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>> Good morning. Let's get the meeting started. We're on a slightly different schedule, but we'll take things in the same sequence. We will start with our labor update and then go into closed session and be back into open session at 1:30. So for the labor update, I'll turn to Gina Donnelly.

>> Good morning. The city has not received any new proposals, so there is no report today. Thank you.

>> We have people who want to speak. Come on down. Robert and Jim.

>> Good morning, mayor and council. I represent the firefighters who serve will city every minute of every day throughout the year. Those of you that council that were deceived as we were must stand with us and demand the truth. I want to remind you what the city charter says with regard to the mayor's position. It is the intent of this article, section 501, that the mayor shall be the political leader within the community by providing guidance and leadership to the council by expressing and explaining to the community the city's policies and programs and by assisting the council in the informed vigorous and effective exercise of its powers. Political leadership shall be concerned with the general development of the community and the general level of the city services and activity programs. I cannot believe that this section says that the political leader within the community can lie, make things up, and then cover it up, extra egregious is that this mayor rode into office that spewed no lying and cheating from its exhaust pipes. This council has a duty to investigate this deceit about it intends to keep any credibility in the future. Surely in this age of electronic information there are other shoes to drop in the form of other E-mails from the thousands that have already been requested. You need to act and demand the truth. Thank you.

>> Jim. Followed by dale.

>> Good morning. I'm representing the POA. Remember the ten commandments of all the mayor wanted to change? It was his manifesto that propelled him into office. It required the mayor and council members to disclose material facts before council takes action. Pretty straightforward. It is now the adopted city

council policy and the disclosure must occur in open session prior to a vote on the pertinent matter. You have taken plenty of votes on retirement reform and ballot measures. You can name the number of times Chuck Reed has disclosed that the \$650 million pension cost projection was made up off the top of Russell Crosby's head and that it was told by Crosby not to use this bogus \$650 million number? This is a projection that on May 21st he told the mercury news times -- "New York Times," I'm sorry, five years from now, when those costs most likely will climb to \$650 million if nothing has changed, civic life will be unrecognizable he predicts. The mayor and his allies will have some slick and slippery legal answer that they hang around their hat, but on each of you know that Reed reform number six was not followed. You and I have been lied to. Do something about it. Because will issue is not going to go away. And at the end of the day, either you knew of the lie and were in on it, or you weren't. Time to pick a side. Thank you.

>> Dale. Followed by McKenzie.

>> Good morning. The mayor says that he does not remember anyone telling him not to use the projection of \$650 million that was made up off the top of Russell Crosby's head. Russell Crosby looked right into the television camera and says he told the mayor and his staff not to use the \$650 million projection. Who is lying? As council members, were you told that the \$650 million projection was bogus and produced without any backup? Mayor Reed said in the "New York Times" on May 21st, 2011 the following. Five years from now when these costs most likely climb to \$650 million if nothing is changed, civic life for San Jose residents will be unrecognizable he predicts. After making its pension payments, the city would be unable to afford to offer almost any services and it will be able to employ only 1600 of its 4200 employees. This is not a worst case scenario. The political leader of the city by charter is saying most likely will crime to \$650 million. Did he share this with you? Council members, that he was told this projection came off the top of Russell Crosby's head without any backup? Shame on you for not standing up for the truth and standing up to this mayor and demanding an investigation to get to the true facts and determine who knew of this lie and when they knew it.

>> Denise, John.

>> Good morning. I'm president of ISPTTE local 21. The mayor's office is telling reporters that the use of the now bogus \$650 million pension projection was used a mere four times and council member Liccardo says it did not factor into his decision making process just because it showed up in the commentary of the June 2011 budget message. And I have a bridge in Brooklyn to sell you. Most assertions are absurd. Mayor Reed used the \$650 million pension cost projection after being told it was made up and not to use it in the "New York Times," in a press release on April 13th and may 13, 2011, and in his may 13, 2011 memo calling for a fiscal emergency, in his June 2011 budget message in two locations, one with an ominous chart and the other in the commentary. In an article in the July 2011 issue of governing, in the publication public CEO, in his presentation on August 22, 2011 with his friend, Joe nation, and in community budget workshops and numerous interviews. Did he ever disclose to each and every one of you the material fact that he was told the \$650 million number was made up and he was told by the person who made it up not to use it? I guess if you keep repeating a lie, maybe someone will believe it. This deceit demands an investigation by this council on determine who knew what and when they knew it. Thank you.

>> John.

>> Good morning. I'm representing associations of engineers and architects. Russell Crosby says he made up the \$650 million projection cost off the top of his head and the mayor acknowledges on camera that will is true. Crosby says on camera that heed told the mayor and his staff pot to use the \$650 million projection. And the mayor in the first reported incident of his entire life does not remember. I want to know how many other important city decisions important city budgetary decisions have been made using projections made up off the top of someone's head. They should be held accountable for making things up and not speaking up publicly and saying the \$650 million projection was wrong. Why didn't Debra say to the mayor don't use the \$650 million. You should not include it in your budget message since we have no backup. She failed

her basic duty to you, to the city employees and to the community. She failed to tell the truth. She should be held accountable.

>> That concludes the comments on this section. We're going to adjourn into closed session. We'll be back here at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for February 14th, 2012. Start our meeting with an invocation. Councilmember Kalra will introduce today's invocator.

>> Councilmember Kalra: Thank you. I'm very happy to introduce Parveen Kaur Dhillon. Parveen and her whole family has been very active in the Bay Area Sikh community having recently moved to San José. Born in Virginia, she was raised in Baltimore, as a part of, having grown up here, I know that for the most part in our life those are our parents, the first generation that really laid the foundation, second generation, Parveen and mande rvetionp are kind of the next level maintaining our heritage our language and our cowment. So it is definitely my pleasure to introduce Farr vein as the Lohgarh Sikh education foundation. They are really fantastic and they are metropolitan to help educate the greater community about Sikhism. So Parveen if you can please, you and your wonderful kids can continue.

>> Thank you very much. We are honored to be here as members of the Sikh American community of San José. I would like to start off with our Sikh greeting, which means the truth is timeless. And by wishing all of you a very, very happy Valentine's Day. For today's invocation we would like to present a multicultural message through the voices of a young Sikh American girl and boy. They will be reading from books I have authored to help young Sikh Americans to build pride in their identity and share simple concepts about their traditions with their friends, classmates and teachers. My daughter, who is Dhillon, a second grader at silver creek elementary school, will read from who quill be reading my first Singh book. Thank you.

>> My configuration core book. I am a core, princess I am. I aware my Kara on my right hand. It reminds me to do good, and usually I can. I equilibrium be strong, do my best and always show I'm -- even though we are all different we are equal to everyone, everywhere. A daughter, a sister, a wife a mother, gave me these names I'm like no other, hard work so much is to be done. So long as I am follow the hooka of the almighty one. [applause]

>> My first Singh book. I am a Singh, so brave and strong. I wish to be good and try never to do wrong. I work hard and do Seva and do the best I can be. When people ask me for help, I quickly agree. I'm a Sikh, here is my

Guru, I am proud i'm just like a lion standing out in a crowd. I will be a father, a husband, a brother a son, but above all I will be a Kalsa, and follow the hookum of the almighty one.

>> Thank you very much again for giving us this opportunity. Thank you.

>> Mayor Reed: Thank you for joining us. Also joining us today are third graders from Lynnhaven elementary school, they are going to help us with the pledge of allegiance. Please stand for the pledge. [pledge of allegiance]

>> Mayor Reed: First item of business will be the orders of the day. Any changes in the orders of the day from the printed agenda? 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: Mr. Mayor, the council did meet in closed session this morning, there is no report.

>> Mayor Reed: Ceremonial items, I'll invite Councilmember Herrera, Neeraj Baid, and Neel Bhoopalam. To the podium.

>> Councilmember Herrera: Thank you mayor. I would like to thank Neeraj Baid and his mother Neel and their families who are here today. I am happy to acknowledge Neeraj and Neel for organizing a conference TedX devoted to ideas worth spreading, around technology entertainment and design. These conferences are really intense conferences that happened in a short period of time and it took a lot to put these two together and these two young men did that. Each year Tedx conferences are spreading innovation and technology in business. Gives the people the experience, these events are planned and coordinated independently and in this case Neeraj and Neel organized these and an opportunity for exchanging big ideas, intense intellectual experience in a very short amount of time. In the conference in October, the group met venture capitalists, Neeraj and Neel's TedX conference was a great opportunity to develop networking relationships. Neeraj and Neel and their fellow students, dwie the status quo that are the qualities of success entrepreneurs. And these qualities are curriculum

to the development of the next generation of technologies that will drive our economy. These are our next -- this is our future innovation leaders right behind me here. At this conference Guy Kawasaki, the former advantage list from Apple, he went on this contrary to what you've been taught but experts usually divine things within established limits and I think you should break those limits. What an inspiring message from someone who has been part of so many successful projects at Apple. Again I want to thank Neeraj and Neel, organizing such a large event is a major employment. Talk to them confidently on the very subject they built their careers on. Successfully pull off a conference of this scale. So we want to congratulate you on the success of this event and good luck to both you in all your future endeavors. I would like Mayor Reed to present them with their commendation and Neeraj would like to say a few words. He's got his iPad ready right here. [applause]

>> So first of all I would just like to say I'm really proud to be receiving this award. It really means a lot to me. What we tried to do was bring together students from all around the Bay Area, to ignite the now crucial entrepreneurial spirit. Having brought together students from schools across the valley, hosting an event like this at their institution. With the significance of entrepreneurship now soars in the majority of the nation's much needed economic growth projected to come from start-up businesses, the importance of promoting entrepreneurship at a young age is now greater than ever. By the medium through which to mentor and motivate the current generation of students we believe we are ushering in a brighter future for the City of San José. We here continue to host our event to become both an annual tradition at Harker and an event Bay Area students look forward to each year. We thank you for your support. Thank you.

>> Mayor Reed: Now I'd like to invite Councilmember Kalra and Camie to join me at the podium.

>> Councilmember Kalra: Thank you, mayor. Cardiovascular disease remains the leading death heart disease and stroke. Totalling over 2,000 deaths each day. These conditions are also leading causes of disability preventing people from working and enjoying activities with their families and loved ones. Cardiovascular disease is also very expensive. Together, in 2010 cost the nation more than 444 billion dollars in health care expenses in lost productivity. These smart choices relating to nutrition and physical activity are essential. Heart disease and stroke affects all of our lives but we can play a role in ending it. You can fight back against heart disease and

stroke in our communities by encouraging ways to prevent and treat cardiovascular disease and we can empower all Americans to make healthier choices. Earlier, actually right before the council meeting, in line with the recognition of February being heart month, and being aware of the risk for cardiovascular disease we just announced the San José fire department their partnership at the hospital and pulse point having an app that will connect those suffering from sudden cardiac arrest with those who are trained in CPR. I think that's going to save so many lives and really fill the gap that has always existed when someone calls 911 and our trained personnel gets there as soon as they can, in just a few minutes, there is always someone to help. I am very excited that our city is doing this, I think it is going to save lives. Also as many may know, as I've mentioned before when we do these proclamations, south Asians are four times greater of suffering heart disease. My father when he was in his '40s suffered a mass heart attack. Leaders to educate the community on these risks and so that's why it's a great privilege for me to have an opportunity here with the mayor and our entire council to proudly declare the month of February as American heart month in the City of San José, and to once again work with the American heart association in helping to get the word out, not just in terms of heart disease as a whole but particularly for women as we know the go red for women compare that oftentimes when we talk about heart disease we focus so much on the men and not the women. We know that women suffer from heart disease as well. With that mayor I would ask that you please present the proclamation and accepting the proclamation on behalf of American heart association, Camie Sanchez and Maria Lopresto who is a survivor and someone who works diligently in getting the word out to the community.

>> Thank you, councilman Kalra, Mayor Reed and the entire city council, on behalf of the American heart association we want to thank you for your wonderful support.

>> Mayor Reed: Now I'd like to invite Councilmember Chu and members of the Berryessa business association to join me at the podium. We are commending the Berryessa business association for strengthening the businesses of the Berryessa community.

>> Councilmember Chu: Thank you, mayor. I would like to thank any colleagues and the mayor in joining me to celebrate the birth of a new community based organization, and to commend the Berryessa business association

for their effort to strengthen the small businesses of the Berryessa community. Beginning in about 2008, shortly after I took over the office, my office worked very closely with the Berryessa citizen advisory council, BCAC, to establish the Berryessa business association, to meet the needs of businesses around business owners in district

4. Walking the district and talking to individual business owners, and their representatives, we finally gained support, and members. We hosted a kickoff meeting 2010 and finally in October of 2011, the Berryessa business association adopted their official ballot and elected their board of directors. The BBA aims to improve business in our community, attract new businesses and create a friendly and attractive area for businesses to grow. I'm proud to have organizations such as the BBA in district 4. I'm confident that they will play a vital role in the achieving San José's economic development goals. Here today to accept this commendation is the board of directors of BBA. We have president Frank Consella and his wife Charlene, over there with the camera, and treasurer Hi Dan, Mike Hills and Mike Maher. Mayor would you please. Charlene you want to join us here.

>> First of all, thank you, Mayor Reed, Councilmember Chu. As the first president of the Berryessa business association, I want to say thank you for all the people who did the work prior to me. That is Councilmember Chu, his staff and Mike, with the initiative of this association. So I'd like to give Mike the opportunity to come up and say a few words on behalf of the Berryessa association. Thank you.

>> Thank you, Frank and thank you, Mayor Reed, and Councilmember Chu. It's been a pleasure to work over the last year to form this organization. We started by, as Councilmember Chu said, walking and greeting and meeting everybody. If you haven't walked out and greeted 100 businesses, or more, you really don't know what they're facing. So we found that by doing the grass roots approach. And have been very successful. We have over 50 members and we will be seeing it grow and grow in our community. So thank you, Councilmember Chu and especially Ann who's been our stalwart support in this endeavor. Thank you.

>> Mayor Reed: Our next item is the consent calendar. I have some requests to speak on the consent calendar. Item 2.9 will be pulled off for discussion so I'll take that in a bit. 2.3, Mr. Wall you want to speak, take that now.

>> Good afternoon, ladies and gentlemen. With reference to the January 11th Rules packet. Item H, is from the public record. One of the things is, title Christmas comes early for Applegate Johnson. City Attorney saves city at great cost. Fire station number 19 liquidated damages and the botched environmental innovation center financing attempts. Calls for investigation by council in the loss of this \$440,000 in liquidated damages. Which several councilmembers who are present today, voted to waive that money. We go on to item I and we have to ask the question, had the City Manager explained the nuances of the new market tax credit fiasco, that's fair. January 18th Rules packet, item H, titled is sewage purified water? To mislead the public? And on the back, of our Rules packet for the 18th. Item I, we have a statement most profound management statement of the century for Lou Wolff. Performance is relatively simple to measure. And performance is what counts. That quote, ladies and gentlemen, will follow us through course of today's activities. Thank you.

>> Mayor Reed: That concludes the public testimony on consent calendar. I have a request to pull item 2.19 and 2.13 -- 2.9 and 2.13 off. Any others that we'll pull off for discussion? Is there a motion? Motion is to approve the balance of the consent calendar items. All in favor, opposed, none opposed, that's approved. 2.9. Councilmember Pyle you wanted to pull that one.

>> Councilmember Pyle: Yes, mayor. Thank you very much. I would like to refer to a late memo that we put out. Just today, dated 2-14 and what I'd like to do is approve the -- ask for approval of the staff recommendations, and in addition to that, provide additional information to the boards of the administration for the Police and Fire department retirement plan and the Federated city employees retirement system. And to strongly encourage the above mentioned boards to allow at least three months for retirees to return the new authorization due the agreement before they become nondues paying retirees. And then also to limit the changes in contributions to any of the approved organizations, to one time per year. So that not quite so much staff time needs to be spent on this. So those are the only two extra provisos and this seems very amenable to the sources and this seemed to solve the problem.

>> Mayor Reed: We have a motion, is there a second?

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion and second. Councilmember Oliverio.

>> Councilmember Oliverio: Councilmember Pyle can you walk me through the scenario?

>> Councilmember Pyle: Did you --

>> Councilmember Oliverio: I did can you walk me through the scenario?

>> Councilmember Pyle: Sure. The boards of administration for the Police and Fire retirement plan and the Federated city employees retirement plan, have a situation where they're trying to be put into a ticketless or a paperless program. And it's caused some confusion with the retirees. So this is an attempt to make it easier on everybody, instead of to return the new authorization dues agreement before they become nondues paying retirees. In other words they need a little bit more time to look at this before they decide to pay the dues or not pay the dues. Additionally, if there are any changes made in the dues, once a year only.

>> Councilmember Oliverio: So right now they have an option of whether to pay or not?

>> Councilmember Pyle: Yes.

>> Councilmember Oliverio: And then you're just saying you have 90 days to make up your mind?

>> Councilmember Pyle: That's right.

>> Councilmember Oliverio: Currently it is one day?

>> Councilmember Pyle: I'm not sure how many days it is but it's certainly not 90 days. Rick --

>> City Attorney Doyle: Currently it's 90 day dps the change in the code will give the specific change to allow for the deduction. Right now, there's no specific -- dues are unassignable and there's no specific authorization. Although the -- as a practice the dues have been deducted. So we're just trying to get the code to conform to with what the practice is. What will happen is, if this passes it will give the authorization in the code to allow for these types of deductions, pursuant to regulations adopted 50 retirement boards. And if I understand councilmembers, Councilmember Pyle's motion, she's asking the boards to consider council's preference that they give at least a 90-day window for people to sign up or not sign up as well as looking at the once-a-year to make think changes to that from an administrative standpoint.

>> Councilmember Oliverio: So if someone at the end of the 90 days chose not to sign up some they will still have paid dues for 90 days?

>> City Attorney Doyle: I'm not sure about that. the council passes a resolution that you can do this legally and then.

>> Mayor Reed: City Manager.

>> City Manager Figone: I'm looking at the staff, Donna Busse, is there any clarification you need to make?

>> Hi, Donna Busse from the Department of Retirement services deputy director. It is actually two separate issues. One issue is the clarification of the municipal code to allow for the deductions from the payroll for the retirement association dues. The second issue is the administration that Councilmember Pyle is asking about, to allow the retiree members to make an election to a dues change to have 30 days to change their dues to a different amount of money. The both retirees associations want to change their dues structure and we need authorization from the individual numbers to change the deductions out of their paychecks and she's saying to allow them three months to make that election before we stop deducting the dues out of their check.

>> Councilmember Pyle: And I might add that some of that is due to the fact that so many retirees don't live locally, they live in various and sundry places in the State of California. So --

>> Councilmember Oliverio: So if I understood you correctly then with this passion an you would be collecting dues even if the person at the end of the 90 days may select to not pay dues?

>> If at the end of the 90 days elect not to make the dues changes we will discontinue the deduction.

>> Councilmember Oliverio: Will they get a credit?

>> No, it's a monthly deduction.

>> Mayor Reed: But if they sent it in the first day it would stop the first day, right?

>> Councilmember Pyle: It would change to the new amount.

>> Mayor Reed: So they have time to think about it.

>> Yes.

>> Mayor Reed: But if they think about it and make their decision quickly, things will go quickly. Assuming they will make the choice according to Councilmember Pyle's.

>> How it's actually administered will be decided by the board with the recommendation by council.

>> Mayor Reed: Anybody else on this? I didn't have any other requests I think to meet.

>> Councilmember Pyle: I need to disclose that did I meet with Dustin Derolo.

>> Mayor Reed: We have a motion to approve based on Councilmember Pyle's memorandum. One opposed, Councilmember Oliverio opposed. We do have a request to speak, Michael Alvord. Didn't see you in the back, I'm sorry.

>> Good afternoon, I'm Michael Alvord, vice president of police for the retiree association for Police and Fire. We first of all would like to thank you for making the amendments to the code, to make things a little more easy to deal with. The only problem we have is the implementation. Sending out of the letter, requiring members to once again affirm what they've already affirmed. In October we had an election or not an election but a ballot based on our bylaws to raise our dues. I have in my possession not with me but I can produce them within an hour if need be all of those ballots with specific instructions and a due date when to return them. Asking for the dues increase. We had more than 99% favorable. Our problem is, with sending out a second letter it's going to confuse our members as to what's going on. There are most of them who are like me, they don't think a lot about those kind of things and they figures, hey, I've already signed it and toss it. As a result of this particular chosen path we will end up losing members and we'll have to start all over again with the beginning of the process. Twice before we've done this. It's been accomplished with just a letter to the retirement services office from our organization. I am in possession, again, they're at my home but I am able to produce them if you'd like, two letters of those both previous dues increases. My problem is, for expediency sake, we should follow the process that we have already done. Thank you.

>> Mayor Reed: Thank you. That concludes the public testimony. Does anybody want to reconsider the previous action? Okay, the motion was approved. 2.13, is reappointments, a couple of appointments to some boards and committees. Councilmember Pyle, I understand, wants to abstain from item --

>> Councilmember Pyle: I need to abstain because I am a member of the VTA. I will just step out the door for the vote.

>> Mayor Reed: Okay, is there a motion on the recommendations for these boards?

>> Councilmember Herrera: Motion.

>> Mayor Reed: Motion is to -- I need a second? Second, okay, we have a motion. Motion is to approve the recommendations, all in favor, opposed, none opposed, that's approved. Councilmember Pyle can come back. Moving on to a report of the City Manager. Item 3.1.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. I'm very pleased and proud to report that our assistant City Manager Ed Shikada was recently honored with the John H. nail memorial award by the lying of California cities. This is a significant honor from the city management profession. Ed was recognized as a motivational and innovative leader with a remarkable strong commitment to public services. Among his many accomplishments in San José has been his strong support for employee engagement. Staff development organizational improvement. He has helped manage our transition from the City's decade of investment capital improvement program to a focus on sustainable business models for operations and maintenance. Ed also has contributed to our external relationships, through his involvement with community organizations, businesses and other governmental agencies. The John H. nail memorial award was created by the league's City Manager's department in honor and memory of an exemplary California City Manager. The award is presented every year to one outstanding municipal assistant statewide who has significantly contributed to the advancement of local government. Ed has been my right hand for the past few years and I count on his knowledge, skill every day on helping us run our city. Please join me in grafting Ed Shikada and for his commitment to the people of San José. Thank you Ed. [applause] 3.3, mid year budget documents that's been circulated. I think we'll have a presentation from our staff. Give them a minute to get into place. Then we'll turn it over to the City Manager.

