Councilmember Liccardo: Thank you. And then finally on that issue on high speed rail, my understanding is when they revised downward the number of parking spaces needed, the estimate is 3800, that's within a a three mime radius, senator?

>> Yes, that's correct, 3800 within a three mile radius of the site.

>> Councilmember Liccardo: Assuming that high speed rail is coming through like we all want to happen 60% of the total number of spaces in the downtown, 29,000 spaces if you add high speed rail and whatever you need for the ballpark, is that right?

>> Well, we are starting to work with high speed rail to determine what the best location for the spaces will be and we're expecting that we'll be able to use facilities for a number of uses. They wouldn't be facility specific for high speed rail, we'll be able to combine for that package . Lo okay, fire stations closing in the downtown, nowhere in this budget is there a proposal to close any fire stations, I want to assure folks of that. Thank you.

>> Mayor Reed: Does this include four items to include in the resolution we need to adopt as part of the acts?

>> Councilmember Liccardo: It does, thank you for catching that mayor..

>> Mayor Reed: Thank you. Councilmember Kalra.

>> Ash Kalra: Thank you, mayor and I actually have been analyzing this for some time. When I was on the Planning Commission I remember the original EIR came through which contemplated a much larger stadium and even at the time there wasn't a proposal per se that may have been in the short term, we still took it very seriously and I believe that at that time we certified the EIR believing it was significant. Now we have a significantly smaller project but with other concerns other projects potentially coming into the downtown as well. But I think at this time, you know, really it's about the EIR and it's why it's efficient, it's not a vote today necessarily about the project. That being said, I think it's been somewhat apparent that the council in general has shown some excitement in regards to the possibility of baseball coming to San José. I don't know if that's an understatement or not. But I do want to thank all the people that came here today, particularly mayor hammer. I think much of the success of the improvement of our downtown into the vibrant community which now exists is due in large part to her vision and leadership and I also want to thank Michael Mulcahy, I know Michael has worked very closely with the mayor in leading this effort. Also we had so many groups, building trades, leadership group, the downtown association, Team San José, we're onto something here and that's one more step in that direction. Certainly, the folks I've talked to in my district are supportive of this but they don't have to deal with a lot of the issues. So I do want to thank the neighbors who have showed up from the surrounding neighborhoods. I think their vision will make it a better project I really do. I think it will require not just councilmembers Oliverio and Liccardo to do what they can to make sure the impacts are mitigated but the mayor and the rest of the council as well. Just because we may show interest in having baseball here or what have you, or to create the jobs that it would and the vibrancy doesn't mean we're not concerned about the impacts in the neighborhood. And finally, in regards to some of the parking issues that were raised, I think that the fact that there's an agreement and that would allow the sharks to build in the parking lot does not in any way admit that there's a flaw in the analysis of the supplemental EIR. I think if anything that should alleviate some of the concerns of the neighbors and if there are two events happening at the same time it is a much lower likelihood that the neighborhoods would be negatively impacted. Furthermore although we use the 2005 numbers for parking, and that may be conservative hopefully we'll start filling up the parking lots just through increased business downtown so I'm glad we stuck to those more conservative numbers

because I think that's a much more responsible way of approaching this issue. And as far as the BART and high speed rail issues whatever parking they would require I think we have to be cognizant of the fact that they are going to reduce the number of parking spaces required simply because people are going to use certainly BART and very likely high speed rail to come to the games and thereby reduce the number of parking spaces needed. So I'm comfortable with the supplemental EIR. I really want to thank the staff. I know they've been working for a very long time on this, put a tremendous amount of energy into it and I know that they'll continue to work with the neighborhood, the surrounding neighborhood, to make sure that we do everything we can to not just be cheer leaders for this project but to make sure we are doing everything we can to mitigate any negative impacts on the historic neighborhoods that surround the proposed site.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I want to thank you for your comments on why we're here tonight and what we're doing tonight and you're very specific of being a former land use attorney so this is the idea that we're doing what's necessary for CEQA and manage and accept it and I do appreciate Councilmember Kalra's comments on protecting the neighborhood. I think you know we had the experience at the arena. We were able to implement and preserve and take care of the neighborhood. I think that will be important should this ever come to pass and so I really do appreciate all the folks from the surrounding areas both district 3 and District 6 that have come out to speak to that. I think you do make it a better project if it goes, if it happens whatever in the future we don't know. I have had the privilege of attending some of the good neighbor committees and there's good ideas going around how we can manage something that would be both an opportunity and a challenge and of course that all remains to be seen on where it ends up. Again mayor I think you are very astute in pointing out the principles that this council has, that the idea is we're not going to spend any money to build nor operate. That San José would be in the name, that this would have to go to the voters. They need to cover operating cost and this must generate some economic benefit to the General Fund. We might do all this for not -- we might have just spent a lot of staff time and community hours doing for nothing. But as Mayor Hammer said, this is an opportunity that you know, she, well respected member of our city, someone Mo who has been a pillar for San José and represents many in our community felt it was something strong we should go to. Has to do the comments of

Patricia Saucedo of the chamber of commerce, didn't have to mention, you live two houses away on Willow Glen. Mr. Zepelli Manuel Pineda should be no secret that half the community knows you live in the neighborhood in the Shasta Hanchett yard so I imagine you're going to be very cognitively distant away but there is that concern of the shared impact to surrounding neighborhoods. And you know I think the council's been pretty pragmatic and I appreciate the mayor's leadership in doing a good neighbor committee that should this come to pass that San José will have the opportunity to manage it. Again I'm holding out, I've never taken a stake on this project I want to see what the final financial deal and how do we make sure that the neighborhoods are maintained. With that I will be supporting the motion tonight and I do appreciate everyone's comments and I took extensive notes on everything everyone was saying that I'll be keeping so thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Mayor I just wanted to disclose that Neil Struthers from the building trades is my husband.

>> Mayor Reed: a motion placed by Councilmember Liccardo. Any other comments? Staff, anything from the councilmembers while I wait for Councilmember Liccardo to get back? We've been at this over 12 hours now folks so occasionally we got to take a little break from the action. We have a motion on the floor. All in favor? Opposed none opposed, that's approved. Thank you very much. That concludes our certification work on the EIR for tonight. [applause] We will now get into some other land use items starting with item 10.1. Which is a general plan amendment request to change the land use transportation diagram, and designation on the property on Dove Little Road. We'll take a minute for the various staff members to swap places. Councilmember did you have some comments before the staff starts?