>> City Manager Figone: Tweal we'll just let Jennifer take it and highlight what you need to know about the mid year review. Thank you.

>> Jennifer Maguire: Good afternoon, Jennifer Maguire budgetary director. Through its budget policy some city council has designated mid year as the appropriate time to present a comprehensive document as the

appropriate vehicle for consideration of any budget revisions. This is in addition to the monitoring that we do through the bimonthly financial reports that are heard by the Public Safety, Finance and Strategic Support committee. complies with council policy. It contains a comprehensive review of the status of the City's 2011-2012 operating and capital budgets and contains many recommended adjustments to bring revenues and expenditures in line with current projections and adjust halfway through the year. Some even those items are recognizing new grants and reimbursements, performing technical budget cleanups and better position is particular funds for the future. To begin for 2011-2012, the mid year budget report is a good news report which is fitting for Valentine's Day. For example, the economy is showing signs of stability and even modest growth in some areas. On a national level real growth domestic product picked up in the third quarter of 2011 growing at an annual rate of 1.8%. An advance forecast for the fourth quarter 2011 is estimated at 2.8%, both of these are above the 1.3% reported in the second quarter of 2011. On a local level employment in this region experienced year-over-year gains of 2.9% through December, though continues to remain below the recent peak of 930,500 jobs experienced in December 2007. Unemployment of 8.9% fleches decrease from the November 10.6%, rate experienced a year ago. Careful planning has appropriately positioned the city for 2011-12 and in general the City's 114 different funds are performing within expected levels or in some cases revenues are outperforming expectations through the first half of the year. This is a significant improvement through the difficulties and required significant rebalancing actions at mid year. I'd like to note that in a few isolated areas performance is falling below expected levels and budgeted judgments are recommended as I'll discuss later in the presentation. Again various actions are recommended at mid year to proactivism position a fund for 2012-13 perform technical budget cleanups. Moving into the status of the General Fund in particular I'm very happy to report that overall the General Fund is tracking within 11-12 approved levels slightly seen budget estimates, a number of categories are tracking above projected levels including sales tax which experienced an 8.4% year-over-year gain in our first quarter remittance which represented July through September sales activity as compared to a 2% growth rate. After factoring out one time adjustments our economic growth for the first quarter was actually 5.7% with the transportation sector experiencing 16% growth, business to business sales activity up 1.2%, general retail was up 1.1%. Food products and construction sales also experienced growth but in the 5 to 7% range. Transient occupancy tax collections are performing well higher card room and marijuana business tax collections and utility tax PG&E and higher gas and telephone utility tax activity. Expenditures are anticipated to end the year within

budgeted levels or with savings. Savings are anticipated to be received primarily from vacancy savings, from departments such as the police department, our Planning, Building, and Code Enforcement department, and finance department. Citywide expense savings are expected from large appropriations as our workers compensation appropriation and sick leave upon retirement. Our salary and benefit reserve will have savings primarily as a result of health care increases coming in below budget. They were projected to increase 14% year over year and they came in at 7.2%. A small amount report and organized in the following categories. Urgent program fiscal needs, required technical rebalancing adjustments, grants reimbursements and fees and cleanup adjustments. In the urgent program fiscal needs category, seven adjustments are recommended for city council recommendation for fiscal reform plan implementation reserve of 2.1 million is recommended to be established funded by retirement city Council's decision to move the election from March to June. This reserve would be available to fund other potential fiscal reform plan needs such as future ballot measures, polling, implementation of the plan. Second, the establishment of a new election and ballot measures appropriation in the amount of \$1.8 million is recommended in order to combine in one place all of the elections funding from the City Clerk's office and the savings remaining from move the march to June. This will provide for upcoming city council elections, June retirement form ballot measure and up to two additional ballot measures if needed. Additional funding of \$450,000 for labor employee relations consultant funding and retirement actuarial studies is recommended to align the necessary resources needed in these two areas with the anticipated cost associated with the imlessments of the City's fiscal reform plan. Additional funding of 400,000 is recommended to increase the unanticipated emergency maintenance appropriation. This funding will be used primarily heating replace stolen lightning rods on the City Hall roof and repair and replace damaged exterior lighting, and available for any other anticipated needs that came about through remainder of the year. Fifth on the list is funding recommended for police officer recruit academy support. To assure that the for their upcoming police recruit academy that will be held soon after the start of the new fiscal year. Aves January 2012, as of January 2012, we fill as many if not all of the vacancies that we project over the coming months and we do not fall behind on our hiring. Lake Cunningham skate park operations of the you the park through June. Through wonderful community support support operations. Through additional expected donations we anticipate being able to continue operations into next year as well. Finally the continuation of the police department's hooter mounted unit is recommended through at least June horse mounted unit this will allow for additional time for fundraising efforts and for the continuation of the unit

to be revisited through the upcoming 12-13 budget process. In the required technical rebalancing recommended. First we are repeg that we establish a \$12 million, 11-12 ending fund balance reserve in order to set aside funding as already counted on as being available for a forecast. This is a proactive step to ensure the funding will be secure as we go into next year's budget process. This reserve is funded by the excess revenues and expenditure savings that I mentioned earlier in my presentation. Next a \$10 million increase to the 12-13 future deficit reserve is recommended which will bring that reserve to the \$22 million level. As you may recall as part of the 11-12 adopted budget due to the fiscal condition of the San José Redevelopment Agency it was anticipated that of the \$15.4 million annual convention center lease payment \$10 million would be required to be funded by the City's General Fund. However, due to the slightly higher than anticipated tax increment revenue received this year the agency was able to assume the entire debt service which has eliminated the need for that funding. The rebalancing of the medical marijuana re fee program has been suspended. 1.4 million of in cost recovery fees will not be received therefore expenditure reductions have been required in various departments to offset the shortfall as well as the remaining recognition of general revenues. A recommended for the county property tax administrative fee. To reflect new and recent information provided by the county to recover a portion of their new tax collection and apportionment system. An energies to the municipal golf course subsidy is now required bringing the annual transfer from 1.5 million to 1.8 million as a result of lower oche rancho dell pueblo and Los on the General Fund. These adjustments are primarily in the police, Parks, Recreation, and Neighborhood Services and Planning, Building, and Code Enforcement departments. Major recommended items include senior nutrition funding of 660,000 from the county and fee activities levels due to increased participation in recreational and after school programs. Lastly a series of cleanup adjustments are recommended at mid year. The most significant transaction include a net zero \$25 million reduction to the tax revenue anticipation notes, to reflect a lower debt issuance for cash flow needs this year. The driks of \$1.2 million from the salary and benefit reserve from January 1st, 2012 are also recommended. Moving on to the status of selected special and capital funds. Our airport funds have shown a .7% decline in passenger numbers compared to last year, a decrease of 32,000 passengers. This is below the anticipated growth of 2%. Despite this lag in growth overall operating revenues through December are tracking within estimated levels due to again conservative budgeting that the airport performed. The airport's fiscal challenges however are expected to continue into the future as a result of the lack of passenger growth and debt services costs associated with the terminal area improvement

program. The two major construction related revenue sources that primarily fund the traffic capital program, the construction excise tax and building and structures tax are tracking above higher than anticipated activity levels. \$4 million and \$3 million are recommended and the use of those funds will be brought forward for city council consideration in late April as part of the release of next year's capital budget and CIP. This would bring total revenue estimates to \$12 million in the construction excise tax fund and \$9 million in the building and structures tax fund. As I mentioned previously the municipal golf course fund is falling below ops fund balance in that fund. Transient occupancy tax revenues are tracking above the estimate of \$1.7 million is recommended. A corresponding increase in the allocation to the three recipient organizations are recommended in the report. That would be \$824,000 to the convention and cultural affairs fund and \$412,000 to the San José convention and visitors bureau and \$412,000 for cultural development. Convention and cultural affairs fund revenues are tracking well above anticipated levels and are expected to exceed budgeted estimates by the end of the year. This is primarily due to contract labor and food and beverage revenues which have corresponding expenditures. Higher than anticipated transfer from the T.O.T. receipts is also included as I just discussed. Overall a \$4.3 million increase in revenues offset by a 3.3 million increase in expenditures is recommended resulting in almost a \$1 million gain to the fund balance in that fund. So conclude, based on our comprehensive review of the city's over 100 funds in general all funds are 12-13 budget season this slide provides the key upcoming activities that will be taking place over the next several months. As we develop both the we will also continue to monitor both revenues and expenditures in the current year. Any necessary revisions to the 11-12 budget will be brought forward later in the year as appropriate to ensure the city is in the strongest fiscal position as we enter into next year. With that I'll conclude and thank you, and we're available to answer any questions you may have.

>> Mayor Reed: Thank you. I'm sure we'll have some questions. Let me start out by saying it's always good to hear that more than 100 funds are operating within council budget authorization. Because that's not only good budgeting work it's good management as well. And many other cities, counties and states can't say that at mid year so that's good news to hear. Unfortunately we hear it every year so we kind of take it for granted. But it does take a lot of work and I just want to make sure everybody understands the difficulty of the work and how much work it takes to manage all of that and do it well. So congratulations to you, and thanks, on behalf of the people of

San José. Even though things aren't as good as we'd like them to be we do have a lot of things to be grateful for. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Thank you Jennifer for the mid year budget review. Question for you at this time knowing that we will be short some amount of money come June, approximately 20, \$25 million, how do you foresee us close that gap? Are we going to do it through reserves and attrition? Because we had that discussion yesterday about adding services. But if we're short, I'm trying to figure how we get there.

>> Jennifer Maguire: We have asked the City Manager put out in I think late November, a departmental targets. We've asked for the departments to come up with proposals to close that gap. We want to look at reallocation of resources in the departments because as the City Manager said yesterday, we may have gone too far in certain areas, and we may need to do some rebalancing of departmental services including our strategic support services. We really need the fiscal reform plan, some ongoing solutions to resolve next year's budget. But as I alluded to yesterday, to the extent that we can't get any of them or all of them over the goal line that would be slated for 12-13, we could use some of this one-time money to backfill until we got them into place. So this \$22 million that we're talking about for this future deficit reserve is one time money and it needs to be treated as such and we really need to have ongoing solutions or we're just going to be pushing the deficit next year to a future year and it won't be going towards the city council goal of eliminating our overall structural deficit.

>> Councilmember Oliverio: Thank you, can you remind the council when the dates for sales tax and property tax, those are every two months.

>> Jennifer Maguire: We got a big property tax payment in December. They kind of trickle in for us. We'll get some, another payment in February here if we haven't already received it. We feel pretty good about our property tax estimate. Sales tax is always in arrears. It comes every quarter. Our next report we will get March and that will be for the October through December sales activity period. Then we won't get another payment until June. So we will be releasing we hope with fingers crossed by the end of the month a five year forecast and update to the \$25

million General Fund shortfall number for next year. But we will revise that number all the way up to our issuance of the May 1 document we revenue information along the way.

>> Councilmember Oliverio: And just so I understand on the property tax not the payment but at some point the assessor tells us what the assessed value or what you anticipate. When is that date?

>> Jennifer Maguire: We get it as of January 1 but it has adjustments because they are always correcting the roll all the way through but it will be as of Jan 1.

>> Councilmember Oliverio: You know property tax revenues?

>> Jennifer Maguire: Would I say that is pretty close.

>> Councilmember Oliverio: Okay, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: So I wanted to ask on the increased golf course subsidy we're being asked to give another \$300,000 into a sinking hole. Can you give us an indication of the -- I know you mentioned both rancho and Los Lagos. Can you give me the attribution between the two?

>> Jennifer Maguire: I believe it's -- Julie,.

>> Thank you Jennifer, Julie Edmond mares acting director of PRNS. For the broken down attributable, about 100,000 to Los Lagos, a smaller amount to Muni and a smaller amount to rancho. Los Lagos is the largest underperforming, Muni is somewhat underperforming.

>> Councilmember Constant: When we've experienced continual cuts and layoffs and \$300,000 can go a long way. What would happen if today, the council said, we're not going to authorize that cut, we want that -- that money there, we want that allocated somewhere else? How would our -- how would you respond at our golf courses to deal with that?

>> In terms of performance the golf courses then cells return their operating profit. It's the debt service they are unable to make. The debt service is about \$2 million for the year combined for rancho and Los Lagos. We would be short subsidizing the debt service. We would have to do some evaluation where operations could be reduced and I'd have to get back to you exactly how that would impact if we did not go forward with \$300,000.

>> Councilmember Constant: I guess my concern continues to be, go back to the page, I think it's on maybe 314. Somewhere I saw --

>> Mayor Reed: Sorry Councilmember Constant, is that III 14?

>> Councilmember Constant: Yes, III 14. Activities have increased but revenue has not increased. Can we see that dichotomy happen?

>> Councilmember Constant, we had forecast that the three courses together would net approximately \$200,000 positive revenue. Excuse me we had forecasted about a \$500,000 but their performance is only coming in about \$200,000 off that \$300,000 gap. They are coming in off over cost. Sometime whether there's going to be weekend rounds, whether they're going to take out a organism cart or not take out a golf cart. So even though rounds are up, they are not up back to the -- we had forecast them returning to the 09-10 level and they have yet to do so.

>> Councilmember Constant: Well I just want to keep bringing this up because we've talked about these golf courses for a number of years and their sub-par performance continues. We know that we have -- we've surveyed our residents. I think we're going to discuss the resident survey a little bit later where something like 84, 85% of

the people don't think we should be in the three-golf-course business. And as much as I'd love to see people getting their hole in ones, the only hole I'm seeing is from our budget from these golf courses. I think we have to continue to prioritize what we're going to deliver to our residents and that should be essential city services. And I know I've said this time and time again year after year but I'm going to continue to keep saying it. As we continue to keep having these black holes, much like our Hayes mansion fund because we can't cover the debt service, we just can't continue in that way. So I'll continue to put my flag up every time we come close to putting more money down this hole. Because I think it's a terrible thing we're doing, not providing basic services, we're letting our infrastructure fall apart and us and we continue to pump more money into a losing golf course program.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Julie, don't go too far away. So I just want to weigh in on the golf course thing as somebody who's just been involved in a very successful endeavor with Lake Cunningham park and who is quite inspired by the community support and the ability to work and solve a problem which we were facing not having staffing a year ago. I can't help but think that that's a model that we might be able to extend to some of our other parks. I consider the golf courses as not just golf courses but parks and open space for our community. Particularly Rancho Del Pueblo. Can you address that? I completely agree with Councilmember Constant that we should not, we have to find a way to make these things sustainable. And the reason why you are advocating for a different way of looking at lake Cunningham now is we've been able to cross that threshold by working with the community and bringing in outside funding it looks like that park is going to be sustainable, going in that direction. Do you see any possibility with this park/golf courses?

>> Yes, absolutely. Councilmember Herrera, you have championed passionate to save our skate park folks, have helped fund raise and increase participation at the site and that's been a real positive aspect of the revenue generation. In addition to your out there beating the bushes and helping fund raise with the organizations, first five and he replicate that in other service areas but it does take energy. It does take commitment just as Councilmember Pyle helped us fund raise for the lake it really takes time and effort to do that. I think it is a model we can look to. But we do have to figure out which priorities to put forward first.

>> Councilmember Herrera: And so I'd like especially Rancho Del Pueblo and it's pretty close to breaking even in operating expenses, right?

>> Yes, that's a challenge for our golf courses, they do break even for operating or make a little bit of money but we are unable to make the \$2 million in debt service for Rancho and Los Lagos combined.

>> Councilmember Herrera: I don't have a we can address these issues and I especially I want to focus on Rancho Del Pueblo, because this serves our community. It is in an under-parked area it is April area that doesn't have enough open space, it serves our children, it severance our seniors. It is not just a golf course, I personally don't play golf very well, people don't like to see me on a golf course. They're beautiful, they look good but I think it's important we offer these amenities to all of our communities. Even though this golf course would not be a golf course anymore would I not want to see this open space go away. Figure out a way to land bank or to look to sell it and lose that open space for the community is completely unacceptable. I think we have to be a little bit more creative and see how we can solve these things. That one I think we need to put the focus there, thank you.

>> Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Julie you might want to stay up. Okay so let's look at all three golf courses. Let me ask my first question. Why would Muni be underperforming? Do we have debt service on Muni?

>> Councilmember Campos, no we do not have debt service on Muni. In fact Muni participates by bringing revenue into the General Fund and helps offset that positive cash flow.

>> Councilmember Campos: So you reported or the report states that -- or someone stated that Muni was not meeting some projections. Slightly but it was not meeting some projections.

>> Correct, these are all our forecasts. Compared to our forecast which is what the mid year adjustment is all about, we planned making revenues back to the '09-10. They have just come in under that, they are under their projection but they are in a positive cash flow number.

>> I've got it here. For the -- we budgeted for \$436,000 in revenue which does help support the debt service on the other two golf courses but falling about 39% -- 39,000 I'm sorry short of that revenue estimate.

>> Councilmember Campos: So we get \$400,000 annually from medicine. How much rrn does it bring in, in total? How much does it create, does it generate? Because there's a -- I guess where I'm getting at is that we get a fraction of the revenue that that golf course pulls in. And it's bewildering to me that if we're bringing in -- I've seen the numbers. We're bringing in or it's generating revenue but we only get a fraction of that. And I think that if we're going to, once and for all, solve the issue of our three organism courses, and be able to get into positive cash flow and paying down bobbed debt, without relinquishing any of the prized open space, because all three of them, they're open space. Once they're gone, you never get them back. We need to tackle whether or not Muni is actually contributing its fair share, and you know, to the city. And whether that's a bad contract we're in with the Muni operators or not, you know, we need to really look at you know what's there and what's right to bring back into this city.

>> Councilmember, you are correct, there is a long term ground lease with the Muni golf course. And the city receives a percentage of their gross revenue receipts. In the other courses we have a management contract with courseco, the operator of the other two operators. Their highest is Muni and it's the only golf course without debt service currently.

>> Councilmember Campos: We need to look at all our options in terms of looking at what we can do to amend, change, get out of it, whatever. Because that seems to be a stone we haven't turned over yet. And we could

probably find some revenue there. There has to be a way if we you know if we put a little bit of research into that. So I'll leave it at that. Because you know as you go into -- as we go into budgets we need to look at everything. One question I do have, changing the subject. On page 3, the \$150,000 proposed for police officer recruitment, do we have any call-backs from officers that might have been laid off, that -- I'm just wondering why are we spending that amount for recruitment if you know we've laid off officers and we need to bring some back?

>> That's a great question. We actually have -- we do have a procedure in our civil service rules that when we do lay off people we do have -- before we go to outside hiring we do reinstate officers that have been previously laid off. The police department has recently gone through the entire reinstatement list so there is nobody left to reinstate. Either people have accepted rapidly or they have decided not to accept employment back with the city because they might have found a job back someplace else. So the police department is gearing up for a July or a potentially September academy, we want to make sure it's filled with good candidates, normally, the police department would have pulled people off of patrol to, as a temporary duty assignment to help with backgrounding. We wanted to maximize our officers on patrol due to the fact that we have cut so many officers. So we would like to supplement that, to maybe go through contract backgrounding, to get the background of all the people who apply to get the best and highest into that academy so we don't fall behind on the hiring.

>> City Manager Figone: Councilmember if I could add, Jennifer please add a requirement about the lead time before point of recruiting and getting into a academy and being street-ready.

>> Jennifer Maguire: I believe the police department usually gives a number anywhere from 12 to 18 months for that entire activity. Chris Moore is coming down here he can help me out.

>> Mayor Reed, members of the council, Chris Moore Chief of Police. I don't think I have to be here. Jennifer Maguire does a great job doing this. After the hiring process the academy and the field training program it is about 18 months and that's what we plan for. The trouble we have now is that now that everybody's been offered their jobs back and we're at the level we're at now it's at 1100 or below we're having additional folks leave we're behind the time line in order to bring these folks back quickly. We're looking to get an academy back up. The caked we

did have was in the health facility very good relationship they've been very accommodating for us. The funds we're looking for is to help recruit quickly, perhaps get contract help in order for us to get the backgrounds done and get these people through the system. I'm here to report that we have 510 applicants that have applied in the latest recruitment, all of that we have 60 that are going to orals.

>> Councilmember Campos: Is the 150 being used to help us vet out the background process to be able to get the candidates that could actually go through the academy?

>> Yes, there's a lot of outreach that's being done throughout the community, I've done a lot of it reflect San José and if you recall with the latest group that we let go and some that did not come back that was our most diverse group so we're looking actively in many groups within the city to help us recruit these folks.

>> Councilmember Campos: Thank you, I consider that money well invested then. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. If I had to hear another bad golf pun from Councilmember Constant I was going to throw myself into a sand trap.

>> Councilmember Constant: Hopefully, quicksand.

>> Councilmember Kalra: Yeah, it's on a couple of issues, one is the golf course issue, I think Councilmember Campos and Herrera made the point that this was open space. The reality is if it was a park and we had to pay debt service there would be a lot more money sinking into it than we are now given the fact that the golf courses are debt service that we have to be creative about to figure a way to cover that. I don't play golf but we have these three assets right now that if we can find a way, as Councilmember Campos said whether it be through a better deal through Muni get more funds in to cover the cost, the reality is if we can make them cost neutral these are assets to our community that is open space. I have been to rancho, I visited the first tee program, there

are thousands of dollars thash going into providing leadership training and of course golf skills and they incorporate a lot of values based training in helping a lot of kids that are in that neighborhood. And of course, that's one of the most low income neighborhoods in our community on the East side. And the last thing we need is for open space to be converted to anything else. So if it's not a golf course, I would certainly commit to it becoming a park or other type of open space. The question is as it now stands how can we try our best to continue to be as efficient as possible which I think operations have really done well in bringing in greater revenue than expenses in terms of efficiency in bringing in volunteer resources but the other piece of it is how can we increase revenues to cover the debt service. And I have a question about, I see that with the excess funds, there's a request to have \$10 million put into the reserve, the future deficit troarve bring that up to \$22 million for this next fiscal year budget deficit which at least as it looks like now, if all things stay the same, would almost cover what we anticipate the deficit to be given today's numbers, is that right Jennifer?

>> Jennifer Maguire: Yes that's correct, but the difference is that it's one time versus ongoing issue the nature of the funds but you're correct.

>> Councilmember Kalra: But at least I think that aleaves some pressure as we continue to I have a question regarding the allocation of 3.4 million from the retirement reform election appropriation to the new fiscal reform plan implementation reserve and the elections and ballot measure citywide expenses appropriation. I know many months ac especially when we were faced with laying off police officers and critical investments officers, I'd ask that at least a portion of that money be used to maintain some of those assets. And critical resources of our police department. Now, I mean would I ask the same and I think that right now we have -- I think it's appropriate to have some of the money go towards the potential elections, and I see that \$1.3 million is set aside for that purpose. The 2.1 million that is set aside, kind of the very general set-aside for fiscal reform plan implementation reserve. And I note that some of that indicates funds for ballot measure polling studies and/or potential litigation, implementation the city approved fiscal reform plan. Now I know that we've done some polling, and the 1.3 million is already set aside for the ballot measure. So is this essentially being set aside for potential litigation?

>> Jennifer Maguire: No, it really is for future ballot measures. For example if we need to do additional polling on the business tax modernization, disposal facility tax, the other revenues that are at play on the fiscal reform plan we would want to have some money set aside on that. We have been going year to year on our ballot measure funding. We might have to do additional studies, it could be additional retirement studies or studies related to the implementation of the plan. But potential litigation is listed as well because it could cost, I don't know the number what we saw would be prudent to put some money aside of what it might potentially cost for litigation. It always costs more than you think it will.

>> Well, for the time being I think that you know money we have for potential studies and polling so far and so on going forward, it's better spent to be set aside for critical services that we're on the verge of losing. And I would certainly be supportive of a recommendation at a did just that and not just asset side this money for potential review or study going forward. I think if there are going to be any review in terms of ballot measures or polling the funds need to be identified as to where they're going to come from as opposed to setting them aside for uncertain future decisions critical employees and critical services to our community. I have another question regarding the \$nownd that additional funding for labor employee relations consultant funding. And where is that going to or who is that going to?

>> Jennifer Maguire: That's going to the office of employee relations, and the attorney's office related to the negotiations that are underway related to the ballot -- the retirement reform ballot measures. It's been a very complex process and that money is needed in that regard.

>> Councilmember Kalra: And more specifically, that -- who has that gone to more specifically at least in the recent past quarter?

>> City Manager Figone: It's gone to outside counsel. And counsel and consultants often from the same firm or two. I don't know if the attorney wants to amplify but that's essentially it.

>> City Attorney Doyle: I think the bulk of the money has gone to the firm John Holtzman Charles Sakai.

>> Councilmember Kalra: I raise the issue again. The same attorneys that are pushing us forward and giving us legal advice to go forward on the pension reform and the ballot measure despite significant legal issues are the ones that are benefiting by getting those same fees. Being checks written to that for that same advice to continue to push forward. There seems to be some -- at least I have some concern that we're not dividing up the two issues. And I understand that we need to have folks that have the expertise that go forward. But when there's a significant financial interest for the same attorneys advising us to push it along despite great legal risk I have great trouble with that.

>> City Manager Figone: I think there's also another firm councilmember. Rick -- hardinger --

>> City Attorney Doyle: It is really a combination most of the money, the reason I'm saying the bulk of of it is the Renissant firm is involved in the negotiations as well.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: So I just wanted to come back around on the golf courses. I think that as we get into the budget study sessions I'd like to delve deeper into these because this has been as I said an issue we've discussed I think almost every year since I've been here and we haven't made a lot of progress. And I think we need to look at all three. I know Councilmember Campos has his concerns about San José Muni. We had look at all that. We should look at each of the three but keeping in mind where the money's going. And when you say they're making money if it's not for the debt service that's like saying well I can afford everything but my house so I'm just going to stay there. Houses get repossessed when you don't make your debt payment. We're in that position where we're robbing from other critical areas of the city to pay debt payment. We've got to figure this out for the long term. It's not just the golf courses. It is the other issues like the Hayes mansion where in this quandary we have decisions that have been made that create so much debt that we can't operate our way out of it. That doesn't mean we just sit here and keep paying. Because we're losing employees, we're losing services, we're

losing infrastructure. So I'm hoping we can have a good in depth discussion and if we can't come one a business plan or some strategy to maintain them and to stop the bleeding, then I think we have to take drastic measures.

>> City Manager Figone: Mayor if I just could. Yes we'll do that. We'll look at the status of the debt. It was reissued in 2007. There may be another window. We'll look at our options with contract restructuring. Issues like prevailing wage might also need to be revisited. So we'll bring you the full menu of options.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I'm going to give the golf course a shot, too. Just a couple of questions. Have we considered outsourcing? In other words, asking some other company to run some of those golf courses? Or is that the case now?

>> Yes, currently the Muni golf course is run by a firm. We receive a percent of gross receipts, and then courseco, we have a management contract. Courseco runs Rancho and Los Lagos, they are subject to prevailing wage, which is an issue they bring up on a continue being basis when we talk about pro forma.

>> Councilmember Pyle: I understand who whoever gave the land to the city has said he will sue the city if that land is turned into anything that is turned into a profit-making situation. Could you comment on that?

>> City Attorney Doyle: We've exhausted the records and there's nothing -- there certainly aren't any deed restrictions or nothing in the documentation that requires it only be used for a golf course but I'm aware of that issue and I know that the allegation has been made and they've even consulted with counsel.

>> Councilmember Pyle: I remember them coming here in front of city council to do that. That isn't why I -- there was another thing I wanted to talk about and that's the transient occupancy tax fund. They came in higher than anticipated which is wonderful. That allows for an increase of \$412,000 to the San José convention and visitors

bureau where market would be funded. Page III-32 however shows that the 412 will not go to con Vis which is the arm that does all of the promotion.

>> Jennifer Maguire: Well, the CON-VIS bureau, part of the -- during the end report I believe it was, we increased some marketing money as part of the convention and cultural affairs fund to help with more marketing activities. So what we're simply doing, is substituting this T.O.T. money which is restricted for CON-VIS so we can allow for some other improvements at the convention center rather than doubling our marketing efforts. Because we had already given them an extra amount of marketing earlier in the year. We are substituting the restricted money for more -- less restricted money so we can have some money freed up in the sequential and cultural affairs fund to be buying some very needed amenities for the convention center such as plates and very -- nothing that's too exciting but things that are needing to be replaced because they have a lot of needs out there. They are going to end up with the overall extra money that we gave to this area this disarl but not above and beyond that.

>> Councilmember Pyle: But the CON-VIS did take a bit of a hit in reference to the amount that they will be given to work with.

>> Jennifer Maguire: Well, we increased them earlier in the fiscal year which was above and beyond T.O.T. funding, that was not -- we have a normal formula allocation. We gave them above and beyond that. We're just simply -- now you just have that bigger allocation, we are gt going to substitute the funding source for it. They're not going to get above and beyond that.

>> Councilmember Pyle: Okay, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Just want to commend Councilmember Kalra, because since he interjected we've putt and end to the golf course -- I know, I know. I did have one question.

>> Hole in one.

>> Councilmember Liccardo: I know, I'm not losing my day job. Julie as I look at page II-26, and we look at the sources and uses with the golf course fund, what I'm trying to understand is how much of that expenditure attributable to just financing cost on the land. And how much is this -- is operating loss? And I understand that you know for Los Lagos and rancho we're paid as a basis, what we get is net profits. And then we get some fixed percentage of gross sales with Muni. But I guess what I'm trying to understand is let's say we suddenly convert it to soccer fields and we were charging local teamings, local lesion to use it for soccer fields. How much of that expenditure that 2.26 million is what we end up paying anyway simply for the land to remain for public use?

>> Jennifer Maguire: Okay, I'll take a shot at this question. I have my little cheat-sheet on these golf coerce. If you want to just talk about, you want to talk about rancho or Los Lagos?

>> Councilmember Liccardo: I guess it would be best to talk about it in the aggregate but if you want to talk about it individually that's fine.

>> Jennifer Maguire: Individually, Los Lagos has revenues, well, this was the wait was supposed to come out, how we budgeted for it in 11-12. We had revenues of 110 thousand in that fund, in that golf course, we had expenditures for that golf course of 115,000. And debt service of 1.1 4 million. So rancho we did not budget for any revenues to come into that fund.

>> Councilmember Liccardo: Right.

>> Jennifer Maguire: We have \$290,000 worth of golf course related expenditures, debt service of \$454,000. So the total of that is a net loss of \$784,000.

>> Councilmember Liccardo: But of that \$784 --

>> Jennifer Maguire: 744.

>> Councilmember Liccardo: It's operating operationally at a loss of 300,000. Judgment.

>> Jennifer Maguire: No, there's no revenue coming into the city. There's expectation of 380,000, we will pay for any -- if they can't cover their own expenditures in any given month this fund will pick up those expenditures.

>> Councilmember Liccardo: Right.

>> Jennifer Maguire: So we say that we have to pick up about \$290,000 over a fiscal year of expenditures for Rancho Del Pueblo, plus the debt service of \$454,000 leaves with you a net loss of \$744,000 on that course.

>> Councilmember Liccardo: Okay.

>> Jennifer Maguire: Then on San José pln to Councilmember Campos question we had just reference of \$436,000 into that fund. So in the total we are at a net loss between all three funds together, the net loss of almost \$1.8 million so that's why we've got a \$1.8 million subsidy coming in from the General Fund.

>> Councilmember Liccardo: Thank you for explaining all that Jennifer. I guess where I'm going with all this, as we continue this conversation, I know it's a difficult conversation to have with the community, I think it's helpful if we talk about other public uses of this same land that may benefit the same community in a significant way, whether it's soccer leagues or whatever. Recognizing that it won't do anything about the \$1.9 million we've got in debt service on the land but certainly we can do something about the ongoing operating expenses that are associated with running golf, in particular. And it may just be that there are other public uses, I mean particularly this comes to mind as I look at the challenges at rancho for instance where we've only seen a small uptic in use even though we've had great weather in the last six months and a rebounding economy, maybe the public is saying hey, there's some other use we would like to have here, not just that it shouldn't be open space use maybe we could bring the people around the table to have a dialogue that's more constructive around what's the best use

of this public land. I just offer this as something you're all thinking about, I'd like to find a way through this and I recognize that you know it may just be that golf is a sport of declining popularity. We've seen that over the last ten years or so. Is that in your experience Julie?

>> In terms of rounds, golf is down, nationally in a lot of ways because of the economy it's down.

>> Councilmember Liccardo: Right, okay, I appreciate that may change with the economic winds. A question I had about the medical marijuana regulatory fee redmancing, that's on the bottom of page 11. I Rick obviously we're not going to have this whole regulatory machinery in place, so those fees go away. But I notice with the rebalancing it's actually a net positive of \$630,000. Is that right Jennifer?

>> Jennifer Maguire: We're balancing it by taking down expenditures of \$630,000. We didn't take down any filled positions. The positions that were added related to performing activities related to that program we've taken those savings away from the departments because they haven't been spent. And then I had to fill in the rest of it with just our General Fund revenues performance a little bit above extra estimates as I described earlier in my presence.

>> Councilmember Liccardo: Okay, I guess what I was just trying to understand was, you know, given the fact that we're restricted to charging fees that reflect the full cost of the service and nothing more, I'm trying to figure out why we wouldn't simply go from 1.4 to escrow as opposed to 1.4?

>> Jennifer Maguire: Okay so we would have had to do -- we still have work related in the regulation area which I think is going to be covered in the later presentation today.

>> Councilmember Liccardo: Right.

>> Jennifer Maguire: But we would have had to trigger a bunch of mid year layoffs zeroed out for our base budget and we're going to revisit our entire needs and bring you back a comprehensive proposal for this program with or without fees as part of this upcoming budget process.

>> Councilmember Liccardo: Okay, thank. On that same page, page 11 the reduction of sick leave payment upon retirement I assumed we were seeing a big rush to the door and that would have driven that number higher but I see it's 2.3 million below what we expected. Is that right?

>> Jennifer Maguire: It is. We have had a lot of retirements but a lot of them occurred at the end of last fiscal year. From a timing perspective it's hard to know when anybody's going to actually leave. But we've been trying to get more precise in the budgeting for that. We had a couple of spike years where we went to \$14 million. It's come down and thankfully you'll see it's come down in the forecast we put out. Basically we look at who's eligible and assuming they would go in June, bough you don't know retirement age or years of service and assume they're not going to take any additional sick time offer so we try to budget for the maximum in this. Sometimes we're right and sometimes we're wrong but we've been getting closer in our estimates here. So this is a good one that we can pull down and actually reserve this for the 12-13 budget process.

>> Councilmember Liccardo: Good and it's nice to have the money to do that. On page 15 we see increases in building and structures and building and construction excise taxes. Good seeing those numbers come up. Obviously that's a good indicator of economic activity. We've got challenges because of a lack of General Fund slashes to perform basic street light maintenance and I know it's a huge problem throughout the city and we've got a lot of problems with copper wire theft and on and on. And I think for a lot of neighborhoods and communities like those in my district that's a real concern around safety. Can any of this capital money be used for perhaps conversion of the street lights, that is, to use this opportunity to use capital money where ordinarily we'd be using General Fund money, so if it's replacement of copper and maybe installation of LEDs and using some newer technologies does that enable us to get over the legal restrictions about using those capital funds?

>> Jennifer Maguire: Well, the construction excise tax fund is just as good as the General Fund. There's no legal restrictions on that fund. And so -- but it has been primarily designated for the traffic capital program so those uses certainly awhrien that from the council's frvet. We are right in the middle of pitting together our capital bijts so we'll certainly take that into consideration as soon as our pavement maintenance needs -- see if we can put more money there. There is certainly pent up demands markings of our streets you know the street lights themselves and everything. So we making sure our signals are working so we will be bringing you back a proposal. In fact all five years of the CIP going to be increasing the rrn estimates so there will be more money overall in both of those programs.

>> Councilmember Liccardo: Thank you for finally bringing us good news, Jennifer.. I know you have been tearing do that.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: So back at the golf -- no I'm just kidding. I'd like to make a motion that we approve the representations.

>> Mayor Reed: We have a motion to approve the recommendations for mid year. Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor, sorry to do this but I'm going to jump if the golf course issue and make a statement, instead of ask a question.

>> Mayor Reed: Let's see if you can get the best metaphor for the day.

>> Councilmember Rocha: Not even try. I appreciate my colleagues good thought, I want to remind at least us and staff and I probably don't need to remind you that the cost associated with turning a golf course into whatever sports field and we saw that with family camp issue in terms of having to clean the site and I can imagine those costs would be probably off the charts for a golf course, again I'm no expert but those are the first thing that came

to mind. I tend to agree looking at open space or recreational opportunities would be the first step of the criteria but I don't think we can even have the discussion until we know what the cost would be. I want to thank you for the work and another great document on the mid year. I'm going to stick in the easy part and just stay in the executive summary and ask a couple of questions with about some of the expenditures. Let me first start with kind of a tough question in looking at the good news in termination of the statement in the General Fund on page 2 about sales tax T.O.T. business tax utility taxes stronger performance, that's great, great news. But it leads me to ask the question how just two months ago, City Manager's office could be recommending an action as significant as a fiscal emergency for a municipality, and how we couldn't have seen some of this at that point, in December, or was that action a represents exclusive of this and purely based upon the retirement projection numbers that came in short thereafter, as under, in terms of under? In terms of actuary study. That's a long question. I'm looking at this and going you know you're very professional staff, ow do a great job year after year after year. I'm going, fiscal emergency, I mean to me that's pretty rare that a municipality would even consider that. And looking at this I'm struggling how we have even gotten that close.

>> Jennifer Maguire: Thank you for the question, Councilmember Rocha. Actually all of these better performing revenues for the most part have been factored into our preliminary forecast that we put out that showed at the time, when we were working on that, an \$80 million shortfall. So we had actually had better growth rates in some of these, I'd been reporting them during the fiscal year concurrently as we are preparing for upcoming preliminary forecast. So it is good news. Overall the problem is, that again, the cost, and it is retirement primarily but it's earth costs as well, the cost of opening new facilities, out trimming our revenue growth. And so it is good news. It's good news from a budgetary basis for this fiscal year. That we do have nice extra revenues and to the extent that I can improve any revenue estimates since this next forecast that we're coming up I will certainly do so over the five-year period as well. But it's the overlay of the expenditures and the combination of the two together that's producing the shortfall.

>> Councilmember Rocha: Okay, refresh miary in temps of tax increment, the good news is the tax increment can cover the cost of the recall when the council was informed of that.

>> Jennifer Maguire: The ability of the Redevelopment Agency to cover the convention center costs became evident to us based on this last month in January and it was recommended -- it was part of recommendations and the dissolution of the Redevelopment Agency, there was a subsequent nome realign the Redevelopment Agency budget at I think it was January 31st. But we knew that that --

>> Councilmember Rocha: Outside of that item.

>> Jennifer Maguire: We knew the tax increment was better in the fall but it was a matter of the fro-through of all their other expenses, at the end of the day, would there be extra money on the bottom line to help cover this debt? So not only did they cover this debt, they also paid for \$1.7 million of the fourth and San fer nad doe street garage which is recommended in this report as well which would better position the parking fund to debt obligations, the 3.4 million that the agency won't be able to pick up. So that was good news part of this mid year as well.

>> Councilmember Rocha: Council wasn't informed you mentioned you knee that in the fall that the council wasn't informed except for that action?

>> Jennifer Maguire: I wasn't sure when the agency -- we recognized that their tax increment revenue was better than they had projected last fall.

>> Councilmember Rocha: Okay.

>> Jennifer Maguire: The ability for them to cover the convention center payment didn't cock clear until last fall.

>> Councilmember Rocha: Gotcha.

>> Jennifer Maguire: We wanted the council to approve the deficit reserve.

>> Councilmember Rocha: Thank you for clarifying that. I'm going to go to one item specifically here, the 450,000 recommended for labor employee relations consultant and actuarial services. There was some discussion and forgive me if this is redundant, on who the firms are and I'm thinking this is separate from the fiscal reform plan implementation reserve. And is this a new contract, or is this a reauthorization or continuing?

>> City Manager Figone: It's continuing and it's basically supplementing what is currently underfunded based on my understanding. So the work has exceeded what we initially thought. And so we need to basically adjust the allocation at this point in time.

>> Councilmember Rocha: So is this two separate firms, the employee relations and the actuarial services or sit one and the same firm?

>> Jennifer Maguire: Actually on my slide it was combined. But there's 400,000 recommended for the labor employee relations consultant funding and \$50,000 for retirement actuarial services, so we can -- the administration has a pot of money to use some outside actuarials to look at the retirement funds and look at any studies that we need to do as we're doing our work on our side. Dp.

>> City Manager Figone: As the council remembers we have been using John Bartell to do our own actuarial work.

>> Councilmember Rocha: And the who is the actuary on that?

>> City Manager Figone: That is Rene Saturdayman.

>> Alex Gurza: If I can explain Alex Gurza, Deputy City Manager. We separate out consulting from the legal service side. So for example not everything in labor relations do you need to be an attorney for. So we do have outside consultants for. For example some of the same firms. The law firm of Rene Sloane Holtzman and sacai for example, labor negotiation et cetera. Ops when there are specific legal issues to be done those contracts are

through the City Attorney. And all coordinate through the City Attorney. But some of the I firms are the same doing labor relations so the two primary firms we use exclusively are Rene Holtzman Reynolds and Sakai around Meyers nave. I think the distinction Alex is trying to make is that our agreement with Rick is that any use of attorneys really need to go through him because he's ultimately the one responsible for the legality advice to the city council.

>> City Attorney Doyle: And let me chime in briefly. The legal issues that have been addressed, whether it be Meyers nave or Holtzman's firm or if you have arbitration issues or things of that sort, those come through the legal services side of the contract. To the extent you have labor negotiations and assisting the OER staff that's the consultanting side of the coin for the most part .

>> Alex Gurza: I just times passed where bargain came up periodically, every couple of years, the contracts, we are now essentially in bargain over something 12 months out of the year. And that definitely brings with it expense. The other expenses that were hard to plan for as well recently is we've had bargaining units file complaints with the public employment labor relations board, which requires us to respond also in the middle of bargaining. We've used outside successful in those complaints but that's also part of the expense.

>> Councilmember Rocha: Okay in a sense then this is not retroactive but to cover some unplanned coast that we've used more than we have in the past year. 10% cone session the pension reform ballot measure, going forward I have a tough time believing we need them any more than we did this past year. This is to cover all the expenses in the past year and this current through the end of June, we don't see this continue being on beyond June?

>> Jennifer Maguire: But as the needs have come up depending on the circumstance from year to year we will ask for a certain allocation. So last time I think we gave an allocation to the office of employee relation and year and a half or more. So this is our best estimate now of what we need in the future. Hopefully we'll need to cover some of this beyond July 1 but this is our best estimate to date.

>> Councilmember Rocha: Okay, what's the threshold again remind me for approval for expenditures that do not need council approval? What's the level?

>> City Attorney Doyle: 250,000 for a personal services contract.

>> Councilmember Rocha: Would it be possible to get an accounting of the expenditures that were made in this fiscal year for these services?

>> City Attorney Doyle: We can get that to the entire council.

>> City Manager Figone: Yes, in fact I think we have a public records act request for that regard and we are already pulling it together for that purpose.

>> Councilmember Rocha: Okay, thank you. Let me jump back. I think that's it on that item. The item on the fiscal reform plan implementation reserve, as you see it the -- putting these dollars in now do we expect that you would come back for approvals on some eve these items or does making these changes in the mid year give you the authority and we wouldn't see these until.

>> Jennifer Maguire: Our recommending is to put it into ash earmarked reserve which is not spendable live appropriation that can be spent so any specific expenditures of those dollars would have to be approved again by the city council.