>> Councilmember Herrera: Yes I just want to say I have submitted a memo today which clarifies my position. Perhaps we can get that up on the screen. I didn't know if councilmembers actually have it. 10.1 GP 08-'08-03. And my memo is to approve staff's recommendation on the general plan amended and I would like to get

a motion on the floor, for approval, but I would like to hear in the community. But if I could get a second on a motion to approve this.

>> Second.

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

>> Councilmember Herrera: So I am -- I am supporting approval of this, with outlining several issues that I want to be addressed at the PD permit zoning stages and these include air quality, for the future residents of the assisted living fast facility. Traffic capacity and traffic safeties on dove hill road and Hanchett parkway. emergency exit and emergency evacuation capacity for ranch residents in addition to the future residents on dove hill road. 90 levels of the future residents of the assisted living frafft highway 101 and finally, construction on the project has not gun within two years of the approval of the PD permit. And as you will recall, this project was scheduled to be approved, it was on the last general plan hearing. We found out that the community had not been properly notified and so we were able to reset the whole process. And I really want to commend you, Joe Horwedel, the community, our staff for really jumping on this and making sure that we had the necessary meetings, going back through Planning Commission, and so we have been working with the community. I also want to commend the community for their steadfast involvement. They definitely have been involved in improving this project. I believe this is a smaller one, but when community is involved projects do get improved and things are brought to light. I do want to hear from the applicant and the community and come back from for more comments.

>> Mayor Reed: All right, we will do that, City Attorney had a couple of comments before we move on.

>> City Attorney Doyle: Thank you, mayor. I wanted to disclose, there have been some inquiries. There was concern that the developer was looking to flip this property and there's some speculation about a land sale. We've looked into that, we have assurances from the developer's representative, Mr. Caruso, that that is not the case. It is not a land use decision tonight but it is a factor that somehow gets raised. Second, there was a question of

potential conflict of interest, district 4 aides, had done some work for Mr. Caruso. Both those aides, Mr. Ford and Mr. Bonia, have been contacted and.

>> Mayor Reed: I heard there was actually two dove hill projects and there's perhaps some confusion between this project and some previous project. This is the only assisted living senior housing project, right?

>> Councilmember Herrera: This is the only assisted living senior housing project.

>> Mayor Reed: Some people had had some different names and different things. I'd never heard of dove hill but it's gotten quite famous. Councilmember Campos.

>> Councilmember Campos: I want to disclose that I spoke with Neil Struthers from the building trades and Javier Gonzales from my office has staffed me with any other information I needed in preparation for this meeting tonight. Thank you.

>> Mayor Reed: I also like to disclose that my staff spent a few hours with Mr. Caruso conversations and a site tower in preparation for this matter. With that I think it's time to hear from the applicant or did staff have anything they wanted to add before they hear from the applicant and take the public testimony? No. I just want to start out by thanking staff for getting this back. We did it in a month. It took a lot of work on the staff to get this ready, congratulations you did it on behalf of the complicate we have Sal caruso.

>> Thank you honorable player, I too would like to thank you and your staff, Ru Weerakoon in particular, by suggesting we meet on site with Joe Horwedel and be able to review the merits of the site, physically take the time to walk the site and actually as a result the project became smaller in scope, went from five acres to three acres. Councilmember Herrera's office has been tremendously diligent in following through and staff has done an amazing job, truly a monumental job. Laurel Prevetti has been monumental. Joe Horwedel and his staff, traffic engineer was there and responding to the community's concern and very important I'd like to thank the community because the community has raised many great issues that we definitely will follow up when. We're in

support of the councilmember's memo that was put out very thorough and thoughtful. All those matters when we come as you mentioned in the ballpark when we get to a project point we will certainly address those in great detail because we too want a project that can be the absolute best with the City of San José. With that I would like to from a land use standpoint ask you to support the land use change to public quasipublic. I'm here to answer any questions. Thank you.

>> Mayor Reed: Let's see if there are any questions to start with. You didn't use up all your time. So we'll Bonnie Mace Neil Struthers, Biad Hara Belapadi. Sanjay Saini.

>> Thank you Mayor Reed and council, Bonnie Mace representing the District 8 community round table steering committee. First I'd like to thank Councilmember Herrera for her memo which we support fundamentally this is a question about a land use designation. You will hear a lot of talk about the project specifics. But fundamentally what you're asked to look at tonight is whether this should change from nonurban hillside to public quasipublic. So from our perspective the most important thing is the safety and the quality of life and whether it is appropriate for that land use designation at that site. You'll hear from the neighbors and the district 8 community round table steering committee is very concerned about the safety issues one of which is fire. As you look at the site it is wedged up between a freeway and a hillside. So whether you have an assisted living facility with disabled people or whether you have a community center there you have to worry about fire safety. The second issue is traffic safety. We're talking about a small two lane road. Some of which is gravel so you always have to worry about the blind curves, aspects like that which you'll hear about from the community. The third aspect is noise. You're talking about senior citizens. You're talking about children in a school, whatever, you have a very high level of noise because of the freeway. So we would hope that all of these issues when it comes back to the rezoning stage would be mitigated before the project moves forward. We appreciate Councilmember Herrera's support but if for some reason this project is not built we want to assure everyone that this bill go back to within two years of time after PD permit to nonurban hillside. For us the community it's very important that this will be one of the measures that's implemented. So thank you so much and once again we look forward to seeing you at the next stage of the project but please make sure these projects are mitigated in this phase not in the next phase, thank you very much.

>> Neil Struthers, (saying names).

>> Good evening gen neil Struthers head of the building trades. I'll keep it brief. I'll speak on behalf of our members who are here because we know you've had a long evening. Our position has not changed on this project. This is a \$100 million private project that puts people to work We think it should move forward. We supported that position recently and support it now. We support Councilmember Herrera's memo. We too would like to see the project to begin within two years, we don't have a problem with that. We urge you to approve it, thank you.

>> Mayor Reed: All right, come on down.

>> Thank you, mayor and the city council for this opportunity to address you. I'm a member of center for biological diversity group, I'm here to speak on behalf of somebody who cannot come here. Our known population of bay checkered spot butterfly are in Santa Clara County. This project is adjacent to the checker spot butterfly Silver Creek habitat. One of the key dynamics of preserving this species for our generation is, the air pollution and the nitrogen generated from that, and the effect it has on its habitat. The project magnitude is going to have significant effect on the Silver Creek butterfly. To this property. In year 2000, lawsuit was filed when the adjacent property was developed. I hope the history is not going to repeat itself again. I hope that you do the right decision so that we don't have to go through this process again. I urge you to what's know or consider moving this projects to a better location, just few miles or few miles from the current location, where it can go through without any objection, and we can create jobs. We need both. We need to preive the habitat. We need to create jobs. I heap you do the right thing. Thank you.