>> Councilmember Rocha: Thank you, thank you very much.

>> Mayor Reed: I think that concludes the commentary at least until somebody comes up with another golfing metaphor. We'll take some public testimony at this time, David Wall.

>> Fore.

>> Mayor Reed: Not bad. Keep that up you're going to tee people off. David Wall.

>> I'm reading from the San José budget and funds guide, with reference to neighborhood security act bond fund, fund 475. Punch of the fund "on March 5th, 2002, San José voters approved measure O a \$159 million general obligation bond measure for public safety improvements. Measure O described the improvements to be funded, by the general obligation bond proceeds as follows: To improve San José's fire, police and paramedic response times by: Adding and improving fire stations at police station, training facilities and create being state-of-the-art 911 facilities, et cetera. Down on the fund restrictions, there's only one restriction. It says bond proceeds and interest must be used for the purposes as described, in the neighborhood security bond act. Basically to improve San José's firefighter and paramedic response times. So I'm in a quandary when we look at the fire station number 19 scandal, how was \$105,000, approximately \$105,000 in fund 475 moneys, were spent on the design and installation of public art? I don't understand this. It's pretty clear I don't think public art would improve correspondence times, unless it's so ugly they want to get the hell identity thereof and save somebody's lives. Robbery of funds, this looks like in-house burglary of funds. I think some explaining needs to be done here, there's a problem. When are you going to get the repatriation of the \$105,000? Possibly from cultural affairs T.O.T. excess, but other than that, good afternoon.

>> Mayor Reed: That concludes public testimony on this matter. On the motion, I count one opposed, Councilmember Kalra, that motion passes, of course with Vice Mayor Nguyen absent. I'm sure she's watching this on television. At least her baby's probably watching it on television while mom naps, hmm? We'll now move to item 3.5, actions related to medical marijuana. I get this great sense of déjà vu when we have all of our staff come down that are engaged in trying to deal with the medical marijuana thing. We've done this a time or two now so but here we are again. Basically going back to tart over. At least that's my recommendation, because the state of the law in California is such that I don't think anybody can devise a local ordinance that can both meet at least the state's interpretation of what federal law is, it's illegal, and the state's statute, and the cases interpreting the state statute, and still actually accommodated patients' needs for access to medical marijuana under the initiative that was approved by the voters. So we gave our staff an impossible task, they did it anyway, but as a result of the

referendum, I think it's important to take a pause they do get the last word so it ought to be helpful or the legislature takes up the neater matter and clarifies it as requested by the California attorney general who, too, has pretty much given up on trying to figure out what the law is and explain it in a way that can be useful to the local government. So here we are, and there are several things we need to do today and see if the staff has any additional presentation or report to make.

>> Thank you, mayor, members of the council, Angelique Goeda, assistant to the City Manager. We are prepared to go over some of the enforcement activities that the staff has undertaken over the last Kim of years at the request of the Rules Committee and the mayor we've put together a very brief presentation on that if you would like us to make that presentation, other than that we are here to answer questions.

>> Mayor Reed: I think it would be helpful for to you go over the enforcement activities. Staff resources to deal with those who are operating illegally in the City of San José. So it would probably be helpful for the council to have at least a summary of the kinds of enforcement confident that we've already had to do.

>> Certainly, thank you. Medical marijuana collectives dispensaries, collective, store over the past two to three years, anywhere from 75 to 100 of these venues have operated and continue to operate in the city. Because of the limited resources available in the city to take action against these venues and at the direction of the city council, the administration has focused its enforcement efforts on those engaged in the following: Public nuisance activities, noncompliance with the City's marijuana business tax and noncompliance with state law in that they were too close to schools. With regard to the public nuisance activities, specifically in the area of litigation, there have been multidepartmental efforts undertaken to close collectives engaging in public nuisance activities. With the following results: Following complaints made to various city departments, six cases have been referred to the city attorney's office. In four instances collectives were closed and in two instances those cases are still pending with investigations with the city attorney's office. With regard to administrative actions, 77 complaints have been received by city departments. Action has been taken on 12 of those altogether. And let me just mention that those complaints have included public nuisance activities, building code violations and also the mere existence of the collective. So staff followed the ones that we were public nuisance activity in this instance. After

investigating each complaint the Planning, Building, and Code Enforcement police department, finance, and city attorney's office, worked together to initially send out warning letters to five different collectives for illegal signage. One collective complied and the remaining four did not. In those instances the remaining four received administrative citations, each suffering a fine of \$250 and then thereafter those four collectives complied. In addition building compliance orders were sent by code enforcement to three collectives that were engaging in unpermitted building renovations and other building code violations, those particular cases are still pending with code enforcement and to the extent that they do not come into compliance they will be taken before the appeals hearing board. With regard to the marijuana business tax again it's been a multidepartmental effort by staff to actually undergo collection of that that much. And those efforts have included site visits to all collectives, to determine ownership, responsible parties, and contact information. Also, written correspondence has been sent, as recently as October 2011, the finance department has sent out 47 nonremittance notices that resulted in 43 collectives actually beginning to make payment. Of the four that did not make payment, finance sent out assessment notices, and those notices included penalties and interest, and three remitted payment and one collective actually closed. In addition, the finance department has made telephone contact with a number of collectives that resulted in a total of \$204,000 being remitted in MBT payments. And finally with regard to state law compliance, again multidepartmental actions have been taken by the Planning, Building, and Code Enforcement department, the -- excuse me the police department and the city attorney's office. Letters were sent to seven venues, six venues voluntarily closed after receiving the letter and one collective is actually in the process of responding to the city. That letter I think was just recently sent out a couple of weeks ago. And that's a summary of the enforcement activities that have been taken to date.

>> Mayor Reed: Thank you. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. A lot has been said on the dais and outside of the dais on this topic. I think you summed it up quite well, mayor. There's a lot of moving pieces. I think there's you know we tried to come to some idea of maybe providing an ordinance that was significantly different legally so that we could come up with something. But really that would have been a lot of pain to get there. And who knows if we would have all agreed on it. But with that said, you know, between the four cases that are before the California

Supreme Court, the legislature and possibly enacting legislation, the November ballot initiative that I believe is signature-gathering now and finally, the presidential election, you know, San José is one of 19 different states in the United States where the residents of the state have chosen that those who have a doctor's permission to obtain medical cannabis at the federal law. With that said, there's a memo put forth by the mayor and as mentioned in the staff presentation to focus our efforts on any of the collectives that are of a nuisance and/or not paying their tax. And the motion would be forward.

>> Mayor Reed: All right. We have a motion. I have some requests from the public to speak. I'll take that now unless Councilmember Liccardo, do you have a question before that? Okay, we'll come back for additional comments. Take comments from the public, James Anthony, Michael Hodges. Please come on down, Pamela Baker and John Lustig.

>> Good afternoon My name is James Anthony, I'm the chair of the CCPC which is an organization of over 30 collectives and supportives which brought the referendum with the intention of repealing the ordinance passed in September and replacing it with something workable and fact based, reluctantly I find myself agreeing with the pair's memos today that perhaps now is not the time for San José to craft that more workable ordinance. And we are shifting our attention to the statewide level. I do agree that some enforcement has to be done. It's grossly unfair that some collectives pay the tax fully and others do not. I think that's very clear from the finance department's report and I urge you to take some enforcement action there. Again on a factual basis looking at how the revenues might increase there, while looking at how to cover those costs. Certainly if there's any public nuisance that should be addressed. If they're unable to abate that activity themselves, I would urge code enforcement and the city attorney's office to take action to see that it is abated. And if that is a problem have the neighbors contact me and we'll see what we can do about that. Thank you much.

>> Mayor Reed: Michael Hodges. Followed by Pamela Baker and John Lustig. Or any of the other, those are the ones who want to speak.

>> Hi, my name is Pamela Baker, I'm part of Almaden valley. I wanted to address the council as I have once before about this action and I know there's a lot of passion around it. My concern as well as my neighborhood's concern is making sure that we have the resources to effectively manage this business. I do not contend that people have a need. My contention is around our ability to manage. As you know we're in a big budget crisis. Do we have the resources to manage all this right now? I think not. There is a lot more work that has to be done as you've kind of already addressed. And I have a lot of passion around making sure this is right. We've learned this lesson once before. I came before this council many years ago because a halfway house had moved behind my house. Some of you might remember. The issues around that is that they were packing kids and children, children and mothers into this house, where the square footage allowance was minimal. Beyond safety. There was not enough resources to look into it. There wasn't enough resources, there was calls, actions, I organized a neighborhood of close to a thousand people, that came before this council many times. The issue that we had was not that that house didn't belong there. They have a right to be there. The issue was that it was poorly managed and there was abuse in the system. Because we simply did not have the resources to manage it. San José was out of budget. Out of time. And this is when the economy was good. So my concern in coming before you today is around this ordinance and making sure that we have the resources to effectively manage it. To look at what the right process is, the right budget to support it. In the right way to help these people without abuse. Now, recently, in castellaro middle school --

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

>> I didn't notice that, I didn't mention that.

>> Mayor Reed: Michael Hodges,.

>> I guess this is Dave Hodges.

>> Mayor Reed: Somebody else may want to speak as well .

>> I'm Dave Hodges, I'm the founder of the first imabs house in San José, also legal state. There's a few things I wanted to talk about. One I think is really appropriate, one you're resending the ordinance, definitely the right thing to do. As is it is not something that would be covered under state law. I do urge you to work with a couple of the groups that exist right now. The CPA which is the cannabis patients alliance as well as the Silicon Valley cannabis coalition to help regulate some of these collectives. The CPA has put together a matrix as far as breaking down what a legitimate place might be, as far as merit of how they operate. So you know, I really would like it if you guys would work with us, related to that. The other thing is the tax measure, which is the biggest concern I have, the current tax measure, measure U does not cover collectives that operate like mine. It defines the activities we do as a sale. And that's something that, as in your title 6 ordinance, violates state law. If you looked in title 6, the draft, it said no sales of any kind shall be allowed. And measure U specifically defines the activities we are doing as a sale. So in order to collect taxes from all the collectives, you need to modify measure U or come up with a different tax measure that would actually tax the activities that we do. Otherwise what's going to happen is as soon as you start enforcing all this tax money is going to dry up because people are going to take the legal approach that what they are doing is not a sale and therefore they don't have to pay you. Thank you.

>> Mayor Reed: John lustig Michael Coldamez. Mark dugger, Corina Reye servings, come on down if anybody wants to speak, now is the time. That's why I call your name. Try it again. I got a few people moving. Just give me your name so I can take your card out of the stack.

>> Hi, I'm Mark dugger. I'm here to speak about the marijuana medical tax increase to 10%. And I'm here to speak against it. I did some research, and the first thing I would like to say is from the senate committee on review and taxation from 12-9-9, recommendations and reforms, this is a quote. Exemptions are for food and medicine. To keep the attach from reaching the basic necessities of life. As far as I'm concerned, cannabis is a basic necessity of life from me. Within 12 hours I'd be in a hospital without it. I'd like to make some recommendations on taxing marijuana. I have several recommendations. One is that tax amnesty program, for collectives that sell discounted cannabis to patients on disability with fixed incomes, right now I use approximately 8/8s of cannabis a month which costs about \$400. I generally pay more than \$400 per month. With a 10% tax that would be \$40 a month which would come to \$500 a year, I would pay in tax for my medication, which is a

prescription. Now, as far as I understand, prescription drugs are exempt from taxes. There's also an exemption on hot beverages which I take out such as coffee, which I take out and not consume on the premises just like cannabis is not consumed on the premises. Another exception is a value-added tax --

>> Mayor Reed: Sorry, your time is up. Sorry, your time is up. , we have other people who want to speak such as Michelle --

>> Councilmember Oliverio: Mayor can I emphasize for the audience that there is no tax thing on the agenda today.

>> Mayor Reed: Right.

>> Councilmember Kalra: , the motion.

>> Councilmember Oliverio: If you're theory talk on that it is not being discussed.

>> About what, about the taxes?

>> Mayor Reed: The motion is to not discuss the tax today.

>> That was I basically talking about. My name is Dan, I was talking in regards to the marijuana business tax. I received SSI so I think it would be good for marijuana to be discounted for people that do receive SSI. The margin from 7 to 10% is a margin. At the same time if we I keep marijuana as a business, we can keep did ratios the same that way the marijuana that is being billed as I said the revenue that's being generated in this city we can keep it at the ratios minimal because for some people they can find their business and you know get their medical marijuana elsewhere. Prem who go to collectives have SSI and disability. Not that it's too much of a different but a small percentage makes a difference. As far as if we take this into consideration, we can make this work. The best for everybody, is alt I have to say.

>> Mayor Reed: Whoever is closest, I can take your name out of the stack.

>> My name is Michelle Hodges, I'm here to represent one of the collectives who legally pays, follows every rule that is designated by the laws, and yet are not as such respected. They are willing to pay the tax, they are willing to do what is necessary so that patients can get what they need. Me as a patient, I'm in the hospital about half the month. The other half I'm able to work as a engineer built on acoustics due to my ability to work with this collective. Would I just like to emphasize the importance of respecting those collectives that choose to pay the tax. Treat patients well. Enforce the rules around the area and help clean things up. Thank you.

>> Hello, my name is Michael Galdamez. I'm here to represent one of the local collectives of San José. I myself am a patient. I have torn ligament damage on both knees which makes it very hard for me to get around from place to place. I'm here today to speak on the topic of closing down dispensaries, although it relates to the taxation from 7% to 10%. I know you're not discussing that. But if you can find it not to close down the dispensaries in San José, and move them to other cities, where it would be easier for patients such as myself to get around, I take the light rail and CalTrain station. To get here to San José I travel about an hour and a half to get my marijuana and prescriptions. I started on Oxy Conton and I wasn't able to sleep for about a month and a half. I talked to my doctor about prescribing me medical marijuana as a treatment. And he agreed. I'm basically just here to speak up and say please don't close down the collectives that are running in San José and that are in ordinance with prop 215. Thank you for hearing me out.

>> Mayor Reed: Okay, next. If you've got a car in, come on down. I've got John Lustig, Corinnena Reyes,.

>> Good evening, ladies and gentlemen of the city council. I've got a reminder all we're doing is continuing the tax for the marijuana. My suggestion is turn those golf courses into marijuana farms. Ha ha. You've still got 300,000 or 200,000 in surplus. And we're still putting our name to the golf courses open reserves and parks. I'd like to tell you I'd much rather go down the slide than smoke a reefer. Now, go ahead and raise the marijuana tax. I want to see it 200%. Because those golf courses are making money and we're losing money putting more money into the

golf courses. Who hasn't played golf? We say it went up the last two months. Well, hasn't the weather changed? Who's playing golf in December? Aren't we all broke buying Christmas presents? My friends here from the marijuana clinic, they're buying Christmas trees, the big bud. What about the electricity? The water? I appreciate you leaving them alone. i don't know how long it's being continued for. My time is up, bye-bye.

>> Mayor Reed: A Salvador.

>> Good afternoon, city council, my name is A Salvador, I'm president of the cannabis loins. I'd urge it took us 18 months to get to an unworkable resolution. Had you spent the time to actually come and talk with us ahead of time we wouldn't be in this spot we are right now. I'd also ask the city to appoint somebody to work with us over the next year to be able to get a resolution, an ordinance that actually will work so we're not going to be fighting one another again. You've collected over \$7 million in taxes from us. That's only from 54 collectives that are paying taxation. Please close down the other ones. I have no problem paying our taxes, we actually are good citizens. Lastly, I really appreciate all the hard work for everybody's done. Contact us before we start again, 12 months from now. Thank you.

>> Mayor Reed: Anybody else?

>> Good afternoon my name is Corrinena raise, patients of the state in San José. We pay tax and we deserve to be respected and looked up to for that, not looked down upon for exercising our state right for medicinal cannabis. We have more things in common with people that do not advocate for medicinal marijuana, such as we don't want it to fall into the wrong hands or go into recreational use. But some of the patients of mine have mentioned that you know, if they don't get better treatment as a medicinal marijuana patient, when election time comes around and prop 19 is put up on the ballot, that they may in fact vote for that, because of the poor treatment and -- that they have been receiving by the public. They don't feel that it's fair to go to a dispensary, that isn't licensed and their dispensary should be licensed. Just like they're licensed for cannabis. It's only fair, and they just want to be treated fairly. Thank you.

>> Mayor Reed: I think that's it. I had some cards, people didn't come down so I'm assuming that everybody spoke who needed to speak so that concludes the public testimony. I just want to clarify the motion. As I understood the motion it was to move the recommendations that are in the agenda items A through D. And to add the memorandum that Councilmember Oliverio referred to with regard to the highest priorities for enforcement. Is that verified? Okay. Just want to make sure of that before we get into discussion. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I wanted to thank the City Attorney and Angelique and whoever it is who put together this legal update, it's very informative and I appreciate having it all --

>> City Attorney Doyle: Colleen.

>> Councilmember Liccardo: Thank you Colleen. Sorry, I should -- no, it's very helpful and combined with the attorney general's letters it helps put things in clearer perspective for me, sort of away we've been told in various ways all along but at least it's nice to have it in a concise form. And I guess the question really would be for you Colleen or for Angelique, based on what we see certainly in the Supreme Court case under mench, in 2008, and now with the attorney general's letters as we currently see dispensaries operating today, do they comply with the letter of the law under the Supreme Court precedent?

>> I think I'll leave the legal analysis to Colleen. But just from our observations I think it really depends. What you see when you go in, if it's operating as a store front the City Attorney will have an opinion on that. But I think on a case-by-case basis we're seeing different setups. Store front probably not the preferred setup.

>> Councilmember Liccardo: Right.

>> City Attorney Doyle: Councilmember I just wanted to add. I think it's important to remember that medical marijuana it's a defense of criminal prosecution.

>> Councilmember Liccardo: Right.

>> City Attorney Doyle: And would I respectfully defer to the District Attorney to make that determination. I think there are problems, I think we all know there are issues. But I think ultimately the D.A. is the one charged with enforcing the law.

>> Councilmember Liccardo: Agreed, we're not about to go charge anyone. The point of this isage leek started by saying this, dispensaries were never legal in the city or in California law if you look at the attorney general's opinion the current model isn't legal under state law either. I voted measure 96 like the majority of Californians did. It seems athat insist and believe that somehow San José had just done things differently, we would have a workable ordinance, the gripe is up the road in Sacramento and in Washington, D.C. If you guys want a workable ordinance, go tell them to figure out how to give us a law that we can actually imrement. We don't have one. It's not just us who believes that, the attorney general believes that, the majority of cities who have faced this decided we're just going to ban them altogether. where exactly the fault lies for challenges in trying to untie a Gordian knot that we didn't create, we didn't tie to begin with.

>> Mayor Reed: I don't think Colleen is going to argue with you but she has some clarification perhaps about.

>> Clarification, be careful what you ask for. Certainly we wouldn't argue that the state adopt something that pre-empts our ability to regulate this at the local level as well. And so I think obviously, at a federal level, you know until there's clarification at the federal level, you know, what is around isn't okay under federal law. Because quite frankly, the law is clear at the federal level that it is not okay. But then at the state level to provide some guidance but not preempting the local ability to do a good job in dealing with this issue that impacts local residents quite significantly.

>> Councilmember Liccardo: Yes, I certainly agree and we want to retain our land use authority. Yes.

>> And I would argue a little bit more authority than simply land use. I think that we would also want to have some regulatory authority to control and tax. And that's part of the issue with the initiative that's on the ballot for

November, that the argument there is they're wanting to preempt everything, cap the tax at 2.5% and only allow some limited land use regulatory authority.

>> Councilmember Liccardo: No, I don't disagree with your assessment, Colleen. I just think that you know, we've been beating our heads against this wall for many months and I'm guessing we're not alone and this is happening in the council chambers up and down this coast. And people continue to look tooth to City Hall to provide a resolution that we simply did not create and needs to be resolved elsewhere.

>> Mayor Reed: If I could add to that, I neglected to thank all the people we engaged on this issue trying to come up with a workable ordinance. I appreciate their lot of people but I think Councilmember Liccardo described it exactly right. We're just beating our heads against the wall. I said it in the beginning, it's impossible to have an ordinance that's workable from the marijuana collectives point of view and from state law, I can't be done. I don't think ignores state law or flaunts state law, yeah, you could do that but I think we're trying to make them all work together and that is impossible. But we will have a chance after the California Supreme Court deals with the mench case or some of these other cases. difficult area was that of cultivation. It's just impossible to come up with a cultivation system that met all the requirements. Because if you get too big, the U.S. attorney is going to come in and shut you down. We want to be able to track the cultivation so that we know that people are operating legally and following state law. But the more you track it, the bigger you've got to get or you get it so diffuse you can't track it and it's grown outside of the area, on and on and on and it's just impossible. Everybody attorney general waiting for the legislature or the Supreme Court to clarify things. I think that's what we need to do and that's really the reason for the recommendations we've made. Were you done, Councilmember Liccardo? Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I was like creative idea of allowing marijuana cultivation on the golf courses because that's a whole new meaning of hitting into the rough.

>> Mayor Reed: That would be too big for federal requirements.

>> Councilmember Kalra: I think Sam liked that one. You know I didn't vote for the ordinance when it first came through. It was restrictive. I agree with what we're doing today based upon everything else that's happening. But I don't want to mistake the fact that I didn't vote around it the first time around to appreciate all the work that's gone into it. Staff has put a tremendous amount of work into it, City Attorney, I know mayor over the past two weeks you spent a lot of time with the collective community trying to work out something to avoid going to the ballot and having something that's workable. But I think now regardless of all the work the community puts in or our city puts in, there's too many unanswered questions that have to be roved at the state level or the federal level, I'm not holding my breath there. again even there I don't know how long that will be. But in the meantime, I think we certainly need to focus on both allowing safe legal access from our perspective, at least, it establishes that are well run, like any other business, establishments that are well run, that are paying their taxes that aren't creating problems for their community, that are supplying medical marijuana to their patients, I think that's always been my priority, we'll still be gaining some tax revenue for that, can prioritize that to law enforcement and code enforcement and cooperate those that are causing nuisance in the neighborhoods, operating close to school, bright line rules that everyone understands and those are operating in a responsible manner can continue to operate while we wait for further clarification as we already have been for several months. Now we have some not just court cases but hopefully we'll see some action at the legislative level. But I think you know the young man talking about his knee problems, and having to go from Oxyconton to medical marijuana, demonstrates the hypocrisy we have at the federal level how hypocritical that you have these prescription drugs that are so damaging to so many people and create far more damage to society, Vicodin and oxycontin people go along being addicted to it. I think that hopefully we can wake up as a nation I think the state as least as our constituency, the residents of this state have woken up on at least one situation to so that we can get people away from the addiction to these extraordinarily powerful narcotics, and offer other alternatives whether it be marijuana or other harling alternatives. But I think I agree with at least the recommendations put forth today. Do I not think that we should be raising the taxes. I think cannabis users get taxed far more than anyone else who gets articulated, alcohol or junk food, they're getting taxed as an enormous need for shut down the bad operators make sure that those continue to get access and hopefully we'll have further clarity in the months to come.

>> Mayor Reed: City Manager.

>> City Manager Figone: Yes, just a basic question for staff, Angelique perhaps you can answer this. What is the city relying on to know where the locations are for these establishments?

>> We've had several different departments actually go and do site inspections. We've been compiling the list over the last year. It's been an effort of Planning, Building, and Code Enforcement, police department, and the finance department. So there is a master list that we're going from. It does fluctuate day to day, sometimes hour to hour as collectives actually pop up, another one shut down. But for the most part the list that we generated a couple of pos ago is pretty reflective of what's out there now.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'm going to follow up on the enforcement issue. When we last heard this item I'd asked about our ability to provide enforcement. I'd heard from staff as I recall that we really don't have the resource to do that. While I appreciate and agree wholeheartedly with my colleagues about the memo O&M I'm I have concerned about impact and feedback I've heard from I think this is great but can I ask how today is any different from that day in terms of our ability to do enforcement?

>> I think what staff conveyed at the last council meeting, councilmember, is that because of the limited resource we had to prioritize where our enforcement efforts were going to focus. So it wasn't so much that we couldn't enforce period, it was that we had to focus in these areas and prioritize them in a manner that really responded to the ones that were generating the most complaints from the public at the time. And then also to focus on the ones not paying the taxes and then the ones that are clearly in violation of state law in terms of distance. We've continued to work down that list with both legal action in court and administrative actions. But it is a slow process given the limited resources we have. If council wanted to step up that process then we would be coming back during the budget process and asking for assistance on that in terms of more staff and resources that we would need.

>> Councilmember Rocha: On this slide you showed how many collectives have been closed that you identified as a nuisance. What was that number?

>> A total of four have been closed.

>> Councilmember Rocha: 4?

>> That's correct.

>> Councilmember Rocha: Thank you that's all the questions I have. I do have an editorial comment again, while we can lack of leadership which I'm completely in support and agree wholeheartedly, it's a failure on their part, I tend to believe that the reason we're here today is a result of a groups or interest advocacy group that really worked hard to show the council that we potentially may have made a wrong decision. Whether you agree with at a decision, was a bad decision or good decision, I'm going to point to our council as a failure to come to an agreement while we think it may be impossible I don't believe it's impossible. There were times when this council could work with interest groups and come to an agreement. And I'm concerned that our ability isn't there, we can make decisions and walk away from them. But these folks showed after that decision the voters can speak. I think going forward, we might want to take that to heart and do a little bit better and work a little bit hard to try and come to an agreement before we make a council decision. Thank you.

>> Mayor Reed: Let me just explain what I was talking about when I said it was impossible. We certainly could have gotten an ordinance that probably could have get gotten six votes on the city council in a variety of differently ways to have gone in different ways. But I don't believe we could have gotten an ordinances that so have got six votes at the council that can on consistent with state law. Because as Councilmember Liccardo pointed out, the operational methods being request roughed about I the disabouteance rise in San José today don't appear to be consistent with that's where it got to be impossible working with the industry to come up with an ordinance that both in it state law and our interpretation of state law. And of course, people do argue about these things but our interpretation of state law and their interpretation of state law were two different things and so that's

why I say it's impossible to make those things work together. We could have gotten an ordinance. We could have just followed some other city's leads but I think those ordinances have some problems based on our had had roars at least interprets of state law. That's why I said it was impossible.

>> Councilmember Rocha: That may have been very significant one. I think there was opportunity on some of the other items that we could have maybe modified it and had some other support from the industry.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just wanted to thank Mayor Reed and councilmember Sam Liccardo, Pierluigi Oliverio and Rose Herrera for this memo. As I stated over and over in the previous council meeting, I believe that this is really and continues to be a federal issue. I'm just hoping that one of those days, the patients be able to fill their prescriptions in the corner CVS stores and the Walgreen's store and on the disclosure side, I have met with doctor senator Vasconcellos and senator.

>> Is or is not a nonprofit operation in any way that is in any way consistent with what is happening out there in the real world then there's no way to fashion something that's legal. And I know it's easy to play Monday morning quarterback and said we should have done what the attorney general of the State of California said there is no way forward and it is simply too easy to put blame on folks who intren beating their hendz against the wall for many months trying to find something workable.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: The easiest thing when this thing first came up would have been to ban it. I tried to come up with a compromise our compromise didn't work but we did work very hard to try to come up with one. I'm heartened by the folks that have come to testify today that have said deal with the bad actors because there are some bad actors out there. And we probably don't have enough resources all at once to deal with them. But I think given what we're moving forward having a little bit of extra money so we can start focusing on that, I think

that's going to be important. I want to thank our staff here, our police department and all of those that have been giving us information because there have been other concerns that have been voiced. So we hear predominantly from the industry when we come to these meetings. But I also hear from constituents. I hear from the police department. I hear from others. There are other voices out there that also have to be heard. And so I want to make sure that all of those voices are heard and that we move forward in the right direction. So I will be supporting this motion and I look forward to clarification from the federal level, and from the state level, so that we can do the right thing and be in conformity which is what I had wanted all along with the law and with what's best for our community.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. While we can cherry pick which item we think are workable or legal and debate that to the end, I'll point to a perfect example of one that was a failure on our part. First come first served as opposed to looking at the best collectives that operate the mostons legally interest of my colleagues --

>> Mayor Reed: I think we'll be back in maybe a year. So we can do it then. Let's hope we get a chance to debate it. Done? Sorry to interrupt there. I think that concludes the council discussion, don't have any other requests to speak. We have a motion on the floor. On the motion, all in favor? Opposed, count none opposed, the motion is approved, the ordinance is rescinded and the other actions in the motion are approved. That conclusion item 3.5 taking us to item 3.6, audit of office supply purchases. Councilmember Constant.

>> Councilmember Constant: I was just going to make the motion but I want to make sure she has a channels to give any introductory remarks. I was jumping in quick.

>> Sharon Erickson: If I could very briefly since 2007-2008, the city has purchased office supplies on a citywide basis from office max through an open purchase order. We audited those purchases for 2010-11, it was about \$1 million in purchases. And found that due to a misunderstanding about the terms of the agreement the city had

received an average 35% discount, not bad, but was significantly less than the 60% discount that city staff had negotiated and had expected. Which is tremendous. In response, office max agreed to pay the city \$the 166,000 difference and to clarify the agreement on a go-forward basis. Also want to note that in reviewing office supply purchases we found numerous toner and printer paper purchases that were not in compliance with the City's environmentally friendly -- environmentally preferable procurement policy and that it actually cost the city at least \$68,000 more than their environmentally preferable alternatives. The administration is moving forward to implement the recommendation to make it easier for city purchasers to save money while buying the most environmentally preferable office supplies available. With that we've got staff here to answer any questions but we'd ask that you accept the report.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I'll make a motion to accept the report.

>> Mayor Reed: We have a motion to accept the report. Councilmember Kalra.

>> Councilmember Kalra: Thank you, I'll accept the recommendation. I didn't think I'd enjoy a report so much about office supplies. It was actually pretty interesting, kind of low hang fruit we didn't know about. One comment, I know in Mountain View for the council there they, instead of giving big binders full of paperwork they got the councilmembers iPads and it's saving tens of thousands of dollars a year in paper cost. Just a suggestion because I would certainly bypass, coming from certain committees that we don't necessarily read but if it was sent to me as a link if I chose to read it I'll read it. Even the council packs here, I'll have a note pad next to me and take notes if I need to. I bring that pickup.it's was a creative way they did that, they did it quickly and already saved a tremendous amount of money. I put that out there as an additional option of how they can save on paper cost.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I just wanted to say congratulations to our auditor Sharon Erickson for finding all of the money. Congratulations.

>> Councilmember Rocha: Was that a motion?

>> Mayor Reed: You want to make one?

>> Councilmember Pyle: He made one and I seconded.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to echo Councilmember Kalra's sentiment about trying to move to a paperless world. I know I've been saying that for three years or more. We are all saying, how can we do this, we are coming up with some challenges, I'd look forward to how we can do this because I think the binders should go the way of the dinosaurs.

>> Mayor Reed: As you will note we have monitors and keyboards, and that was going to eliminate the need for paper. That is a quest. We have newer technology now, Councilmember Herrera.

>> Councilmember Herrera: Thank you for another good audit and I agree with Councilmember Kalra's suggestion on getting -- going paperless getting an iPad or some other device. We see that at VTA, we see colleagues showing up, colleagues at Sunnyvale to have that. I don't know the process for doing this. We are the capital of Silicon Valley, this year we should go paperless.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: We've talked about that every budget year but I tell you our retirement boards are going paperless next month. They've approved and they're going to the iPad dock system. So I know, I've had discussions with Dennis and I'm sure we're going to see something lining that in our budget this year.

>> Mayor Reed: At least a memo. Councilmember Oliverio.

>> On paper though.

>> Councilmember Oliverio: Just want to make sure we're disclosing whether or not we have Apple stock on this dais. Thank you.

>> Mayor Reed: All right we have a motion to approve the office supplies audit. No cards from the public. On the motion, all in favor, opposed, none opposed, that's approved. Next is an audit of Team San José and convention visitors bureau audit of 2011. This one is a little bit more complicated than office supplies.

>> Sharon Erickson: .

>> Sharon Erickson: City Auditor again. This is the annual performance audit of Team San José's management of the city's convention and cultural facilities. We also reviewed the city's CVB met seven of its nine performance targets. Team San José met its target for gross operating revenue in 2010-11. As calculated in conforms with the management agreement which is slightly different than some numbers you've seen previous Team San José reduced its operating loss to \$2.4 million, that's compared to a \$6.9 million operating loss the year before. So significant broived. Team San José met its pornlings targed for its event attendance, hotel nights, estimated economic impact and return on investments. It fell short on two of its targets for theater performance, those are performance days and occupied days but it met its performance target for customer satisfaction. Overall, Team San José achieved a weighted performance score that earned them the maximum incentive fee of \$350,000. The convention and visitors bureau operates under a separate agreement with the city. In 2010-11 Team San José received a total of \$3.8 million in revenue from the city to support CVB activities including sales marketing and

public affairs. Since much of the focus of these efforts we found is geared towards booking conventions and other events at the convention center and other facilities we see no reason to keep -- to continue keeping certain aspects of CVB's operation separate from those operations. And therefore, recommend that the management agreements be consolidated into one agreement, when all the agreements expire in 2014. With that, we're happy to answer any questions. I've got Lee Wilcox here as well and I'd ask you to accept the auditor's report.

>> Mayor Reed: Thank you. I have a couple of questions. When I look at the performance targets and the theater performance genomes in particular and the fact that we paid 100% of the incentive fee I think maybe we've got the incentive fee needs to be restructured. I'm just used to in the private sector if you don't meet all your numbers you don't get your bonus. You got to meet all the numbers. And so I think that's something we should consider as we go forward is making sure that they hit all the numbers before they get 100% of their incentive fee. It also raises another question with the recommendation to consolidate the two contracts into one. What would you think about considering a separate contract for the theaters? Since that's the part of the operation that seems to be foreign, when you look at the things that are thrown together there, and it's also the area where they're not performing nearly as well, and should we contemplate having a separate contract with separate performance measures even with a separate entity to manage the theaters? And so I'd like to give you a chance to comment on those three things together.

>> Thank you, Mr. Mayor. Again past practice in this agreement is to look at the performance measures and their weight added up together to look at the performance measures. So this is a past practice. We do have the City's industry advisor, convention sports and leisure looking at the performance measures and coming back with recommendations as part of the best practices report ensure this is an industry wide trend and we are holding Team San José accountable for what like companies and jurisdictions do. Related to theater performance per Sharon's recommendation the city does agree that we can consolidate both agreements in the 2014 time frame. I think staff would like the ability over the next few years to look at Team San José their new agreement with Niederlander at the CPA and the civic to see how those two agreements can activate the downtown and activate those two theaters and really look at the overall performance before moving forward with possible separate

agreement for the theaters. But it is something that the city is looking at and holding Team San José accountable to drive performance of those two facilities.

>> Mayor Reed: We have been talking about that a long time but obviously not as high a priority as the convention center which I think we all agree but if we have a convention center staff and a bureau that's focused on the convention center aren't the theaters always going to be left behind? So that's the question, related question is the benchmarking study that you mentioned, when will that be done, when will we have it and how will that inform the question I asked you know about the theaters?

>> Very good question. The benchmarking study will be completed for internal review in mid March and we'll bring that forward to council for approval in April of this year.

>> Mayor Reed: Okay, I'm sure some other staff has some questions so I'm going to pass on. Bill Sherry was here going to try to jump into this conversation but we'll cock back to that. Councilmember Constant.

>> Councilmember Constant: Thank you. Mayor. We circulate the opportunity to see this report at the public safety committee recently. And I just say that in all, it's great to have such positive discussions about Team San José compared to where we were quite a while back. And I think a lot of that credit goes to Bill Sherry and Chuck Toeniskoetter, and I see Chuck Fox who is here 0 who is on the board. We've made a lot of progress and I know we have made changes to the incentive measures. I don't remember exactly when we made the changes. But of course that's always something we can look at as we go forward. Gut overall I'm very happy to see that the news is much more positive than we've seen in the past and we have a much better working relationship between Team San José, the city, the City Auditor's office and all the related. So I'd like to make a motion to accept the report and I'm sure Bill will add in some stuff later. Thanks.

>> Mayor Reed: We have a motion to accept the audit. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and Sharon thank you for the report. I think it's a really positive report. Again as Pete indicated, that the mayor discussing the performance measures, it's really great to see some of these targets not just hit but surpassed quite significantly including the gross operating revenue and certainly the satisfaction rate which of course really I think helps to get repeat business when you are performing really high in terms ever customer service. And -- terms of customer service additionally another good sign is the recommendations really are kind of I wouldn't say surface, they're important, but they're not as structural significant as in past. I think the board restructuring is effective, I really want to commend the board in working with the city. I think that making it a much more nimble board but again one that has much more clear insight over the finances has really helped and especially with our new convention center kind of newly renovated an built-out comes online I think it's really critical that we have in place now a system that I think we all can rely on and a relationship that I think we can have confidence in. I look forward to any further comment Bill might have. I look at also the last thing on recommendation 4, I think it's really good to find a more appropriate way to credit the economic impact of what some of the thaings Team San José does. In reading it looks like there are some subsidies they provided that wasn't necessarily a true reflection of kind of the pay back in terms of hotel room nights, in terms of T.O.T. revenue and I think that's something I want to make sure that every ounce of energy and resources that Team San José puts into the downtown, into create being vibrancy, and revenue into the city they get credit for. In looking at other models it is not always easy, not accurately define visit ears that come into the downtowns or visitors that come into San José based on certain outreach efforts or certain events. I think it will benefit us to look at other models being used around the country. Thank you.

>> Mayor Reed: I think that's it on the comments. I think we have a motion. Bill Sherry do you want to make some comments? I do want to acknowledge the tremendous improvement in the operations of the Team San José over the last 18 months or so wp we really appreciate that.

>> Bill Sherry: Thank you, mayor, Bill Sherry Team San José. I want to address the comments regarding the theaters. I don't want to offer excuses but in addressing some of the underperformance I want to give you assurance going forward oop we have had a renewed organized focused on performance sales bringing events and activities into the downtown area . With regard to the theaters, there were three issues that really impacted

the attendance and the performance days of the theaters. The first is our arts partners. Opera, symphony, ballet, et cetera, et cetera, were all cutting back in terms of the performance days through the recession. They're unfortunately still cutting back. We haven't seen the bottom of that yet. But I just point out that we have limited control over our performance partners, in terms of their activities, their attendance and their schedules. The second thing that impacted the theater performance was the renovation and construction of the civic. It extended into this fiscal year, fiscal year under audit, as well as this current fiscal year which was unanticipated. It went on longer and therefore we were able to have less events at the civic. However, even with that construction we had more events in the civic than at any time in the last 12 years. So I think that's important to note. And then finally, the Niederlander agreement. I think the council was well aware that Niederlander agreement was entered into with a shared risk with Team San José. We had to restructure that agreement, getting Team San José completely out of the risk business. We are a landlord, Niederlander is the promoter. And we have done that. Those negotiations were -- there was complications associated with the tax exempt bond issuance and funds that were used on the civic. Having said all that, all those issues are behind us. And I think that I can give the council some assurance that you're going to see much improved performance in the theaters. In the recent months we've restructured the Team San José organization allocating staff specifically to the theaters, both in terms of sales and operations. So before, the theaters kind of played second fiddle to the convention center. Now, the staffs are dedicated to the theaters, and are dedicated to seeing the performance increase. So going forward, I have a lot of optimism. We have a new agreement with Niederlander and we have a restructured organization, and I'm hopeful that you're going to see renewed and quite a bit of improved performance in the theaters.

>> Mayor Reed: Thank you. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I just wanted to thank Bill and Chuck Toeniskoetter who have worked a remarkable turn around in this organization. We're grateful to see it here and I know it's added vitality in the downtown. Civic looks great. Look forward to the big celebration I think will be in May or June. And I think it's -
- I think we're heading in a great direction so thanks, Bill.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I just want to add my praise. I remember being on this council early on and hearing nothing but bad news out of this. And so it's just great to have Bill and the team and the great news that's happening. The increase in revenues, the decreasing losses, and just you know, a brighter picture for now in the future. And thanks for the explanation on the theaters. That was very good points on that.

>> Mayor Reed: Anything else? All right we have a motion on the floor to improve the audit. All in favor, opposed, none opposed, that's approved. Taking us to item 3.8, audit of information technology general controls. City Auditor again.

>> Sharon Erickson: This is our third audit on the agenda this afternoon. Let me start by just saying a few brief words about what I.T. general controls are. Information technology general controls are the basic policies and procedures that ensure that the City's information systems are properly safeguarded, that software application programs and data are secure, and that computerized operations can be recovered in case of unexpected interruptions. Our review found many of the weaknesses that have been identified in previous reviews remain. There are data security vulnerabilities that must be addressed. We recommend regular reviews of network access, tighter user name and password controls and tighter controls over credit cards and personally identifiable information. The I.T. department's backup process needs to be improved. With data backups and off site and data retention requirements identified. A formal disaster recovery plan needs to be developed and tested. In addition it's inventory practices can be improved and in order to better distribute and redistribute technology centrally installed software packages. Finally, this is the iPad commercial, it's not news -- excuse me -- it's not you news to anyone who's been around City Hall for very long that some of the City's computer systems and software applications are old archaic and generally outdated. The City of San José, as was stated earlier in this meeting, is located in the heart of Silicon Valley. But operates with 20th century technology. Some of the City's main enterprise systems, operating systems and software applications are operating well beyond their life expectancies, this includes the City's financing systems budgeting systems payroll systems and PC operating systems. Given scarce funding we recommend the city administration review the age of its replacement for budget and highest risk statement. I'd like to add a apparently side of thank you to the I.T. staff and the staff that

keep those archaic systems running for all of us every day while they struggle with limited resources. With that Vijay Sammeta is here and we ask that you accept the audit report.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, Mr. Mayor, this is another audit we were happy to review at the Public Safety he committee. Just a couple of comments. Nothing in here was particularly surprising in that over the years we have raided our capital reserves, our dollars put into our I.T. infrastructure to know that we have legacy systems that quite frankly take three or four people full time just to keep them running and the total cost of ownership of those as we'll probably talk about more in the budget cycle is extremely high. Especially when we're using many of our software programs that are a decade old or older. But even our simple Microsoft office products as we know are a decade old and three or four versions behind. It's really hard to maintain our data security when you have such outdated software and that's one of the reasons we see such turnover out there in the software industry, is a lot of it is driven by the cybersecurity issues, the internal operations issues, to plug those holes, and I think until we really get the I.T. strawrkt backbone, and the software updated, it's going to be very hard for us to really make any significant strides. And I know it's challenging given these budget times but it's something we need to do. And then finally, we've had quite a bit of turnover in the leadership of the I.T. department. And I just want to thank Vijay for doing a great job out there with what little we give to you run such a complicated system and still squeeze out some efficiencies and get us a little faster connections and all those things that you make happen. And I just want to give you a personal endorsement. You've been doing a great job as your interim or acting or whatever your official title is, I'm glad to have you there. With that I'll make a motion that we accept the report.

>> Mayor Reed: Motion to approve. City Attorney.

>> City Attorney Doyle: Yes, I haven't had a chance to touch base with Sharon about this and I apologize. But on recommendation 5D which is a recommendation to include boilerplate language essentially seeking hold harmless and indemnification agreements. I just want to note for the record that we strive to do that in most if not

all our contracts. The technical world is a little bit different. The tech companies don't give this up freely and I think it is something we would try to accomplish but given the sometime negotiating position, that's something we would -- it's more of a goal. And whether we can have it standardized is something else.

>> Vijay Sammeta: Thank you Rick. Vijay Sammeta acting director of I.T. tech component to it at the surface level. But then when there's a -- we get to implementation there is a heavy tech component. Typically when it's a service being provided by an outside provider. We just want to reach that all through the agreement that there's an obligation for them to act you know as if we would or in this case, better than we would. So I think the intent was really to reach those types of situations where at surface level technology isn't the main focus of the contract.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Just want to thank the auditor and also thank Vijay for constantly being on the cutting edge. I think you'll be moving the information technology department and the city into a new realm. The only thing that limits you is some amount of money which we have to work on allocating. That's one big deal but one silver lining we may be able to leapfrog and now make some investments that other cities have made some years back. Number one is not investing tens of millions of dollars in the IT system. Thank you.