>> Mayor Reed: Sanjay S acres ofni, Stephen Sullivan, Suma Sharma.

>> Good evening, honorable members of the city council, my fame is Sanjai S acres ofni. Public Safety is dear to me however I'm here as a resident of the ranch community. We have here a group of speakers from the ranch

community voition their concerns about the proposed GPA. In fact based on what is available today in the study there are currently 243 ranch residents who have signed a petition opposing this gap and the proposed project. We understand the landowner's right to property and its economic benefit from it. We understand the need for job creation we also understand the need to go hand in hand with prosperity. After reviewing, there are several concerns that the community that takes part there this part ever Silicon Valley would like to see it addressed by the capitol of Silicon Valley. Next slide please. The prominent concerns are traffic safety hazards, fire safety hazards, air quality hazards, and land use and development goals. As part of the process and by the way we all thank you for giving us time when we were here about a month ago to come back and provide our inputs into it, as part of the process we have raised these concerns in the Planning Commission meeting. But were informed by the Department of Planning, you're too early. We would like to discuss two of these concerns here as an example and then community has some concerns for those considerations. I think I will be running out of my time? Thank you.

>> Mayor Reed: Stephen Sullivan oop Naples Naples.

>> Mr. Mayor, members ever council. Thank you for your attention. According to the fire department records no calls have been made from the residents of the ranch for a six month period from July 2009 to December 2009. We know that this is a good situation for the neighborhood. We want to do everything moble to keep emergencies to a minimum and keep that good situation today. Have stated in the initial study a senior snifted living facility may have a typical hundred calls per year, which translates to, originating from nearby similar facilities validate that two calls per week could originate from this proposed project. Our concern is that dove hill, dove road is the only point of proposed, it is a two lane road running north and south, having two blind turns, that hinder vision ahead. There is absolutely no shoulder on this road on either side. On one side is the 101 and the other side is a cliff. To next speaker, please.

>> Next slide, please, traffic slide 4. The community is already facing traffic congestion issues during the peak hours, during which the traffic lines us around the dove hill road. Traffic backup on dove road. the yellow diamonds point to two blind curves around the hill. The emergency response vehicle will be forced to use the road

with oncoming traffic as illustrated by the red and the arrow. With two blind turns this creates a crash situation for the oncoming traffic. Photograph B and C illustrates the same traffic safety hazard at the blind turn position. The community would like to highlight that the proposed project has a substantial number of emergency calls on a regular basis, and directly increases the current near-zero risk of such crash with emergency vehicles to a very high risk of traffic crashes. Our concern is traffic safety and the community believes that personal safety of current residents and any future residents will be in jeopardy. Thanks and I would like to invite the next speaker.

>> Good evening, thanks for your time. My name is Apesh Johan and I'm a resident of the ranch. Red arrow shows the only point entry and exit to the site is Dove Road. Some very good mitigation measures to reduce the risk of fire hazards, our question is very different and yet to be answered by the Department of Planning or applicant or anyone else. Fire is not a family that lives next door of the property spoke of three fires in that area, in the Planning Commission meeting. The question is, what happens if a fire or other disaster were to occur that requires evacuation from the site? How do you evacuate 340 elderly residents from the site? If you look closely at the proposed site and buildings in the triangle like area is there even space allocated outside these buildings where 340 residents and 73 day shift staff members can be safely gathered. Applicant said in Planning Commission meeting that this facility is hospital grade, it is a safe haven. Does that mean that there are no fires in and around such buildings, or does this mean that these buildings are not evacuated? Please do a simple search on fire evacuations, assisted living facilities and you will see a long list of evacuations because of fires. Some of these search results are in supporting material screen. There were fire related evacuations, assisted living vehicles in Concord L.A. San Diego, Las Vegas and list goes on and on. Just last morning in an unfortunate event a man was found dead because of fire in a senior community called Villages in the Evergreen area. This is just across fiber station 11 less than a mile away. We know that Sr. living is different than assisted living but this.

>> Mayor Reed: Sorry your time is up. Is anybody else working on that same slide deck? Come on down let's -- you can do it in order, whatever you've got planned. Just give me your name.

>> Hello I'm Sateesh Lennon. I ask you ops 70 staff can be evacuated in four to six minutes from this site? Next slide please. In various meetings in the past month, the applicant has many a time mentioned that the community

is just pushing back, that the community is just against this project. Well, ever wondered why, the community lives in that neighborhood and has seen accidents happen day in and day out and the community knows what can happen if something were to be built in the proposed site without having the traffic and fire safety hazards seriously addressed. Having stated the concerns many a time the community has some suggestion for the city council. The current land designation keeps the safety hazard risk to the minimum and is aligned development goals, we request the you keep the site as-is. The community requests going to increase and there are many nearby sites that provide safe haven to develop such facilities. The ranch community requests the city council to consider the safety of the existing and future residents as priority, while reaching a decision. The liability issues could be of great magnitude should a calamity ever occur in the proposed site. The community also uncovered inconsistencies in the initial study done for the GPA, traffic signal classification being one example. Such inconsistency takes away from the validity and reliability of the correct. The community thinks the inconsistency should be corrected related to the GP or proposed project. I invite my next speaker now.

>> Good evening, Mr. Mayor and members of the city council. Next slide, please. Community suggestions, slide 7. Should the city council decide to move forward with the GPA, the community suggestions the following: be built not proposed site to U.S. 101, dove road be expanded to avoid traffic safety hazards. Complete and adequate mitigation plans be considered for noise levels. Concrete plans be made to maintain and force the habitat for special status species. Adequate safe zone areas hold all future residents and staff in case of emergency and evacuation. The heights of alt buildings on the proposed projects be limited to two stories only so as to lastly the community pace for Hassler parkway by Mello-Roos. Paying its fair share thank you .