>> Vijay Sammeta: Thank you, councilmember, no pressure.

>> Mayor Reed: I believe that concludes the discussion. There are no cards from the public. On the motion, all in favor, opposed, none opposed, that's approved. I think that concludes the audits portion of the agenda for today. We'll move now to item 3.10, the 2012 community budget survey. We'll move to the results of that survey which have been posted in a couple of places.

>> Thank you, Mr. Mayor, members of the council, my name is Dave Metz, I'm a member of the firm Berry Bank and Lynn Metz and Associates LLP which has been available in your packet. I'm not going to go through all the questions in the survey today but would be happy to answer questions that you have. Both about the data I

present and then any additional data as well. Just a quick reminder about the methodology of the survey. And this is the sixth in a series of annual surveys that we've been conducting for the city dating back to 2008. As in previous years, we divide our sample into two halves. Half of our sample is adult residents of San José, so these are all citizens. All residents. The interviews are done on land lines and cell phones and in English, Spanish and Vietnamese to ensure that we have maximum opportunity for residents to participate. The other half of our sample is limited to likely voters. And the reason for that is obviously the opinions of voters as distinct from residents overall are more critical. There's going to be a few places here and in most cases we blend the data from the two samples but there will be a few places where I note we're focusing on the data just from likely voters. One of the initial questions in the survey is one we've asked in prior years which in order to understand the relative budget priority that residents assign to some of the City's goals presents them with a list of five objectives that the city has set for itself, having a safe city a approximate a green sustainable city and an attractive vibrant economy. We then ask the respondents to allocate 100 budget dollars across those five priorities and you'll see here the amounts that residents allocated for each of these items, the bars group those who said they would spend less than \$10, 11 to 21, 21 to 30, 31 to 40 and more than 40 on each item and you'll see the average items on the right. As we've seen in prior years, the highest priority tends to be for safety and then ensuring the highest priority seen in the past. We also have some questions where we offer the respondents some choices. Given that the city has budget shortfalls, we present them with some options that the city might pursue to address those shortfalls and ask them to choose between them. One of those choices presents them with three options, either reducing city employees retirement and taxes or fees and reducing existing city services. The data on this choice has been fairly consistent from year to rear. Residents perhaps not surprisingly choose reducing public employee compensation as their number 1 preference, that's followed by taxes and then cuts to existing city services. However in a follow-up question when we asked them whether they -- when we inform them that simply making cuts to public employee compensation will not be enough to completely balance the budget and we ask them to choose between the two remaining options, either reducing services to need to raise additional revenue or raising additional revenue to cuts in services the public is about evenly split, 42% in favor of revenue increases, 41% in favor of service reductions. There has however been an interesting trend in this data over the course of the last two years. You'll see dating back to 2008 over that period of time the initial preference that residents expressed for service reductions has gradual slunk year by year. this year we have a high over that six year

period in terms of the number of residents who tell us they would prefer to raise additional revenue as opposed to cut services. This is the first time it's hit 42% and the second time including last year where we've seen a preference for revenue increases over service reductions. Back in 2008, prior to the economic crash, we saw that there was a 10 point preference for service reductions. As I noted that's generally declined over time. Now, this survey also explored a variety of more specific options that might be presented to voters for raising additional revenue for the city. They were described in detail in the survey questions. Some of them were presented as actual ballot measure concepts while others were described with briefer conceptual descriptions and they are listed here in more shorthand form along with the portion that said they would vote either yes or no for each of these items. The yes and no votes are subdivided into three categories. Those who definitely hold that position, those who probably would hold that position, undecided or leaning towards a yes vote or no vote. We'll talk about some of the implications of those tentative voters in a few moments. Revenue raising options. I would note that each of them received majority support overall although as I'll show you in a moment under the law a number of them would require a two-thirds supermajority to be approved by local voters. The top ranking options included reallocating hotel tax revenue away from convention and arts programs into the General Fund to support those services. Adjusting the City's business tax for inflation to both account for past inflation and future inflation. And then you establishing either a one quarter or one half cent general purpose sales tax. Those were the three options that received roughly two-thirds support from voters. In support of a library allocation tap or a \$911 parcel tax to fund street repair. Now again in evaluating the level of support for these measures it's important to keep in mind the vote threshold that will be required for approval of each of them. The top 3 measures listed in terms of their overall level of support are the only three that could be passed with a simple majority as general taxes. And each of them is well over the vote threshold that would be required for approval. On the other hand the three measures that would require a two-thirds supermajority for approval fall slightly below that standard. The library parcel tax and the construction and contains tax conveyance tax undecided but leaning towards a yes vote and those voters are the ones whose support obviously is most tenuous and possibly given the political might be the ones whose support drops off. If we exclude those leaning voters from the calculations you'll see here how the levels of support match up with the two-thirds vote threshold. The reallocation of the hotel tax, adjustment to the business tax and the sales tax all still sieve more support than would be required for approval. But you'll see that the margins for the parcel tax for the library, the construction

and the conveyance tax and drop further to the point where they're trailing the required vote threshold by double digits. The sales tax out of these options is one that we spent a little more time exploring in detail in the survey. At the beginning of the survey in fact we introduced it by reading voters a model for the potential ballot along they would see were they to vote on this on election day. read voters exactly this language. As we've discussed in prior presentations it's the one piece of information that you know for a certainty that every voter will receive before they cast their ballot. So you'll see the language that we tested here describing the establishment of a seams tax limited to 15 years funding a variety of essential city services. We split our sample and for half the sample we asked about a half cent sales tax increase and the other a quarter percent sales tax increase. You will see here the 65% support at a half percent also 65% support at a quarter percent, some variation within those numbers in terms of the intensity of support with a couple points stronger support for the quarter percent sales tax measure as opposed to the half percent. But the rate didn't see to be the determining factor on whether voters were offering support. Now the quarter percent sales tax is one that we have explored in prior surveys that we have done for the city. And here you'll see how support for this idea has fluctuated since 2009. Now I should note that in each survey the context in which the question was asked was a little bit different. The ballot language we used, the service that we described that it would fund, the length of time it would be in effect, all of those varied. And that to some extent, as well as the other items at a were asked about it, around it in the survey, may affect the differences in the level of support that we see. The other critical factor is the turnout model that wire using in selecting our poll sample. This is the first time that we have been apology a presidential year voter turnout. November of this year turnout will be higher than it has been at any time since 2008. And generally speaking all else equal that higher turnout in November means there are more voters, particularly younger voters, Democrats, communities of color, renners, all of which tend all else equal to be more supportive of a sales tax proposal. That may have played into this year's survey as well again although it has been more or less around that 60% threshold. One final point that we wanted to make about this data is the November electorate that I've just described is not the only option before the city. There is also the potential to place a measure on the June state primary ballot. We looked at the sample at the same subset in November and based solely on the survey data there's relative little difference between them. The margin of support is a couple of points lower in June than what it is in November but that's all within the survey's margin of error. There's a number of issues surrounding the relative wisdom of putting a measure on the ballot in June or November. There's some legal issues at the time

we put our presentation together. It seemed that there might be an open question there but I believe the City Attorney has weighed in on whether or not that would require a vote of a declaration of emergency from the council. All else equal as I've noted, turnout tends to make November elections advantageous. However this November we have a somewhat different context in what we have in other November elections in that there is likely to be at least one measure on the state ballot, the proposal from the governor that includes a sales tax increase as well as potentially three or four others that involve other sales tax county regional governments and school districts. And the aggregate effect of having all those on the ballot impact support. In June although turnout will be lower and will tend to bring out more conservative voters who are fewer measures on the ballot at least at the state level. Although I will note that one of the two state measures slated for the ballot is a \$1 tobacco tax increase and if history is any precedent last year the tobacco try spent \$70 million running a campaign against the last tobacco measure that was on the ballot which again may create some of that antitax environment in June as well. All these factors obviously from the point we sit here today in February it is hard to project how they all will play out. The one thing we can be certain of at least from the survey data is from that perspective there doesn't seem to be a huge difference in support between the two elections. With that I'll be happy to answer any questions you all have.

>> Mayor Reed: Thank you. I think most of our discussion and question is going to be on the next section of the agenda, item 3.11 but if there are any questions about the survey, and the mechanics and those kinds of things now would be the time to do that. Councilmember Liccardo.

>> Councilmember Liccardo: One quick question about parcel taxes because they always seem to poll lower than sales or other taxes. I understand we always put a fixed number on the whole lot more dollars with a half cent sales tax than they would have with a \$97 parcel tax number, it seems that number may have an impact on voting. My question for Rick is that a requirement in law that we have to have it in a dollar amount as opposed to a percentage of whatever the valuation might be? Is it required to be fixed per parcel?

>> City Attorney Doyle: I think the -- I'm testing my memory pack here on property taxes, and the case law says discuss parcel taxes, and how they're structured, and I think that's the case. And the reason is that the ad

Valorem tax is limited. To the extent it has anything that is a tax on property it needs to be the parcel tax with not the ad valorem.

>> Councilmember Liccardo: So everyone has to pay the same amount. Is that your experience?

>> Yes, the reason tends to be even if it's a parcel tax, raises the same amount per household, the sales tax is fixed, the the sales tax it's simply a rate. So we see gaps of ten to 15 points for measures that will raise the same amount using different mechanisms as a result.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I wanted to ask you a question in light of the fact that, in November, the governor will have a in your, sales tax measure on the ballot. If we also go in November that's two competing against one another. So it would give us more time to do a good thorough education program. But there's also the possibility that if we went in June, we get it out of the way first, we get the voters first, and we go from there. Do you have any opinion on that, one way or the other?

>> It's a tough call. I -- and there's obviously a lot of factors to take into account which you've highlighted that we can't project with total accuracy where we are today. In terms of some trends we've seen in the past if there is a state ballot measure and a local ballot measure that use the same taxing mechanism on the same ballot generally speaking the local measure frankly is the one that will be advantaged and the state measure generally be disadvantaged. We've had local sales tax measures around California enjoyed fairly good success rate even on those same blood. And the reason for that is that voters have much more confidence that a sales tax increase that is a city tax is going to benefit their community in direct ways as opposed to a state measure where they'll pay it but the benefits will be more diffuse. You know, the other factor to keep in mind is the amount of time that would be required to prepare and plan for a measure. Obviously the city can do nothing to advocate for or against the passage of a measure. But should citizen committees wish to form and play that role the timetable between now and June for them to engage in those activities is pretty constrained.

>> Councilmember Pyle: And have you seen success with grass roots campaigns?

>> Yes, it's obviously more challenging in a city the size and diversity of San José as opposed to smaller communities where that outreach can be more easily accomplished.

>> Councilmember Pyle: In addition to the state saying we are going for a half sent sales tax if we went for a quarter would make us much more appealing as well. In light of the fact too if we do a tax measure all of the proceeds go to San José. Whereas if the the state does it all goes to the state.

>> That's right. I think that latter factor Councilmember Pyle is really the one that's going to have the most impact. The lack of the confidence in the state, survey data and city government in San José as well as the fact that those moneys, they know they'll stay locally I think is likely to have much more influence.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you. Councilmember Liccardo raised this issue and I'm glad he did because this is one of my interests, is that the street maintenance and the parcel tax, talking this issue out a little bit. I recognize the difficulty with trying to present this to a voter and explain it because in my mind conceptually I have envisioned structuring this parcel tax where different type of uses land uses would pay a different rate. And you really can't explain that out in terms of trip generation let's just say hypothetically, let me say that again, hypothetically, commercial or industrial generates more trips, there are you structure the tax for them to pay more land use or property earn owner with the parcel tax. Not being able to explain that to your resident and that they may not be paying the bulk of this is probably pretty difficult for you and that's why looking at this you can't go too far in terms of trying to explain this when you've got a whole list of other items. Can you speak to the difficulty of that if you don't mind?

>> That's exactly right. It's an important caution, most of those seven revenue options we tested in very short fashion. We asked a short one sentence question about what respondents with any details about how the cost burden would be shared across different types of property owners. We didn't say about it, we didn't even test full ballot language for it the same with way we did for the sales tax. All of those factors would give you a much more thorough understanding of the fee levels of the concept. You're correct, the space limitation might be and the number of pages you might be able to see, an improvement over the numbers that you see here. But given that I will say, we've pulled parcel taxes to fund discrete pre-repair in a number of communities in the Bay Area, including a small and affluent ones where there's been tough sell.

>> Councilmember Rocha: Have you looked at the tiered where you tiered out the different property uses?

>> We have and that can help. If it brings down the amount that residential property owners are asked to pay. But if the question is the degree of impact it would have how much that might be able to shift from that \$97 amount. Given where we are here, at 51%, obviously you know, there's a significant gap that has to be made up. And so again, these are rough numbers but my guess is you'd have to make a fairly significant increase, reduction in the amount of it to increase the support.

>> Councilmember Rocha: In looking at the question though, I would almost walk away with looking at that this is going to be a tax or parcel tax borne exclusively by residential because it doesn't talk about any other types of uses.

>> You're right it didn't specify those types of uses.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: City Manager.

>> City Manager Figone: David just to follow up on comsh's question, if the city council were to decide to advance one or more tax measures for further study my experience that we would undertake that deeper polling and perhaps get at those finer points that Councilmember Rocha mentioned, whether it be sales tax or any other measure, is that not correct? David?

>> I'm sorry, I was just -- sorry, I was just checking the wording to respond to Councilmember Rocha's question. You were saying we were to do some deeper polling to explore some of the nuances.

>> City Manager Figone: Yes.

>> The language we read them did say that the amount of the tax would be contingent on the property size and type. So we let them know there would be variation. We did not however tell them what that variation would be.

>> Councilmember Rocha: And my interest first and foremost thank you for raising the issue is equity. I don't have any interest in burdening a particular land use with an unfair amount. That's why I think it would really be critical for us to look at industry standards in terms of trip generation and just that as our standard as opposed to picking something out of thin air. Thank you.

>> Mayor Reed: I would like to point out that in terms of Councilmember Rocha's interest on the transportation side we've talked about this before. That a bond, most of the bond measures we've had the word tax doesn't appear nor is there a dollar amount. That may be another way to approach this. It is a different financing mechanism but still goes to the same property. But obviously having to say it's a tax and it's going to cost you \$97 is a disincentive, as opposed it's a bond and you're going to get some benefit of it. Obviously they poll different.

>> One note on that Mayor Reed. We recently did some research for the City of San Francisco which had been having similar trouble for successful in passing a bond measure I think for the reasons you described for the election year last year for those road needs.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I think it's interesting in figure 4 page 10 was discussed, the different priorities in terms of how we deal with ongoing -- with reconciling our ongoing budget. And I think particularly of note from January 2011 to January 2012 increase in raising additional revenue including taxes and fees, particularly since the question doesn't give context as to how much we've already done in terms of employees compensation being reduced additional context is given you can only imagine that the willingness to raise taxes or fees would even go, go even higher and also of note looking from January 2011 to 2012, the 8 point increase in the prioritization of raising additional taxes or fees, is exact same amount of a reduction of the all, none or don't know. So that you know, obviously you can't tell if it's the same people clearly but -- or the same type of person, it could be someone that changed their mind from existing city services and so on. But I think it does -- it's quite telling that people now and I think this was very well reflected in the community budget meeting that we had of a couple Saturdays ago that people are certainly much more willing to look at taxes because they know, and how much has already been done in terms of our employees giving back and how much we've cut back on services. I think it's been apparent. I think that bodes well in addition to the very specific data on the quarter cent and half cent sales tax numbers I think are quite telling in a presidential year I think this is the best opportunity we have to get taxes that the public knows is going to stay in San José. As you mentioned as Councilmember Pyle has reiterated a number of times over the past several weeks that that's an important message, that particularly with the distrust of Sacramento although I do think the way governor Brown has handled the budget in the last couple of years has gained some trust in him more than the rest of the legislature. So he promotes a certain sales tax option may have been more supportive than would it have been a year or two ago. But still we have certainly the advantage of local tax and especially if we build a coalition, and all of us indicate to the community what we've already done to make our operations more efficient. How many people we've let go, how -- what we've been able to outsource, what we've been able to cut back on, what our employees have given back in compensation. You could put that into one combined message in that look we need some more money to now continue what we have been doing. And so I think this is very hopeful, in that regard. And one further comment, one last comment in regards to some of the very specific questions about consolidating the boards and commissions and the golf courses and 1% going to art and all that, all those, it's good to know what people think about those things. They

also it's very difficult as is the case in polling in general without giving context to really get a sense of how we're going to set our policy based upon that. But you know I don't think it hurts to ask the question. I think we should be cognizant going forward about what the value of those answers are without further context. Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: A question on the poll results. Do you think you would see a significant difference if the question had been prefaced with a notification that sales tax is going up an 8th cent this spring before we would have any opportunity to go to the ballot and due to previous voter approvals?

>> It's hard to say. I would say in general, we have found that voters are largely unaware of what the sales tax rate is. If we told voters that the sales tax had gone down just last year, most of them probably weren't aware of them either. From focus groups we've done we've seen they're unaware of it. It varies from community to community, it varies with what you're asking for. Obviously an awareness of additional sales tax would probably not increase support, it would affect how much of a negative impact it might have.

>> Councilmember Constant: Any yes is a lot of people have forgoing with BART hitting its milestones that that 8 cents tax will hit we're estimated in spring I don't know an exact date --

>> Councilmember Liccardo: I think it's July 1st.

>> Councilmember Constant: People will be hearing about it right about election time. I don't know if that is something you would see a statistically big difference or not, thanks.

>> Mayor Reed: I have one request to speak, take that now. Mr. Wall.

>> I believe these public surveys as a matter of city policy should be just flat out outlawed by law. The city has a desired target audience that they look at. They construct a set of questions for desired political goal. They

therefore set in motion very trained and honorable statisticians O&M and say ladies and gentlemen of the public you have spoken. We will do what the survey says. Well, it begs the question, why don't we just hire the statisticians and get rid of you. Look at all the firefighter and police positions we have here or attorneys or clerks. We elect you to make decisions, and a good shepherd knows his or her flock or should, in theory. Isn't that one of these questions up here for revenue generations have I seen parcel tax reformulation. It is not here. What we do see is a methodology of manipulating language with basically the intent to deceive. And an illustration is the advanced water treatment facility, which treated sewage, water, being renamed as the Silicon Valley water purification plant. Consultants were used to manipulate the language, just as we see here today. These surveys should be outlawed. And just dispense with permanently.

>> Mayor Reed: That concludes the public testimony on this item. The action on 3.10 is to accept the report and then we'll go into 3.11 which is a further discussion. Is there any additional questions for the consultant on the poll? We need a motion to accept. Motion is to accept the report. All in favor? Opposed, none opposed, that's approved. Now on to 3.11. That's further discussion regarding the June/November 2012 tax measures as originally requested by Councilmember Pyle. Would you like to speak to that Councilmember Pyle?

>> Councilmember Pyle: Thank you, mayor. We've seen some fairly positive results in reference to this survey. And over the last three surveys, more residents have indicated that raising additional revenue is their first choice. An increase of 20 to 23% before is now 28%, a total gain of eight percentage points. That's on page 10 of the report. On page 11 is results shown in figure 6 show that preferences have suddenly shifted over the years with a stark shift occurring over the last year. The dynamic flip to four points in favor of raising additional revenue. So, so far, data examined here related to a sales tax measure exclusively explored support among the likely November 2012 voter sample of the survey. Concluding with it is unclear whether a June ballot measure would be at a distinct advantage or disadvantage to a sales tax measure that was placed on the November ballot. So what I'm asking is a couple of things. One, to discuss the two possibilities. Two, to decide, by February 28th, or come back in two weeks, for a vote, today is too premature. We need more time to let it all filter and for us to think about it a little more. So I just wanted to point that out and ask for the following points of guides for council deliberation. So I could go further but I did put out a memo dated February 8th in reference to the

June/November 2012 tax measures. I hope you all have that, it was a two-pager. So there you are. Quarter cent, half cent, June, positive, that's basically where our choices are. And there's one more to possibly consider, and that is, the if/then option. If we have ballot reform -- not ballot reform, if we have pension reform, could we then couple that with funding voter outreach and tag them together? And I understand from our attorney Rick Doyle that that is doable.

>> City Attorney Doyle: Yes, councilmember we responded to your question and we haven't found anything to prevent it. If I understand the if/then, proposed tax measure, any tax would be conditioned upon favorable passage of pension reform.

>> Councilmember Pyle: Uh-huh, just another possibility. So I'm not sure at this point if Jane would like to speak more about this.

>> Jane Light: Councilmember Pyle, if you'd like, I can review the information presented yesterday that was at the study session. Assuming I can figure out how to work this, which apparently I can't. So as we think about ballot measures, one of the main questions, as Dave Smith mentioned, is whether it was a measure that would require a 50% plus 1, or two-thirds, and a sales tax which is going to be into, for general purposes, would be 50% plus 1. As we consider the cost, I don't know if the City Clerk has a comment about what the cost would be for the June versus November options.

>> Dennis Hawkins: The cost for the June ballot measure, the first measure is \$607,000. The subsequent measure, each subsequent measure is \$401,000. We don't have a firm quote from the registrar of voters for the November election. But for a planning number I think that would get us started.

>> Jane Light: Okay. And then timing as Mr. Metz mentioned, I think that at this point is one of the main discussions the council would want to have about the fact that the deadline is, I guess, three weeks away. Other considerations, probability of success with polling results and other information. And any kind of understanding of whether there would be any opposing coalitions or groups in the community. And then looking at competing ballot

measures which are different more clear in June than in November. Availability of staff resources to both in terms of a June deadline, to prepare information for your consideration by June -- by March 6th but also to develop any kind of informational materials in what's basically a 13-week period between March 6th and June 6th when the election takes place. And then finally implementation, if a tax was passed earlier, then implementation would take place sooner. But it is a massive implementation job, which if then the state tax passed a few months later, all of the businesses would have to go through a second round, I guess a third round, with the BART tax, of having to change all of their internal systems. So I think those are really some of the main points from a staff point of view about the administrative functions that we would carry out, whichever decision you make.

>> Councilmember Pyle: So the time frame is really tight in reference to June. Most likely be better.

>> Jane Light: I think there are others in the room who could speak to that, the City Attorney and others, but it is very tight.

>> City Attorney Doyle: The only thing of getting anything together is always, we'd have to push. But one thing that I -- we don't control is the state board of equalization, any sales tax measure we have to at least run by them in advance. They're typically good, they can turn around pretty quick but just a heads-up.

>> Jane Light: And as we talked about yesterday, basically, the local revenue measures do very well in both June and November elections, in termination of the recent history over the past few years, anyway. So -- and that's obviously what your poll has showed. And then Betsy may speak to something else that might be on the ballot.

>> Betsy Shotwell: Thank you, Jane. Betsy Shotwell, Director of Intergovernmental Relations. The reduction of smoking that will be an additional dollar per pack . I am in contact with the registrar of voters office in the county and as of last week, she had not received an potential local measure yet but she did indicate of course there was still four weeks, and that this, there may be districts and entities within San José that might have a measure on the June ballot. But there was nothing official as of last week. And then as has been discussed, I highlighted the

three income tax, sales tax measures that I believe have substantial amount of money to support a signature drive. It will cost millions to qualify for the November ballot and then it will cost millions more to advance the measure to succeed. Around as has been discussed, there's obviously competing measures here. There's other measures as well. I indicate that as of yesterday there was 75 potential ballot measures in circulation or headed towards circulation, and indicate there what some of the other revenue measures are. But historical two years ago at this time, just to keep in mind, there were about 80 measures in play. Nine actually made it to the November ballot. So it's a tremendous, tremendous cost to actually succeed. And I think we'll start seeing a few dropping by the sidelines as deadlines approach. Now as you know, the deadlines are coming up in June or July for these measures to have gotten successfully over 500,000 signatures or in the governor's measure, a constitutional amendment would require over 800,000 signatures. So a lot of work for these measures, they have a lot of support behind them and a lot of media attention .

>> Councilmember Pyle: If I could ask another question, and that is what is the turnover time between now and the November election, let's see we won, what is the turnover time to the realization of the tax money?

>> City Manager Figone: I believe as Jennifer is coming down --

>> Councilmember Pyle: Sorry Jennifer --

>> City Manager Figone: Jennifer, about April we thought?

>> Councilmember Pyle: Oh, April, okay.

>> Jennifer Maguire: Jennifer Maguire budget director. In general, after you put a tax measure on and it passes, it has to be 110 days after the passage and the beginning of the next quarter. June would probably be collected in October time frame and April in the November time frame.

>> Councilmember Pyle: So the 1/8 of a cent that the equalization -- no it was a the transportation agency put on that is going to go into effect when? Do they have any idea yet many?

>> Jennifer Maguire: I don't know, I haven't calculated that one. We were focusing on just our local measure.

>> Councilmember Pyle: I would think whenever we win a sales tax, I'm alonging at this optimistically of course, it would behoove us to try to work in coordination with them so as you said they're not changing that sales tax format at all the retail outlets more than once. So just a consideration. Thank you.

>> Mayor Reed: Thank you. I'm just going to make some comments that I made yesterday in the study session, that based on my experience with tax measure, ballot measures et cetera, that I think there are eight questions you would certainly like to have the answer to before you predict whether or not you can succeed with a tax measure. And I believe we have the answer to one of those questions today and the first question is what is the level of support that you start out with, with the voters. We know from the survey where we are. I in my experience would expect to lose the leaners with the first negative piece of mail. Annal of and in order to hang on to the probables you've got to mount a campaign so you can hang on to the probables and if you don't you're going to lose half of the probables and that puts you below 50%. So you can't not run a campaign I think and be successful. So there are some other questions I think you have to have the answer to to assess whether or not you can win. First question is what will you spend the money on? Right now we don't know. We might know by -- in time for November election. Third question is, probably even more important than what you intend to spend the money on is what do the voters think you will spend the money on? Will you waste it or spend it on something they think is important? That is subjective in the mind of each voter that's why you have to run a campaign. Next question is: Do you have a business and labor coalition you can put together of some form of support of it? Can you neutralize the opposition so even though there may be opposition they don't really say very much. Will the opposition be funded? Who would raise the money for a campaign? And how much money will be raised? So eight questions and I think you have to have a pretty good idea of where those would fall before you can say this is worth taking a shot at it because we can win. And I think we have some pretty big questions to be answered. I noticed there's not a lot of people here today in the audience volunteering to raise money for this. But maybe they

would show up. But those are the questions I think we'd have to answer. And I don't think we can possibly answer those between now and March 6th or even between now and June. Which is why I favor you know, not trying to put this on a June ballot. I don't think it can win. I think it would lose in June. And which is why I've said in the past I think there are some things we have to do first before we're going to have success with the voters. But that's just my opinion. I know there's probably other views of this as well and we'll hear from some other people. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. And I agree with the sentiment mayor. I think as we look forward, I think we're all afraid of what's going to happen in November and as we fight against an army of other tax measures to try to get our measures on a ballot or even viewed by voters who are going to be looking very far down ballot on measures. I am in favor of November. Some mention was made of the bond measure in San Francisco and I'm still puzzled how San Francisco pulls it off knowing, I'm guessing they work the deal with every lawyer in town not to sue them. You know clearly the measure says it's for road repaving and to fix potholes, there's no question it's for maintenance, it's ostensibly for maintenance, it says it right there at the ballot measure. And it's still a \$248 million bond. If they can do it, I'd love to see how we could do it. I can't believe we wouldn't get better measures, for something focused on street repair maintenance and also improvements in our own facilities, there's a way to reduce our own operating cost, facilities, energy retrofits, so forth. This is the thing we could easily get passed. I would love whoever makes the motion if we could at least take a closer look at the bond measure that passed in San Francisco to understand if that was -- if we think that's lawful and if so can we pull it off?

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First off, Rick, thanks for your memo. Because my memo came as a -- from a concern from a resident in San José. And I'll tell you, following through everything that refers to a gazillion other codes trying to figure that out, frankly our charter is not real clear when the only place it discusses a June primary election is the definition of a regular election and doesn't mention it in terms of a general election. So you sort of cleared a little bit of the mud out of the water but not all much it. Because I think it's still

ambiguous. We've talked over the years potentially reviewing our charter and cleaning out stuff. That's something if you're keeping a list somewhere, that we need to clean up. I don't know why we have two different definitions of.

>> City Attorney Doyle: It is a 1965 charter, I can't explain anything more than that.

>> Councilmember Constant: It runs like a 1965 American car. So -- anyway, I forgot what my other point was. On the road infrastructure, it was kind of interesting for me to see, in the previous item, how low that poll, when I talked to my residents and they seemed to indicate that that was one of their higher priorities, and when you talked to them about addressing something specifically for the roads, they seemed to be very supportive, compared to something like a sales tax that could just go anywhere in the organization for whatever purpose. So I'm not sure why we get such different results when we talk to different people. But I do think that the one thing we need to do before we ask the residents to consider a tax is make sure we complete our reform, our pension reforms. We get our budget balanced for next year, and we start showing some projects projections that we're moving in the right direction of fixing our structural budget deficit .

>> Mayor Reed: I have one request to speak, we'll take that now, Mr. Wall.

>> For the record Councilmember Pyle is correct. Not many people really looked into what she said about this. It's just that there's some problems, not with what you stated, councilmember, because we keep the money local. The bigger problem is that this council is just not trustworthy. And above all, your poor managers and stewards of the public's money. You talk about pension reform and being a retiree. I say to you how come you didn't perform with your obligations of your unfunded liabilities? This was over decades but a lot of you have been here. We also look about the road repairs and parcel taxes. We don't talk about reformulating the parcel taxes, you don't talk about your either negligence or incompetence by not funding road repairs. Until it gets to such a point of a catastrophic allocation of close to \$1 billion. So no, you're wasteful. You talk about and make jokes about the city charter. Well, if anybody could make jokes it would be me to make jokes about you folks. You read the city charter and you start looking at the last time it was amended and you see 15 years, 20 years, 24 years, or what have you. Well, that is

your job. As legislators. To amend the charter. Lastly, the second ballot initiative would cost you \$401,000, correct? Seven of you voted to throw away \$440,000 for that fire station number 19 scandal. Thank you.

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

>> Councilmember Rocha: Thank you mayor Sorry for a delay. I share my colleagues' concerns about June in terms of the timing. I'm more concerned about competing in November, and I just honestly think that the likelihood there is slim to none. Even in this short time I think we might have a better chance at June. But either way, neither one of them may be in our best interest. So as we have this further discussion, we could consider a special election, specific just to this one item, and if the City Attorney could share with me what the requirements are for council adoption for that, is that unanimous?

>> City Attorney Doyle: Yes, in the case of a general tax, if you have a -- anything than a tax on a general election it requires unanimous declaration by the city council of an emergency and the need to put it on the special election. If you're asking the voters for a special tax which requires a two-thirds voter approval, you can put it on without that declaration.

>> Councilmember Rocha: Okay, well I'd encourage that to be part of the discussion and I'd thank Councilmember Pyle for her leadership and reminding us to continue to look at alternatives and not just the slash cut and burn that we've been doing this .

>> Mayor Reed: Comp.

>> Councilmember Pyle: .

>> Councilmember Pyle: I want to ask, do we need to vote on bringing this back in two weeks?

>> Mayor Reed: Yes or else we're done. Would you like to make a motion?

>> Councilmember Pyle: I make a motion that we bring this back in two weeks, and it's two weeks because we don't have council next week. Bring it back on the 28th, see what further refinements our thinking has taken and see where we are at that point, it will give us more time to meet with constituents and that kind of thing.

>> Mayor Reed: I've got a second, so we've got a motion to I guess continue the discussion, bring it back in two weeks to try to make a decision for a vote. Okay. I'm not going to support the motion. I think it's an exercise in futility to try to get it on the June election, we might as well just put it out of its misery today. Any other comments on it? All right, we have a motion -- Councilmember Kalra.

>> Councilmember Kalra: I will support the motion. I think it certainly deserves our attention. Are it's an important issue, the June is just as viable as November I know that councilmembers Liccardo and Rocha had a custom add-ons and just wanted to see if that was included. I think I was just looking at San Francisco's how they the their bond measure for maintenance and Councilmember Rocha looking for other alternatives, whether it be June or November for sales tax. Would that be June or November as quell? I will be supporting that motion.

>> Mayor Reed: Further discussion on the motion, all in favor, opposed, I count one, two, three opposed, that would be Oliverio, Liccardo and Reed opposed. So we'll bring it back in two weeks. That's the 28th. Okay.

>> City Manager Figone: Mr. Mayor.

>> Mayor Reed: City Manager.

>> City Manager Figone: Really staff would have no further comment other than what we've already shared so unless there's some other direction for us I think this is just a council discussion in two weeks, am I correct with that?

>> Mayor Reed: Well, I think there were a couple of questions about the San Francisco bond that would probably be relevant to the discussion.

>> City Attorney Doyle: We can look into that one.

>> Mayor Reed: There was one other one.

>> Councilmember Kalra: I think Councilmember Rocha was saying at least staff's thoughts on potentially having a special discussion on the tax to separate it from the June and November ballots.

>> Mayor Reed: That will come back on two weeks. Go to 5.1, deferred payment of park land fees for high rise multifamily residential projects located in the downtown core if they're painted what color? A very specific item, 5.1.

>> City Manager Figone: We're just here to answer questions.

>> Mayor Reed: Motion from Councilmember Liccardo. Have a request to speak. Mr. Wall, motion is to approve the recommendations.

>> Just want to read what's on today's agenda. Quote, adopt a resolution to amend the schedule of park land fees and credits, council resolution 7387 as amended authorizing the City Manager to negotiate and execute an amendment to agreements with developers of high rise multifamily residential projects, located in the downtown core area, who previously executed a deferment agreement with the city to provide up to an additional 12 months for payment of park land in lieu fees and crewed interest to the city, period close quotes personally I'm tired of these developers getting a Mulligan. They get these facilities, they show park land or developed parks in their borrow sure or advertisements. People come in under the auspices that they are going to get a park when in reality get a postage stamp of bare land with weeds. Maybe that's a park, California native plants, live in the winter death dead in the summer. But no, people that buy into these facilities should get what they pay for, and

that's a park. And giving them another 12 months even though the city gets the money, there are memory lapses I think that occur, on council. And maybe they'll say oh fiscal emergency we've got to use money over here or over there. Meanwhile the people that purchase these things, they can go out and play in the weeds. It's not fair.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just want to clarify for the record, on -- when we initially adopted a resolution in 2008 it would require the City Manager make a finding and I'm reading here from page 2 that the deferred pavement of park land fees contemplated in the agreement will not interfere to be deferred and I wanted to ask the City Manager or member of her team to confirm that that is in fact the case. My understanding is, even if we have this money in hand we can't build the park because we don't have the O&M maintenance to maintain a park. Is that correct?

>> Matt cano deputy director of Parks, Recreation, and Neighborhood Services. right now we don't have the construction the operation and maintenance funding for Martin park and even if we do have the funding today it would take us a while to gear up and we can make that finding.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: We have a motion to approve. On the motion, all in favor? Opposed, none opposed, that's approved. Item 7.1, master agreement with Cameron international for some electrical stuff. No staff presentation on that. There are cards? Motion by Councilmember Kalra for the staff recommendation. Mr. Wall.

>> My sole concern is just for the issue that this company is the sole-source of electrical engines. I'm not certain, I have concerns about reliance and the financial stability of a company that has different names to it. I know the corporation's may be well funded but for a sole source purchase I have concerns in that manner.

>> Mayor Reed: That concludes the public testimony. We have a staff recommendation to approve On the motion, all in favor, opposed, none opposed, that's approved. Item 7.2.

>> City Manager Figone: We do have a brief presentation. No?

>> Mayor Reed: Biosolids.

>> Kerrie Romanow: We had a presentation prepared but we are happy to just answer questions.

>> Mayor Reed: This presentation has been made to the transportation and environment committee, right? That's the same presentation. We have a motion to approve. I have some requests to speak. I'll take those now. Jim Foley.

>> Honorable mayor and councilmembers my name is Jim Foley. I represent McCarthy ranch. McCarthy ranch is a neighbor to the wastewater treatment plant. We have been closely following the wastewater treatment plant biosolids handling process the collaboration between ESD and Public Works makes a lot of sense. Directors Romanow and Sykes have done complent job in reducing the plant master plan process. This will be of great benefit to the surrounding community and we hope the plant master plan continues in this direction. Thank you.

>> Mayor Reed: Mr. Wall.

>> I applaud our friends from McCarthy ranch for orchestrating a very unique way of perpetuating their profit lines. I'll echo Mr. Mayor, this way of handling biosold is shameful. You can't get any greener than solar drying of sludge. This whole orchestration, by the McCarthy ranch property owners, I understand it and I can support them what they do. But you Mr. Mayor and Vice Mayor Nguyen have actively supported the development processes, in not communicating to the City of San José residents the cost of moving residual sludge and also the fact where the odors actually come from. The odor studies are ongoing from the landfill. Milpitas has their own defunct water treatment facilities that could cause odors. The sewers could cause odors. And yet the City of San José residents

and ratepayers for the tributary agencies are going to have to pony up somewhere around \$500 million in bond measures to pay for this. Now, I know the plant has to be rebuilt but Mr. Mayor, when an outside third party orchestrates the design and build of a plant for their own profit margins, their own properties, Mr. Mayor that about, that may -- a subsequent agreement may be opened up to allow more residential housing next to the plant, no. The San José Mercury News has done a very poor job in educating the public as to this push by McCarthy ranch which I think they're well deserved in what they get. They have a council in their pocket. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. On the motion, all in favor? Opposed, none opposed, that's approved. Item 7.3, San José Santa Clara water pollution control plant pretreatment plant some revisions to a sewer use ordinance. Mr. Wall you want to speak on that one?

>> Remember we started the meeting out with a quote from Mr. Lou Wolff. Performance is relatively simple to measure. And performance is what counts. You had two audits of your pretreatment program in October 2009 and 2011. These audits were from the environmental protection agency and from the state water quality control board. Both audits were fairly damning to your pretreatment program and we've heard talk yesterday too about investing in our capital assets. The pretreatment program is the only line of defense that the water pollution control plant has. And let's look at the structure of decision-making. We have a City Manager, an assistant City Manager, who's gotten awards for being motivational, two dispute City Managers, an assistant director of ESD, a deputy director of ESD and a program manager that all oversee this program and yet, there were 85 recommended actions and slr or violations to this program. Anonymity, when you look at the accounting of all this money, Mr. Mayor and thinking if you had proper management, none of this would have ever happened. None of it. And if the plant fails because your pretreatment program fails, who's going to pay? It's going to be the ratepayers. But what's interesting is that nobody holds anybody accountable. Nobody's lost their job over this and these people make a ton of money. You have to accept the report because you don't have anything else to do. I'm very shameful of the transportation and environment committee. I think their decision making is less than incompetent.

>> Mayor Reed: That concludes the public testimony. Is there a motion? Motion to accept the report. As recommended by the transportation and environment committee. On the motion, all in favor, opposed, none opposed, that's approved. Item 8.1. Actions related to title 16 amendments. Have some staff need to come down and take their places on this one. This didn't come up during the budget discussions, but I think it's still the case that our two card rooms generate more revenues for the City of San José than all of our auto dealers combined. And so we're very interested in making sure that we maintain that source of revenue, as well as maintaining good quality controls, so that we have high quality clubs. So we've been working on that for quite some time now and this comes to the council after having been to the Public Safety, Finance and Strategic Support committee. But Councilmember Constant did you have something you wanted to start with?

>> Councilmember Constant: Yes, thank you, mayor. I have a memo that I co-authored with the Vice Mayor and the mayor dated February 10th that I'd like to make a motion for first and then I'll speak to it.

>> Mayor Reed: We have a motion to make the recommendations outlined in the memorandum. Councilmember Constant.

>> Councilmember Constant: So this is an issue we have been dealing with for a number of years here at the city through Public Safety committee and several discussions with the council. We've had not only an audit report by our City Auditor but also an outside consultant's report in relation to the department, the police department's handling of the title 16's licensing and things of that nature. when this came to the public safety committee, we had several discussions over a period of, I don't even know how many different meetings we discussed it. But trying to really ensure that the issues that were brought up in the City Auditor's report on the performance of the division as far as getting through the processing of applications for licenses, permits, key employees, nonkey employees, things of that nature, which had been significantly backed up, at our last public safety committee meeting we asked the City Auditor based on what has transpired over the time period we have been dealing with this, we got an answer, I know Sharon's here, she'll probably speak to it, that the division has not reinvented the investigation process, they have not tracked the timeliness of permitting and licensing. However, our implemented. In other words the administration's process has not been fixed. And after a period of a couple of

years, I think it's important that we make these changes that are outlined so we can get the process working. So what the memo says is we would accept the amendments to title 16. We've already moved a couple of things forward in the past, but this would bring the non-key employee process, the permitting process, in line with the key employee process that has been moved to the state. Additionally, it would provide for a provisional rule making procedure to limit the length of time that provisional rules are in place, and require that any provisional rules that are intended to be final regulations get through the process of going through our implementation process quickly. That way we'd have certainty for the card clubs that operate under title 16. It would also ask the City Manager to develop a process that the card clubs can request clarification of title 16. I know many of you have read title 16 probably too many times, but it is a set of regulations that's not only complex, but there's a lot of areas that are a bit vague, and subject to interpretation. And given the card club's desires to comply with the regulation, I think it would be important that we allow them to ask for clarifications on what some of the items mean, just like you can ask the IRS or the FPPC or many other governing agencies for clarification on a particular rule or regulation. I think that it's also important that we establish a way to have grievances dealt with in a quick and efficient manner. I think that having the City Manager work with the two card clubs to come up with an agreed upon plan for resolution of disputes through an appeal process, where there's timely, cost efficient, and a process that everyone can rely on to -- because there's a lot of disputes that come up over title 16 throughout the course of trying to comply, enforce and regulate. And then finally as part of the budget process to really revisit the recommendations of the City Auditor and the white sand consultant report, and also, tie back to the original staff direction, back years ago when title 16 was written and enacted to look at how we might civilianize that more, make it more efficient, and put some space between regulation and enforcement. What this does is really streamline the process and move things forward in a quicker more predictable fashion. What it does not do is say that we are going to lighten up on enforcement or regulation. In fact it's my opinion and I don't know if that opinion is shared by everyone, but it is my opinion that doing this will free up the employees of the division of gaming control to concentrate their efforts on enforcement and making sure people are following the regulations that we have in place. I think that it's in everyone's best interest that those regulations are enforced rigorously. I know that the card clubs' owners should be open and inviting to this type of enforcement because when it comes down to it, they have the most to lose if there's gaps in the system where employees are taking advantage of the situation and money are slipping out where they shouldn't be slipping out. And of course we, the city as the recipient of the

taxes, have an interest in making sure that everything's done above board and enforced on a regular basis. So with that, I ask for the support of our colleagues to join me and the Vice Mayor and the mayor in this recommendation and move forward. Thank you.

>> Mayor Reed: All right, City Attorney.