>> Good evening everyone, if I name is sob yah Saini, I'm a resident of the rarch. The two examples, next slide please. The two examples out of many others presented before you are very real. These are not fears why do we know this because we live here. Department of Planning acknowledges that the community has valid concerns but we were told you are too early. We step by step process is meant to uncover any grave concerns fix them before moving forbid. Applicants opposes development. The fact that we respectfully disagree with the applicant on the key safety and hazard issues, blind deaf and dumb just because we won't stop asking questions that aren't answered yet. So far there are no answers on the safety issues that are directly related to this proposed

project. For number one we aren't on the project safety yet and I am talking about the project yet it is all about the project and potential jobs and funding that this project brings to San José. We are in full support of creating jobs and economic stimulus to the City of San José but our questions are not about creating jobs, it is about safety and hazards at this particular site. In summary since when has safety of citizens and family and dear ones become less of a priority such that it is too early to be adequately even were to occur in context of this proposed project and anyone pes due diligence to equality address issues early enough before wasting time and money? Also as much as this project talks about creating jobs and pouring money into the City of San José, have the finances in this project been checked to see if they are in place? If the decision is just about GPA thesd please set aside all project financials and think about the site if it is appropriate given the concerns here.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Chris wolfgrom and Richard Rothdale.

>> Hello again to all of you. My name is Rick Rosdale. I represent the family that actually lives on this side of the hill. We've heard from the people who live on the other side of the hill. I'm always amused, they move there, they bring up the arguments that I have killed my parent and I'm an orphan. I'd like consideration because I'm an orphan. I'm the person that brought up the fact that there was three fires on the hill. We've been on the hill and I was amused with the mayor saying he had never heard of dove hill. My mother-in-law actually named dove hill and dove hill road. She's been there for 62 years on the adjacent property to this site. And she's here, 88 years old, in good health and in good spirits, okay? The fire, the fire danger on this property would be greatly mediated by this project. The fires come from the freeway, comes from cigarettes, comes from bottles being thrown out. If we had this project in between us and the freeway we'd be grately appreciated. Our next door neighbors the fullmers lost their house billion three years ago because ever that. Only two people live there quowl, I'm nervous and I can't remember the names. We would very much like to have this project. We are on this side of the hill, we would like something nice on our side of the hill. I realize the ranch is a nice place to live, okay, we appreciate our

neighbors, we welcome our neighbors. Now we would like to welcome new neighbors. We do not have fear of these neighbors because they are older because they might need new things, okay? In the period of time we have been there we have welcomed all of the neighbors not only to our hill but to Evergreen. So let's move forward. Let's welcome new neighbors. Thank you.

>> Mayor Reed: Sorry your time is up. Chris wolfgrom is our last speaker.

>> Hello mayor councilmembers and staff my name is Chris wolf-gram. I have lived on the hill 26 years ago. I had parties on the hill. The neighbors to the east of us complain about possible noise, traffic, too many roads, gravel roads, we still have that on our side of the hill. They have a beautifully new development they moved into after they took the top of the hill off where I believe most of the checkered butterflies did use to live and I believe this projects is not going to touch the remaining hillside above them and rather just go primarily where the junkyard is right now which I don't think supports the checkered butterfly which might still be there, I don't know. The hill looked the same as it does, the 26 years ago when I lived up there and I believe also 62 years ago when my grandmother moved up there. We very much welcome an asset to the community, driving in on 101 is certainly going to be much better looking than the junkyard is now. It is an improvement to our side of the hill. It's one step forward, and the Planning Commission that's already approved this unanimously twice, you've already approved it, nothing has changed since then. Just some people who I think are upset about their one lane going into their community, and change, and we're for it. Thank you very much.

>> Mayor Reed: That concludes the public testimony. We're going to hear from the applicant who can respond to anything he wishes to talk about in the remaining two minutes.

>> Thank you, honorable mayor. The emergency evacuation plan that was alluded to will certainly be addressed if and when there is a project phase. If there is your approval tonight. I did want to state publicly at Planning Commission, nor anywhere else, did I ever consider the residents blind deaf and dumb diligently to solve their concerns and to address them thir owely in working through the councilmembers office and yourself. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. First of all I want to thank the applicant, the staff, I want to thank the community for their diligent effort, and their very efficient slide show, showing all of the issues. I certainly respect every issue that's been brought forward. I also want to thank Bonnie Mace and the District 8 round table for their thoughtful input as well. Tonight it is not an evaluation of the very detailed specifics of the project. It is a decision about a general plan change. That being said, we have to look at what is the best use for this land? What is the best designation, land designation. And the Planning Department, the Planning Commission, and this council, has made a determination, or has supported the idea of making this change. I have concerns about how this moves forward. The community's brought out a lot of those concerns, and that's why they're included on this memo. I wanted to ask staff, and possibly the applicant, a couple of questions based on some of the things we heard from the community one of which I don't have on there and that's the habitat for the checker spot butterfly. Can I get -- Joe, can you address that and/or the applicant?

>> Joe Horwedel: Thank you, Councilmember Herrera. The bay checker spot butterfly is found in the ridge that runs from the ranch at Silver Creek all the way down to lake Anderson. The -- one of the speakers did note that the ranch site was -- has significant amount of habitat on the property before it was developed. We do have a major effort going on in the city partnering with the habitat conservation plan that we are preparing with the county of Santa Clara, the water gilroy one of the species we're dealing with and the prime reason we're participating account bay checker spot butterfly where we will be dealing with preserving protecting and enhancing the habitat for the bay checker spot butterfly. By experience, I'm a treeftd for the city on the bay checker spot butterfly in the preserve at Kirby canyon where there are a substantial number of butter flies that come back in that area. Three have come back because of grazing. The location of this hill is not really conducive of the bay checker spot butterfly, they isolated nature and how it's, writ sits elevation wise and faces the direction that it faces, is not prime habitat. It does have some benefit as emergency habitat. So -- but not the area where we're actually developing, it would be the slope areas that we are preserving. It is one of the things we would look at at the zoning stage. It's not -- we don't have a direct impact. One of the things I am or quality impacts that were talked about that that is

how we deal with butterfly habitat mitigation is through nitrogen emissions or car exhaust. So that is one of the things we'll take a look at.

>> Councilmember Herrera: I'd like to add that as a conclusion to staff, would like to check that.

>> Mayor Reed: Who had the second?

>> Councilmember Herrera: I did have a section. Who seconded my motion.

>> Mayor Reed: Councilmember Constant, is it okay with the seconder?

>> Councilmember Herrera: There might be a few other directions to staff, maybe if we could go through the question.

>> Mayor Reed: Okay.