>> City Attorney Doyle: Yes, I just have a couple of comments and some questions. The first issue, and we talked about this at the committee hearing, and it had to do with this turning over the nonkey employee permitting to the state. I think, and I know the chief is here, and the department conceptually doesn't have a problem with that. One thing councilmember we haven't had a chance to talk to the state. Either the division of gambling control which is part of the Department of Justice which has to approve any ordinance change or the which W.H.O. does the permitting, we'd like to have that conversation. I remember at the meeting we proposed an alternate. If we could do both city and the state that that would be the ideal solution. Because we have the inquiries from bay 101 officials who indicated they have a preference that the city continue to do it. Maybe because we have four-year approvals and the state has two-year, let the council need to know we need to pursue first and have that sort of space to look at that and come back. I think ideally we sense both from the committee and this memo, the council's concern in wanting to at least have the state have the ability to do the permitting. I have a question on the appeal of final regulations. And some ADR process. And I don't quite know what you mean about by that, if that's sort of a meet-and-confer or mediation process. Let you know what my interests are. First of all you can't contract away frur police power. Any regulations that have to be promulgated have to be imposed by the city. And I think we're more than willing to have conversations, sit down with you, called meet-and-confer mediation but at the end of the day, if there's no agreement the city needs the ability to do that. The example I've used if you use the S.E. heC. you may tell them to regulation. So that's something I think in developing this I know the managers office is going to have to have these conversation but we're going to be involved as well. And lastly, the only thing on coming back on the timely cost efficient process for appeals, I think that's the solution I think we're all trying to seek. You know having gone through the litigation for a number of years and worked through title 16 changes we did a lot of that. Both card clubs have to be engaged in that and hopefully we can get back in 60 days. But that's

something that getting both card rooms to agree to this, because they may have a different view of the world, I think you understand that.

>> Councilmember Constant: So if I could address each of those. The first one, my understanding is, the state does do it for virtually every other jurisdiction that has card clubs. And my understanding in conversations with you Rick, is that if we have the option of doing it here or there, the state's going to say they won't do it.

>> City Attorney Doyle: We don't know that for certain. That's a possibility. My point was, we haven't talked to the state. That is a very real possibility. And -- but I -- before we -- I don't want to judge or say what the state is going to tell us.

>> Councilmember Constant: I do think it's important we go that direction. I know in my conversations with the chief he wasn't opposed to having the lower level employees go to the state. Specifically since we already have the higher level employees going to the state. The issue about the provisional rules, one of the reasons I think this is important is, title 16 is so broad and gives so much discretion, that a gaming administrator can make a rule for virtually anything to be a temporary provisional rules and it can exist forever. And so I think my intent there, our intent, the authors of the memo is to make sure that if there is a need for an emergency rule or a provisional rule because something has arisen that we have the discretion for our gaming administrator to do that. But it's not an indefinite item.

>> City Attorney Doyle: I understand that. That's not what I was asking. I was asking the part 2 part of that. The final regulations and ADR process and just being understood that at the end of the day The city has to have the ability if you can't get consensus to impose a regulation.

>> Councilmember Constant: Understood and I think perhaps maybe that is something where can you come back to us. I know when we -- chief it looks like you want to say something. Let you get in here in one second. But in my view it's almost like the Meyers Milius Brown Act. You have a process going through othat involves

negotiation, potential plead yags, trying to come to a resolution before you do an imposition. Chief you want to weigh in?

>> Actually there are a couple. nonkey employee licensing. I do think some of the issues you referenced earlier about the inability of the division to do what we really needed to do was being bogged down by those nonkey employee licensing. I do agree to offload that to the state would be helpful but we do have one club in town that has expressan interest in having us maintain that, that is reasonable to explore if it's asking them to do or turning over to them that's not to say that we shouldn't ask them and if they're willing to do that to evaluate it to see if it mites the needs of the City of San José over a period of time. Irhonestly believe in a year or two or whatever that period is they've looked at what they need to do and if it meets our needs for regulatory purposes we might look at retaining or taking back the key employee licenses, again that is for the risk down the road but that's the risk of the City of San José that's more Rick to the clubs themselves but to the revenue to the city it's the major prairtsdz that we need to be concerned about. Just with respect to the rule making procedures and you talked about the provisional regulations, I would like to share something with you. It used to be two years and through litigation over the years it was caingd to one year. The problem of moving it to three months the effort we go through in trying to gain consensus everybody on the same page to see if there was a problem you discussed councilmember you want to be able to take inaction a timely fashion but you want to be collaborative. I fear if we go down to the three month limit wish so that is something I put out for consideration.

>> Councilmember Constant: So something short of a year, what would be your recommendation?

>> I think a year is good. But if that's not good for council I think we're more into the six to nine month range and even six might be short but even three is counterproductive for what we're trying to accomplish.

>> Councilmember Constant: Okay, and I didn't address the final thing, the City Attorney asked about the 60 days. My big concern is we've been dragging this on for a long time. I know part of it, it's drug on for a number of different reasons. Part of the work had to be done at the police department. I know the public safety committee sent it back a couple of times because we wanted nor clarification in the status and where things were. So my

goal and I think our goal, the signers of this, is to get something that has some time certainty in it. And I'd much rather push and then have you come and ask for more time versus the other way, quite frankly.

>> City Attorney Doyle: I think I would read it that way, we should return within 60 days but there may be some discussions that take us beyond that but we can at least come back.

>> Councilmember Constant: And what I'd like to do is you know hear more from my colleagues before I start making any amendments to the motion.

>> Mayor Reed: Okay, I think I'll take some public testimony. I only have one card, Antoinette McGill.

>> Antoinette McGill appearing on behalf of Garden City casino. Thank you, Mayor Reed and members of council. I'd just like to say that Garden City casino thanks regarding action regarding amendments to title 16, it's very important that the interests of the card rooms be taken into account given the tax revenue that's provided to the city. Garden City casino, soon to be casino matrix, believes in regulations. We are a self-reporting company and in addition, we believe that regulations protect us from loss. And business losses are something that can be very devastating. So I just wanted to state those comments, and again, we thank you for your time and your consideration in this matter.

>> Mayor Reed: Anyone else want to speak? Ron Werner.

>> Good afternoon, Mr. Mayor and members of the council. My name is Ron Werner. I'm the vice president of bay 101. We have no objection to the acceptance of the report as previously promulgated. We have a couple of concerns about the memorandum that was issued on February sect. And at the expense of being redundant, we're concerned about the state process, given the state's budgetary issues. We're not -- although we have experience with the key employee licensing we have no experience with the work permit processing. The state only does a limited number of work permits for a few cities that do not do their own work permits. We're also concerned about what happens to our 700 employees during the transition period and we have unanswered

questions about -- if it gets turned over what happens to the city work permits and the continuance of our employees. On the issue of the three-month period for provisional regulation, we do agree that there should be some time frame in there. Like the City Attorney has said, our members of the staff experience tells us that 90 days is probably too short for us to work out the kinks, and I'm concerned with the 90-day period we'll be stuck with a regulation we can't live with. So we'd ask for you know six months at a minimum. Other than that we agree with Councilmember Constant, on his other points, in that regulation of the card rooms is important for the public's perception of integrity, of the games, and the City of San José. Thank you very much for your time. That concludes the public testimony. We may have additional council comments or questions. I see none. Councilmember Constant do you want to make some modifications to your motion?

>> Councilmember Constant: Yes, first of all my goal is not to frustrate the rules and make provisional rules permanent by default. So I have no problem moving that up. Chief douse think 90 days, 120 days? I mean, I'm sorry, I'm reading the wrong line, the months. Six months, nine months?

>> My preference would be to keep it at a year to keep that flexibility. By the time you get everyone in the word room and you are trying to avoid a bad outcome and you're trying to work collaboratively, nine months we could do with a year better, with a goal to trying to keep it. I hear your frustration level so I would say no less than nine months.

>> Councilmember Constant: Friendly amendment to my own motion of nine months. I don't know who seconded but hopefully they agree.

>> Mayor Reed: It is amended.

>> Councilmember Constant: As far as the issue with the nonkey employees, and the possibility of alternating or optioning with the state, I do have some concerns if we go down that road. And let me just be frank. I think that in order for us, in order for me to feel comfortable having an option for the city, we need to address those concerns in the audit report, and we need to address them very definitively, and very linearly. Processes, procedures, time

lines, the whole ball of wax. And I just don't feel that we have that. And I know the City Auditor based on her comments has the same feeling. And I don't know Sharon if you want to weigh in at all on the progress or status, as you see it.

>> Sharon Erickson: Thank you, Councilmember Constant. Sharon Erickson, City Auditor. Two years ago my office made recommendations for several options for handling licensing and permitting of card room employees. At this point quite honestly given the limited improvement in the City's process we strongly recommend that you do move all permitting and licensing of card room employees to State of California. The California gambling control commission performance similar functions for other jurisdictions in the state. It is my staff's understanding that they are willing and could handle permitting and licensing under the auspices that they currently do it. I do agree that a transition period would have to be worked out, so the kinks of this thing would have to be worked out.

>> Councilmember Constant: Thank you. And I had remembered that, the first time we talked about this a couple of years ago in the conversations we had had with the state. So the question for you Rick is how can we get from where we are to get some analysis and keep this moving on a very rapid pace?

>> City Attorney Doyle: First of all let's explore the transitioning to the state and both card rooms, I think you heard from Bay 101, they have some concerns about the state's capacity and State process. We've not checked with the state at this point but we will check back and.

>> Ed Shikada: Ed Shikada, assistant City Manager. Also notable that staff has been working over the last several weeks on an automated process to really bring the work permit application process into the 21st century. So my understanding is the few weeks from being ready, we had been working on it, put it on hold, given this potential direction. But we'll make that a part of the discussion with the state as well, so that when we come back we can provide the up to date information on that readiness option for the council.

>> Councilmember Constant: Okay, so I'm just kind of thinking out loud here how I can do this with some sort of confidence that if nothing happens, we just move to this. Because I'm worried, we first start discussing this over two years ago, just from the time the council approved the title changes, it took about two years for us to really see them. And take action on them. So if anyone has anything to offer --

>> Mayor Reed: Why don't we tie this to number 3 which is to bring back in 60 days to rules the cost efficient -- timely cost efficiently process for dispute resolution and have them report on that.

>> Councilmember Constant: You know I think I'm comfortable with that, if there's some real teeth at the end. And I don't know, City Attorney, if there's a way that we can say, that if we don't have an answer in 60 days, this is what we implement. Because I just -- I know, I'm probably not showing as frustrated as I have in the past but I'm really frustrated by this process.

>> City Attorney Doyle: I think we get the time sensitivity and we'll come back in 60 days to rules and Rules can then say either march forward or you know, I think you have to wait until you get the information but we'll act on it.

>> Councilmember Constant: So let me just make it very clear. I'm willing to give 60 days. But it's a very reluctant 60 days. And I do sit on the Rules Committee. So I'll just tell you when it comes to the Rules Committee in 60 days my intent would be to have it on the next council agenda for implementation if there's nothing. Just to be very blatantly clear. So the City Clerk is clear on the motion, there is the one amendment on the 1 B 1 or 1 B I, three months to nine months, I got that backwards, on the next section to have the City Attorney look at that alternative dispute resolution process for the approval of final regulations to see how we might be able to efficiently move that forward. And then tying the nonkey employees, moving to the state on a 60-daytime track for you to come back with options for us. And if not, then I'll be pushing forward to bring it to council for immediate action. That is the motion. Pierluigi I guess you're still okay with it. Okay. He's heard this many times.

>> Mayor Reed: Modified motion.

>> Ed Shikada: One point if I may.

>> Mayor Reed: Motion includes adoption of the ordinance. At least we've done something today. Ed.

>> Ed Shikada: Item number 3 on the direction to manager to come back, the phrase, agreed upon plan. I think could be somewhat problematic to the extent that the interests of the card clubs are not necessarily aligned much less not necessarily aligned with the city. So given that and perhaps to pick up on your reference to Meyers Milius Brown Act it's meet and confer not meet and agree. Based on consultation recognizing that we might not all be on the same page.

>> Councilmember Constant: Right and knowing that I had some very prescriptive language in my memo there are a couple of different options that if the city and the clubs can't agree on I've got some very clear ideas write think we need to go and I'll be more than willing to be very specific about that at the rules committee.

>> Mayor Reed: I can be optimistic that if we can sit down with the clubs at a time we are not arguing with each other over something we can figure out a way to resolve it. That's not necessarily to say that we will come one an agreement but if we get focused on it we'll come up with something that will be reasonably acceptable we obviously have to make the decision based on the recommendation. But I'm still going to be optimistic. Okay, we have a motion as amended. On the motion, all in favor, opposed, none opposed, that's approved. Title 16 amendment done. For today. Couple more items on the agenda. Item 8.2, Homeland Security federal emergency agency grant proofer Councilmember Oliverio.

>> Councilmember Oliverio: Mayor, I don't know if the budget office is still here. I just want to make sure that any time we accept a grant obviously there's some obligations to the budget and I just want to make sure we keep in mind keep enough money open for future COPS grants. John if SAFR grants are flexibility should we choose for COPS grants thank you.

>> Mayor Reed: I think all of that's true. I'll let Chief McDonald add to that if he wants to but this is not the acceptance of a grant. It's the application of a grant and if we don't have the money we're not going to be able to accept it. But it has been easier to get SAFR money than it has been to get justice money chief.

>> Mr. Mayor, this is the fiscal year twin SAFR grant so it's been delayed. And the announcement for the grant application period and the period actually didn't open until January 30th, and so trying to get it before you before the application period closed which is the 24th of this month meant we had to get it here today. Apologize for this.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: As the liaison we need this very badly, I would move for approval.

>> Councilmember Herrera: Second.

>> Mayor Reed: The application is to apply for the grant, not the grant itself, we'll be back for that we hope. All in favor, opposed, none opposed, that's approved. Good luck.

>> Thank you.

>> Mayor Reed: 3.9, fiscal 2011-12, fiscal priorities and policies, we need to vote and that's on the agenda to make a decision. I think there are people who want to speak on this as well. Councilmember Rocha.

>> Councilmember Rocha: Mr. Mayor if I may make a suggestion I may get booed, consideration to defer this item to the next city council meeting.

>> Councilmember Herrera: Second.

>> Councilmember Rocha: My interest is having a good public policy debate on this and not rushing, would I like to hear from staff as well as my colleagues opinions. If we could consider taking public testimony. The people have no interest in coming back to this building on this item. Just a suggestion.

>> Mayor Reed: There was a motion and second to do that. Some enthusiasm is what I heard. Let me just say that I think we can do this, the way staff was saying is we want to pick the next ones in line when they get done because they're not completely done with everything on the list. I think we have some time, it won't delay taking action but I agree we ought to let the people who are here if they want to speak, they can always come back when we take this up. And whether it will be in two weeks or whatever, the Rules Committee will have to look at the agenda probably in two week. So let's let people who want to speak go ahead and do that. Michael Fox, Jonathan Reyes, (saying names).

>> My name is Mike Fox, I'm the CEO of goodwill of Silicon Valley located in San José. Goodwill runs 18 retail stores, nine of which are here in San José. We employ about 550 people, many who have multiple barriers to employment. Additionally we veterans and tear teams. In 2011 we repurposed recycled more than 2200 pounds going into the landfill. The revenue allowed us to serve 5500 people and placed 280 people with barriers into employment. I'm asking you to support inclusion over your 2012 policies an ordinance concerning unattended donation boxes. Most of the boxes are unpermitted have been placed without regard stay here and in many cases the money is benefiting for profit organizations not located here. Thank you for your consideration I brought a couple of people from goodwill, some of my colleagues who have been benefited from goodwill to speak to you too.

>> Good evening, Mr. Mayor and council. My name is Jonathan Reyes and I just want to introduce myself as a very lucky beneficiary of goodwill's programs. Couple years ago I was diagnosed with muscular dystrophy. Prior to the diagnosis I didn't know what was going on with me. It's a very rare genetic disease. But since I didn't know what was happening with me, the prospect of work was stressful, a stressful notion. Even though I have worked you know in the past I actually used to be a personal trainer and a bachelor's degree from Cal state Northridge in business. I work consistently through college. And up until maybe about four years ago. But when I was looking

around for job prospects, I was lucky enough to see some fliers that advertise goodwill's career readiness program and institute for career development and I am very happy today to be employed by goodwill under one of these programs, the CRP, clear readiness program. And I would urge you also to support my boss and his requests for approval of the the designation, ordinance. Thank you very much.

>> Good evening, council, Robert shuck. Three years ago I was a homeless veteran living in a homeless shelter in San José. I was referred to goodwill. And the goodwill and their programs have helped me. I wouldn't be where I am today, I'm now the general manager of good source, a division of goodwill. They've helped me throughout with employment. Transportation. And housing. So I wouldn't be where I am today, if it weren't for goodwill. Thank you.

>> Good evening, Mr. Mayor and members of the council. My name is Frederick Ferer, top 10 priority in the policy ordinances outlined in Councilmember Oliverio, Campos and Liccardo's memo all communities in San José have access to affordable quality fresh foods and vegetables and funded by the communities putting several partners city departments to be urban agriculture community gardens support certified markets and mobile produce vendors. Health trust funding I Public Health law and policy which is a national expert on health policy has been working with the city staff to identify what nationally recognized he best practices policies and ordinances that the City of San José can adapt to fill the specific needs and priorities in this community. PHLP will also help draft the policy ordinance language itself working with the staff later this fall of this year. Aoutlined in the memo this work builds on the commitments of envision 2040 to promote access to healthy food and to date the health trust has county departments and neighborhood associations, all of which expressed commitment to work with us on being able to make sure we make these policies come true. We urge you to take advantage of these resources and the partnership by supporting the prioritization of the health food access and mobile fending policies in your work. Thank you. .

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

>> Councilmember Pyle: Other than the fact that so many people have waited so long, I just wanted to ask if it's at all possible to take a look at some of these boxes. They've really ticked me off abuse they're taking money away from our libraries, they're taking away money from other groups that need help and certainly away from goodwill. Is there some way that we can just identify them, as a viable problem so that next when we do get together we'll know for sure that this is a worthwhile project? I don't know if staff could do that or not.

>> City Attorney Doyle: Well, to the extent they're not permitted, they are a nuisance.

>> Councilmember Pyle: Ipso facto.

>> City Attorney Doyle: We can remove them. The problem is tracking them. And we operate on a complaint-based basis so we don't get all the wudges. So the idea is to comb.with some mechanism to deal with them more proactively and I'll let Laurel address it from the code enforcement side.

>> Laurel Prevetti: Thank you, Laurel Prevetti, assistant director of Planning, Building, and Code Enforcement. The City Attorney is correct. We do rely on the community as our eyes and ears. If the community finds a business that is operating in a way that is not conducive to the City of San José, we do encourage residents to file a complaint. They can do so on our Website through code enforcement or they can do so through the phone.

>> Councilmember Pyle: So if we alert our neighborhood groups et cetera that we meet with on a regular based that this is problematic they can help us to determine where they are? Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I appreciate the suggestion to come back on these items. There's a lot of great items to consider. And I do want to thank Fred for being here, and continuing to champion the health of our valley. And there's one question I had, when we do come back, I know -- I believe

there was a suggestion from the staff that access to healthy food and farmers markets could be combined. I know that Councilmember Liccardo made a suggestion, even potential mobile vending. If we know beforehand if it is a possibility to combine all three because it goes to obviously the same general area and since all three of them individually will require some work and we can continue to work with the partner organizations. And second of all I would like to thank Michael and the great spokespersons from goodwill, we know the great work they do, I agree with Councilmember Pyle really since I've learned about this issue and I've gotten and I think even from some of the goodwill represents they do have maps identifying where some of them are but it doesn't even count for some of these boxes that just pop up. And I think that you know we need to -- it's deceptive, at best it's deceptive, at worst criminally I think it's certainly something that when we come back, we'll have further discussions whether to make it a priority but there are things regardless whether it's made a top 10 priority the things we can do now, first by educating ourselves kind of scanning your own neighborhoods, take a look around you'll start seeing these boxes are everywhere. Take a look at them, read them note them, our staff has been doing that, we have noted companies that have particularly bad reputation, so they have a game plan as to how to go forward even if we don't necessarily make it an ordinance priority at least we have a game plan from Planning. If they something is done about it but I certainly think it's an important issue and I'm glad that we're coming back so it will give us all time to think how important that issue is as a potential top ten ordinance.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Yeah I also agree with the suggestion of Councilmember Kalra regarding combining the memos or the priorities, street vendors and you know access to healthy foods. I think that would be -- I think a perfect idea since we are going to see they are all going to intertwine anyway. The other one I want to show you how close to home these collection boxes are. I was at the Alum Rock resource center a few weeks ago. There is a collection box on city property at the Alum Rock youth center.

>> Mayor Reed: Does it have any fresh fruit as part of it?

>> Councilmember Campos: They do not. But you know they so boldly say we are not a nonprofit. We are a for-profit business and you know so staff luckily is working on getting that removed. But they -- yeah, they pop up everywhere. And that is something we have to deal with. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I'm glad that we're going to postpone this so we can have a more thoughtful and time to have more discussion on these items. I just want to thank -- and I want to thank the folks from goodwill and also, the health trust, for coming. I think it's really important for us to hear your testimony on these items. I also wanted to add in addition to the one thing we're combining if there's any other items we can combine. In addition to some other information we can receive some of those have been there a very long time and we may not all be aware of their significance so I'd like to get that information. I'd also like a way when we vote on these things the ones that -- if they receive no votes have some process to have them deleted from the list. I would like to have the list shrunk. not have us work on them if they're not really anybody's main priority.

>> Mayor Reed: I think Laurel Prevetti needed to respond to a comment or question.

>> Laurel Prevetti: Thank you. I wanted to talk about the combination of the healthy food and the mobile vining and farmers market. We are well on our way to healthy food ordinance in fact in December council made the first ordinance changes to facilitate outdoor gardening on people's backyards and their ability to sell and share that produce. So you've already started on that path. We are already working on the healthy markets staff is working on that way. We are well underway. To the extent we can pull apart the mobile fending we will certainly do so. The item that went to staff we haven't even begun to study so we may need to pull apart some of the mobile vending but the food related items we certainly agree could be combined. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. My colleagues have strong views on the owners, probably a lot of the voting is probably already decided. But if it is the will, to do it another night we're halfway there based on the comments I've heard.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Mayor, if it comments back two three weeks, maybe if there can be on each item also when it was first brought up or initiated. So at least we have some sense how long these items have been sitting around and kind of waiting for council to get the nod. That will give us some sense on some of the items that we haven't been as familiar with, maybe we weren't the ones that brought it up, maybe staff initiated it years ago. Maybe that will add another issue.

>> Mayor Reed: We have a motion to defer probably for two weeks, we'll see where it fits on the agenda. All in favor, opposed, none opposed, that completes our agenda except for open forum. I have no cards under open forum. That completes our agenda. It's Valentine's Day go home and be nice to somebody.