>> Councilmember Herrera: In terms of the emergency vehicle issue. Joe, can you address that? I think that's one of the most critical issues that's been brought up is being able to egress, ingress and egress identity of that site and what would that mean with over 300 seniors living in assisted facility if there was an emergency?

>> Joe Horwedel: Well, first as one of the speakers from the neighborhood rightly pointed out, tonight's decision is about the color on the map. Should this be nonurban hillside, should it be public quasipublic or should it be commercial. At the level we know at this stage for public quasipublic, emergency access is something we will need to deal with. Depending on the type use you put in there certainly an institutional use like a hospital or a senior assisted facility has one level of emergency response. Putting a church on this site would have a very different and of emergency response. So it is one that when it is time to zone this property, assuming the project moves forward we will be looking at the specific characteristics of that project what are the emergency needs and it is going to be both a use such as you this that if it does have two emergency calls a week making sure we've

got adequate resources in the area to serve that. We're also going to be looking at the issues raised about evacuation. Second points of access. It is a single point in proposed right now so one of the things we'd look at is where is the second point of access that comes in? So if there is an accident that would prevent the fire department getting into this site coming in at Hassler and dove hill, how else does the fire department get in to protect this project? If not the process.

>> Councilmember Liccardo: General plan amendment we don't have that project in front of us yet. Right now this could be -- could turn out to be a church, could turn out to be several different things. So from your viewpoint it's not at issue at this point to make that determination?

>> Joe Horwedel: It is at issue, it is our radar but not a fatal flaw at this point. At the zoning stage it might become a fatal flaw if we don't find a solution to it. At this point there are public quasipublic epees one of the things as we go through that zoning stage we'll be working at the fire department and our staff in the building department to look at what does it take to make sure that that building and site operates in an extremely safe manner so that you don't put yourself in a position of isolating or stranding residents in this facility, if it was to get built, without a means of second means of access.

>> Councilmember Herrera: And Joe, can you walk us back through? I think it's instructive to hear what your thoughts about this project were, when you -- it was first brought to your attention and why did you change your opinion on it?

>> Uh-huh. When staff fishes looked at this and as Mr. Caruso pointed out staff did not support the original proposal, one is that we had -- the information we had showed that the property was totally above the 15% slope line. Meaning that the freeway higher up the hill than the valley floor. And so we went back and looked with some new information we had on topography, that we've been collecting around the city, that was much more accurate, and looking at some information that Mr. Caruso provided, looked at said there actually maybe be a part of this property that is below the 15% slope line. Meaning, it is treated as developable I took an electronic level and literally figured out the site, it confirmed what we saw on the topography information, so based on that, then the

question staff looked at was, what is an appropriate use at a location such as this. And as the neighborhood pointed out same issues that staff had is that we didn't think it was a site that was appropriate to put a condominium on. That it is in a noisy environment because of the freeway when you're right next to the freeway. As you go back in the site it dissipates. Concerns about air quality in that trapped canyon of how that operates. So we didn't want to go through and put traditional residential where advertise residents that are active outdoors, that they've gobbling you know normal balconies and open spaces are going on. So we were really looking for uses that were commercial chem institutional whether it was a church, hospital, school or you know like a church use and we said that a residential care facility where you had residents that were really not independent in their living, that they depended on others for services, that might be a use that would be appropriate here. Because they are more inside the building as opposed to outside the building, being able to do more with noise attenuation, with air quality controls inside the building so you can deal with some of the constraints that are often that property. But clearly we did not think it was a residential site, it was more of a nonresidential institutional type.

>> Councilmember Herrera: As we move into the next phase, exactly what this project looks like, what kind of senior assisted living some all those things will be looked at as it moves forward into the next phase?

>> Joe Horwedel: Correct. We'll be looking at the use, how that works on visiting hours, are residents allowed to have cars, our expectation is no. How we do with building heights setback issues, all those would come at the next step. How all the specifics of a project feet together with what's going on with the property and how it deals with those issues that might be significant or not, such as emergency access, wild land fire, those are issues we deal with throughout the city, they're anonymity insurmountable, but for the applicant on site.

>> Councilmember Herrera: Mr. Caruso, I would like to ask you about which slide, and suggestions acknowledge in the event we rks I'd like to know if you are working with the community and possible imleption ever those ideas?

>> We are absolutely, I do want to state for the record also that no checkered butter flies were found on the site, they were evaluated at this stage. It was not omitted, a couple of the plants were found, no suitable that is a clear statement so I want to for the record make sure that we're clear on that.

>> Councilmember Herrera: Segregate, I think we're still going to have a direction though just in terms of I think we had some sort habitat, supplemental habitat or something that will -- I think that's a good idea to just have that reviewed. I would like to add that if the seconder will do that, will approve that. And again I just want to thank the community for the issues you brought forward. You have really informs this coircht, you've informed our planning staff, you have mepped to sure these things are on the radar screen as we move into the next phase. With that I'd just like my colleagues to support this motion and that's all my remarks.

>> Mayor Reed: Councilmember Kalra.

>> Ash Kalra: Thank you, mayor and I will be supporting the motion. And wand wanted to just make it clear, for staff to be put on the public hearing and turn this around, I know it is a tremendous amount of work to do that. And I know you have plenty of time right now so I just wanted to condemn you now. This is a GP amendment stage, question is whether it's a site that's appropriate for public quasipublic. At the permitting stage, many of the issues raised by the community will and must be addressed. I know the fire department takes those situations I'm not sure about the butterfly but I think I have some of those in my district, down in Coyote valley so I'll make sure we protect them as much as possible. And I just want to thank the community for coming out again, stay engaged, it seems like you've got a lot of concerns about the safety of whoever may end up living in that -- or residing in that excite. And so I think you've raised a very important issues, a lot of them can't be the reality is there are subsequent stages in which we'll reViet more as to what the real plan is, for this site. And I think that your continued engagement will likely help in that process. And finally, I'd like to thank Councilmember Herrera. You've gone to extreme lengths to ensure that the voices of the surrounding neighbors have been heard. And there was kind of a dual, you were kind of being pulled in two directions, one the urgent of making sure that this project doesn't fall by the way side but at the same time you had the concern for the plrk making concern they had their concerns and had an opportunity to be heard. And so I commend you for finding that balance and making sure

that we can go forward and making sure that all the specific cerches are directly being addressed by staff as we go forward. And so I'll support the project and just want to thank you for that.

>> Mayor Reed: I'm going to be supporting the notion. I think Councilmember Herrera has done a.

>> Jour of trying to work this out. I think we can move ahead at this point. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Joe, with the recent regulations that the Bay Area, does that affect anyone from 100 feet from the freeway?

>> Laur Prevetti. Yes, at the zoning stage we will need to use the CEQA guidelines that the airline put into place. They do look at the possibility of toxic air january 1st of next year and in addition, they'll be looking at green house gas emission issues.

>> I do want to commend Councilmember Herrera for working so diligently with our community. Clearly, the conditions that have been raised, very effectively on this project. Looks to me like it's clearly going to pass. I wasn't a fan early on and voted against it. Having something like a knee jirk creaks, involves the northern land use change of nonurban hillside, that I don't believe in develop the in hillsides, remitting to viempt e-environmental concerns, certainly fiscal concerns the fact that it draws out traffic, increasing BMT, I've had concerns about this site all along and honestly, I've been a bit torn about this because I know enormous accommodations have been made already. I'd respectfully vote no on this, I know there's a lot of work left, and I appreciate that,s this accusation.

>> Mayor Reed: We have a motion, framed on Councilmember Herrera's notes. That were incorporated. All in favor, opposed, Councilmember Liccardo opposed, that passes on a 10-1 vote. We're happy to be done, we're in countering almost 13 and a half hours so we're glad to get every item done gets us a little closer to the end. El we're now going to take up 'regular lands use items. Item 11.1 has two items on the consent calendar. Is in a motion on that? Motion to approve the consent calendar items. All in favor, opposed none opposed those are

approved. 11.3 an administrative hearing and-k of an people of the Planning Commission decision to adapt a negative declaration. Mr. Director.

>> Joe Horwedel: Staff last analyzed the claims of traffic impacts and hazardous materials permitting. We've confirmed with the county of Santa Clara that the subject site at 1604 McKee road is still in compliance with the viern health requirements and regulations, it says as of today our Public Works and D.O.T. staff has gone back and looked at the claims about level of service impacts and disagree with the conclusions that the appellant has made and we're available to answer questions but the questions of the staff is that there's no potential gas station island addition that there's no fair argument of any possible impact of a significant nature and therefore there is no need for an environmental impact report and counsel asked for the council to deny the appeal and approve the conditional use permit.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I would like to make a motion with some modifications to the staff recommendation right now I'm looking at an e-mail some Jean Hamilton and I have gone back and forts --

>> Mayor Reed: I think this is an administrative appeal. I think we might have to hear the appellant. City Attorney -- City Attorney says do it that way..

>> Councilmember Liccardo: That's fine.

>> Mayor Reed: I'll come back to you. As I understand it Jim Dom Browsky is representing the appellant. Give you five minutes sir and then we'll take public testimony. Let me just check. I'm not sure who's representing two. I have two cards here says is representing the applicant, Amir Shirazi. Would --

>> That's correct. I've requested a deferral of this because we didn't receive proper notice. And I've been in communications with Avril Batty, I hope I'm not mispronouncing her name. But I indicated that I have not until this

day received the requisite notice to proceed on this matter. There were four separate appeals filed, one on behalf of Andy Saba rivetion with respect to negative declaration, one on behalf of Andy's BP, with respect to negative declaration. One on behalf of Andy Sobari epees and with respect to the permit. Each one of those applications and appeals clearly name me as the contact person and provided my address and so forth. And I have been in communications with Ms. Beatty since April and I notified her in mid April that I haven't received any notice. She notified me that I would in fact she sent me a an e-mail that I would receive at least two weeks notice in the mail and to this day I haven't received notice. It wasn't until June 8th that she provide he knee at my request the requisite notice and also, the requisite report made by the staff to this council with respect to their so she is the one who suggested that I request deferral and so on that basis I'm requesting a deferral until my client receives requisite notice. In point of fact my client to this day hasn't received notice either. So for that reason I request that this matter be deferred until another date, and that we proceed after I, on behalf of my clients, receive the requisite notice. And that's in a letter by the way that I e-mailed yesterday to all the councilmembers and also Ms. Beatty. I've also made copies today and I just noticed them, there are copies sitting right there and I don't know if - I'd like to have those provided but the first portion of that letter provides my request for a deferral in addition to the e-mail that I sent to Ms. Beatie requesting a postponement of this ten days written notice served by mail. So I would request for that reason this pleater be deferred.

>> Mayor Reed: Okay, you've got a couple minutes left after the applicant speaks you can use the rest of your time if you wish and council will decide what to do here.

>> Okay, and I have additional things I would like that my letter be provided to each of the councilmembers. That contains the also exhibits we have a petition, signed by approximately 250 people, residents of San José that support the traffic study and other exhibits but yes, I would like to speak to that if it's guyed that the deferral should be --

>> Mayor Reed: You've got a minute and 39 seconds to speak on whatever you want to talk about. I don't know what the council is going to do here. So you might as well --

>> There are main issues I'm not waiving my request for deferral. Two main issues, one about public safety with regard to underground gasoline tanks and the other to the traffic study. The traffic study that was refuted by the staff, relied on data collected in the year 2005, to refute data that was just collected last fall by traffic data service that clearly shows that a traffic study should be conducted at this particular location. Again? I submit my letter and ask that the council consider that and I'll reserve whatever time is left for the rebuttal.

>> Mayor Reed: All right, we'll hear from the applicant, Gary Wesley.

>> Good evening, Larry Wesley, for the applicant, we're here with the engineer Bill Duga nrvegths. By the way tonight it was lakers 89 and Celtics 67. With regard to the underground storage tanks was a county case and there was the criticism that wells have to be dug understood it and the area has to be monitored and it hasn't done and once it was done then the gas station was in compliance. And there was no other environmental issue at all except a procedural matter involving the county. With regard to the traffic this proposed project would improve the traffic flow. So there might be some more people that will swarm to this corner to get the cheapest gasoline, there at McKee just 101. That may continue for years as long as this goes on. And that reality is the motivation for trying to stop an expansion of this gas station. But the truth is that this will improve the neighborhood, it will improve traffic flow and there's really no basis for any public report.

>> Mayor Reed: That concludes the public testimony. Mr. Dombrowsky you have a minute left if you want to use it.

>> Thank you, mayor. The point is, is that even though there -- the businesses are in examination there's a school across the street, and there's no question that there's a serious traffic problem. We've suggested in the letter that I submitted yesterday that the council adopt the traffic calming proposal, and they also request appropriate traffic study be -- that we submit the traffic study should be done on this before proceeding. And I think it's a no-brainer based on the traffic data service study that was done, that we've also submitted with respect to this fail. And I also submit that this matter should be deferred for the reasons previously stated. Thank you.

>> Mayor Reed: All right. Staff, you want to talk about a couple of things probably there specifically interested in the notice issue.

>> Joe Horwedel: Correct. I do have, from my staff that does the noticing, a certification declaration that on June sec, we did send out the hearing notices for the protest, hearing tonight. The first name that is listed is a Mr. Jim Dombrowsky, P.O. box 751 two 1 Petaluma, California. Mr. Dombrowsky is listed as the contact person on the appeals, the we use the address that's with the county assessor office, to where he mail tax bills to. From the city's standpoint we can't force people to open their mail but we did go through and mail out to the parties of interest many.. On the staff report we do mail those to the property owner, the actual property owner it scwex you will see on the CCs it because going to the applicant and the I can't verify that woo sent the a separate copy of the staff report to Mr. Domebro wsk-y. We may have erred but that's not a legal requirement it's a courtesy requirement.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I'm satisfied notice was provided even though there were some defects, it appears there isn't, certainly sufficient evidence to me that due process has been satisfied. Here you have an opportunity to be heard, you submitted numerous appeals, I see a letter from am 16th. Extent letters have been submitted so I think we're ready to hear this. I want to make a motion, yum holding the issueness of a C umplet dP for a major permit adjustment to read major, the applicant is required to apply for and have approved a major mermt through the use of onsite queuing redirected parking and direction AI signage, and promote aesthetic interface along McKee and additional landscape. That will be my motion.

>> Mayor Reed: That is the motion, I will not repeat it. Is there a secretary?

>> Councilmember Liccardo: This has been something like a hatfield versus McCoy situation between the two owners of these reports. Clearly this is an for myo nor by the other gas station than the other one. There is a real problem, I hope it can be addressed, any potential traffic that may be waiting here to get onto this gas station from

MLK Key or 33rd and minimize some of the conflicts out there. I look forward to working with the applicant and the Planning Department to make that hatch. L coo I just want to reiterate the comments Councilmember Liccardo made about the traffic and hopefully that can be mitigated, we have neighboring diswricts and I do get calls and concerns about the traffic over there so I appreciate the fact that you did do that. Be.

>> Mayor Reed: I think that concludes the discussion on this item. We have a memo, you write Councilmember Liccardo made, do long and lean. Awful, post office, that item is approved. That takes us to 11 much 4. Rezoning of property at North San José avenue. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor, are there nerch from the public that would like to speak? Jr. Mr. Mayor, there was last time those whereas before council regarding the permitting process for off asset of alcohol and go back and relook as whether this site required a public neath, it would, any proposal for offsale alcohol to come before the city council for approval regardless whether it was planned development or conditioned release process. The applicant has stated he has no intention of requesting an offsale alcohol approval and as you heard from staff recently, this is the type that staff would not support the sale of alcohol, it is not a full service grocery or fresh food available and that the neighborhood is certainly opposed to additional off safely alcohol. So queef tried to go through and bring this back to a proposal for a car wash and I think we've put enough assurances that alcohol would not be and staff is recommending the approval of the PD zoning.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: If there's anyone to speak on the topic, I will be happy to --

>> Mayor Reed: I have no cards on this item.

>> Councilmember Oliverio: Would I make a motion to approve this item. With that said I'm in support of the private property right owner to develop this property into what they wish. However I would not be supportive in the future as would Joe mention would be a separate application for a liquor license. I'm supportive of liquor for

restaurants and grocery stores not for gas stations. We denied a liquor license in this area just across the street. This area is in a -- has enough liquor in the area and enough 23rd has a living facility for substance abuse across the street at Esperanza. With that, enough said, motion to approve.

>> Mayor Reed: Couple of sections, motion on the floor, all in favor, opposed none opposed, that's approved. Leaving item 11.5, rezoning of property south of the village square at Core-Tona Drive and Ruby afternoons.

>> Joe Horwedel: Thank you Mr. Mayor. This is a general plan zoning up to 35 additional homes on the Evergreen Specific Plan area. This was a site that was planned for residential uses, the heights that this zoning accommodates are low pressure approved as zoning heights for this site. The density is within the range that the current zoning allows. The action tonight is merely to increase the total unit count allowed in the Evergreen specific plan to allow though 35 units to potentially be built on this site. It does include the triggers that were built in as part of Councilmember Herrera's direction at the general plan stage to provide that the housing could not get built prior to the commercial on this site. Staff is recommending approval.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you Mayor. My recommendation, I want to make a motion to move my memo which also came out today and maybe we can put that up on the screen if you don't all have it.

>> Second.

>> Councilmember Herrera: Okay. And to approve staff's recommendation for a planned development rezoning to allow for development of up to 35 single family attached residences on 2.8 gross acre located to an adjacent to but not yet constructed 35,000 square foot commercial building. And this was approved this did go through general plan, and the issue was how many units would be built on this site. One of the things I was very concerned about was that the Evergreen village square that we achieve all the retail so the retail has to be

completed before the residential is completed . I will have a few more comments to make about why I am supporting it but I would like the applicant to have an opportunity to speak and the public that is here. Thank you.

>> Mayor Reed: All right, we do have some people who wish to speak. Are I'm not sure the public comment but I'm guessing maybe Susan Mineta.

>> Susan Mineta representing Chappell homes. We concur with staff's analysis that this rezoning is in conformance with san José 2020 general plan, the Evergreen specific plan, the Evergreen east hills development policy, and the City's general policy move encouraging any fill development and the creation of villages as reflected in the 2040 general plan update process. This heels of the city council's recently approval that accommodated 35 additional units into the Evergreen specific plan and village center in coordinates with the Evergreen East hills development policy. In addition the density and the height restrictions proposed in this rezoning conform with the specific plan that has been in place for close to 20 years. Chappell has been a part of the Evergreen specific plan since the original task force for this area was convened in 1990 and we continue to believe in and support the ESP's vision for a walkable infill community for a strong and viable mixed use village square. We urge your support of this proposal and our team is leer to answer any questions you may have.

>> Mayor Reed: Okay, I don't think we have any questions at this time. We will get back to you if we do. Let's take some public testimony. Kevin Lego, Charles Welch, Bonnie Mace. Come on down, the hour is late but I think a few people have waited it out.

>> Good evening, Mayor Reed and members of the council. Thank you for the opportunity to speak. My name is Ken Leal and I'm a resident of district 8. Every issue boils down to the economic impact of the development . In this particular issue the schools in the area are really struggling. As a recent graduate of Evergreen valley high school I can tell you this school is almost a thousand students over optimal capacity. And also as a former youth commissioner I can tell you that you know, having these extra places won't be optimal for the learning environment of students. That being said, the Planning Commission has recommended the number of 20 additional units instead of 35, and I feel that that would be an optimal compromise between the community and

the development. So thank you very much, and I hope you would support the Planning Commission recommendation. Thank you.

>> Mayor Reed: Charles Welch. Bonnie Mace, chow way leal.

>> I'm Charles Welch. I thank you Mr. Mayor and councilmembers. I also want to thank Councilmember Herrera for her involvement in the community and her advocacy for the center. I would like to thank the staff for their well thought out recommendations. I would like to support the dlief units and I'd like to support the reasons why. This is around the reasons we have for this area. Is this a sleepy residential community which would lend itself to just a few homes on this spot or this intended to be the never a vibrant town center? And vibrancy is one of the key reasons. The second key reason is infrastructure and the third key reason is transition. These 35 homes starting from last to first provided greatly transition from the single family homes across the street to the full three story retail that will be build. People across the street are going to be looking at the back of a commercial development. By having dlief homes that effectively shield the community from that retail development, you'll have a much better looking development, great transition. Infrastructure, this area was designed to accommodate 55 housing units. We've already compromised and said that should be 35 units. Let's not kid ourselves this is on a public bus line we've trained a community to traffic and ability to support. Studies have shown the schools are ready to support this, the elementary schools have room. So the infrastructure is there to support this. And finally vibrancy. What do we want for this? Do we want the sleepy community or do we want the lively community center? We're having a discussion about having a liable in this area. I think we need a vibrant community --

>> Mayor Reed: Sorry your time is up. Bonnie Mace chow dps.

>> Diseerg committee first I want to thank Councilmember Herrera for her thoughtful memo. She has worked a lot with the community, also we are very much in favor of the vibrancy just as Chuck was talking about of the community. The issue here is density and height on 2.2 acres, this is not a Mirasou site. Steering committee support. We feel this is a reasonable compromise. We're not saying there should be single family homes there. We're saying there should be 12 dwelling units per acre. That was the decision of the Planning Commission

on a vote of 5 to 2, the majority of the Planning Commission on this. It is not the lower end of the permissible density range. The density is 17.5. The density assigned by the Planning Commission was 12. It could be 12 to 25 per acre. Part of the problem is, three stories of town homes right across the street is very large and also there is a requirement I understand from staff's perspective as to you have to have within 100 feet I think it is a two and a half story, two and a half story or two story height. So it's density and height. The last thing that's important is the residential development, concurrently or after we want after. This is to ensure that whatever is put there for that commerciality site will be built out before half a commercial development without the residential units coming statement. So thank you very much for grand jury exported and thanks to Councilmember Herrera. It will be great no matter what happens here so thanks a lot.

>> Mayor Reed: Chow way Lea-I, Daniel Beshwati.

>> Councilmembers, I'm right now is very nice area to live in but right now there's two big like thousands project the one we talk about today, 150 unit on Irwin. Town house or very high density house built is it's going to traffic and school it's going to get very crowded. Now we talk about this specific project, you know please pay attention, right now you know, in that very small triangle, except this is 35 units, Chappell proposed to build their, going to build up another library or commercial building. So it's going to that area get very crowded. So on May 26th, the Planning Commission recommend instead of 35 unit be that they would comment 20 units had this area. So you know we ask your support to instead approve 35 please support the Planning Commission's recommendation. And the build-up 20 units in this small area. Thank you.

>> Mayor Reed: Our last speaker, Danielle Beswati.

>> Good evening, my name is Danielle Beshwati, :00 other than of the secret as a merchant it is obvious I would support a future development so our local economy will grow. From a business owner's perspective I see a big future for the square and Evergreen and we have a builder that is willing to invest in that growth for that area. In my opinion Chappell did a great job in keeping the community he informed on the progress of this project and have draft issued regarding twrask and schools. We talked about parking last time and I see no problem with the

parking. There's plenty of parking. 35 more units, that area is almost vacant so there's plenty of room for 35 units. More schools, I can't wait for this project to be approved, thank you so much.

>> That includes the plictsd on this item. Councilmember Herrera.

>> Councilmember Herrera: I want to thank the community for their comments, the merchants and also the applicant. I had a question or actually I guess I want to make a comment. In terms of the school impact which was brought up a number of times, we had Ron smiley, talk about, answer questions about school impact. There virtually wasn't going to be any school impact in temps of the thee units that would be proposed. I very well. This is a project now that really is going to help complete yerveg village square we need to get more density there so that we're going to be able to support the retail that's been contemplated. This village is one of the first villages, in what's going to be many villages as part of our general plan so we really have a chance here as we're putting this together to create the right number of residences so that the trail that's there will be able to succeed and grow and create this vibrant city center or village center. We have kept no village alive, the merchants have stayed in there, husk in there, through the economic downturn. Residents have come forward and we've had lots of, commercial that's contemplated to be there, hopefully we're going the to have a library there we're going to have residential there and we're really going to see this -- all of this move together towards creating a great critical an center. So I absolutely support this and I hope my colleagues will join me in supporting it as well.

>>> Councilmember Liccardo.

>> I just want to express smart support here. I think if it were not for the development policy I'd be pushing for hire dense toy. I think this village square is the going to die unless there's a lot more ooms love to see a retail there first that's a pipe dream that's never going to happen. You've got to have the residential, the housing's got to come first. So I strongly support that.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I just wanted to clarify, we do have a trigger in here, so Chappell ask going to trigger the he, that's going to happen before the residential, don't want to mislead. We have megs often the floor, all in favor, opposed none opposed, that concludes this item, that's approved. That concludes our meeting.

>> City Attorney Doyle:

>> Joe Horwedel: Mr. Mayor, I did have one more, 10.1,.

>> Mayor Reed: General plan item. We had one amendment for this hearing, so staff's suggestions is that you are also approving the resolution to conclude the general plan hearing and I wanted to confirm that and not just assume that.

>> Mayor Reed: We have a motion to conclude. All in favor? Opposed, none. We're all in favor of concluding this meeting and that's what we're going to do. Meeting adjourned.