

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

Police and Fire retirement board.

>> David Bacigalupi: Good morning, ladies and gentlemen. I'm going to call to order the meeting of the board of administration of the Police and Fire retirement plan for the City of San José. Under orders of the day I have three items. Item number 2A, it's an application for a disability retirement by police officer Kyle Johnson, that's been deferred at his request. Item 1 LL. and that is an application for a service retirement, for fire chief Darryl Von Raesfeld, changing the effective date from June 25th to June 26th at his request. And the last item is item 3Z, application for a change of status by retired police officer John Quayle and that has been deferred at his request. Are there any other requests for orders of the day? Hearing none we'll start on retirements. We have quite a few service retirements today. Actually, 31 police officers and ten firefighters are retiring today. So I'm going to read all the names for the record and the information and then I'll entertain a motion for the -- for this very, very large group of employees. So item number 1, service. Item 1. A.

>> Councilmember Pyle: Application for a service retirement by police captain Ernie Alcantar, effective June 27, 2010. 27.10 years of service. B. Donald K. Anders, deputy police chief, police department. Effective June 26th, 2010. 28.35 years of service. With reciprocity. Item number 1 C. Oscar D. Bazarro, fire captain, fire department, effective June 26, 2010. with 24.47 years of service. and that's also With reciprocity. Early retirement. item number 1 D. is application for police officer Truman Bowman, police officer, police department. Effective June 26th, 2010. 20.03 years of service. one E is police lieutenant Gordon Bowen, police lieutenant, police department. Effective June 26th, 2010. 27.34 years of service. 1 F. Michael P. Brown, police sergeant, police department. Effective June 26th, 2010. 26.28 years of service. G. Lloyd Cardone, police sergeant, police department, effective June 26th, 2010. 27.35 years of service. H. John Carrillo, police officer, Effective June 26th, 2010. 27 years of service. 1 I. is deputy police chief David Cavallaro, Effective June 26, 2010. 28.01 years of service. item 1 J. Anthony C. Colon, police Sergeant, effective July 24, 2010. 26.9 years of service. Item 1 K. is police lieutenant Mike Crescini, Effective June 25th, 2010. With 27.68 years of service. Item number 1 L. is police lieutenant Robert Dominguez, Effective June 27, 2010. 26.63 years of service. Item 1 M. it's listed on the agenda as battalion chief. But it's Fire captain Paul Eden from the fire department. June 27th, 2010. 25.95 years of service. With reciprocity. Item number 1 N. Police captain Vaughn Edwards. Effective June 26, 2010. 27.34 years of service. With reciprocity. Item number 1 O. is police sergeant Al Ferla, effective June 26, 2010. 28.01 years of service. one P. is police officer Mark Goings. Effective June 26, 2010. 23.76 years of service. Item one Q. and this is a correction on the agenda as well, fire engineer, it is listed as fire captain but fire engineer, Edward Guillory, Effective June 26th, 2010. 25.93 years of service. With reciprocity. one R. is police sergeant Steven Joseph Gutierrez, Effective August 21, 2010. 25.07 years of service. one S. is police officer Millard F. Hampton. Effective June 12, 2010. 25.9 years of service. Be T. Calvin Hom, fire captain, fire department. 27.7 years of service. Item 1 U. Curtis A. Jackson, police sergeant, police department, effective June 26, 2010. 29.30 years of service. Item 1 V is Harry L. Jackson, jr. Fire captain, fire department. Effective June 26, 2010. 21.90 years of service. W. Matt McLinden, police officer, police department. Effective June 26, 2010, 28.01 years of service. item 1 X. is police sergeant Bob Mendiola, effective June 26th, 2010. 25.13 years of service. With reciprocity. Item 1 Y. is fire engineer Jeff Olivetti, Effective June 27, 2010. 25.95 years of service. item 1 Z. is police officer William Orok, Effective June 12, 2010. 24.06 years of service. Item 1. AA. Chris Passeur, police Officer, effective June 26th, 2010. 26.68 years of service. 1 BB. Luis Manuel Pinheiro, police officer, police department, effective June 26th, 2010. 29.38 years of service. 1 CC. Dana C. Reed, deputy fire chief. Fire department, effective June 26, 2010. 29.13 years of service. 1 DD, Daniel R. Reinmuth, fire engineer. Fire department, effective June 27, 2010. 29.84 years of service. 1 EE. Rene T. Retuta, police officer, police department. Effective June 26, 2010. 25.94 years of service. 1 FF. Jeffrey J. Ricketts, police sergeant, police department. Effective June 26, between. 2010. 25.21 years of service. 1 GG. John Rusyn, police officer, police department. Effective August 21, 2010. With 25.01 years of service. With reciprocity. 1 HH. Kim R. Shuper, police sergeant, police department, effective June 26, 2010. 27.69 years of service. 1 II. Robert St. Amour, police sergeant, police department. Effective June 27, 2010. 28.57 years of service. 1 JJ. is Nestor Torres, police officer, police department. Effective June 26, 2010. 28.92 years of service. 1 KK. is Theodore J. Urban, police officer, police department, effective June 26, 2010. 27.70 years of service. 1 LL. Darryl Von Raesfeld, fire chief, fire department. Effective June 26, 2010. 32.65 years of service. 1 MM. is John A. Wells, fire captain, fire department. Effective June 26, 2010. With 27.12 years of service. 1 NN. is Neal Sherwood Wilson, police sergeant, police department. Effective June 26, 2010. 28.35 years of service. 1 OO. is Anthony Young, police sergeant, police department, effective June

26, 2010. With 26.96 years of service. And those are all the service retirement applications for today. I'll entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: Okay, I have a motion and second. Is there further discussion on the motion? Conrad?

>> Conrad Taylor: No.

>> David Bacigalupi: Sam.

>> Sam Liccardo: I know we have many, many distinguished members of the Police and Fire members that are losing. I want to recognize one in particular, Chief Darryl Von Raesfeld is here. I think he's here for another matter but I want to thank him for his extraordinary leadership during an incredibly difficult time for the department and appreciate everything he's done for the city.

>> David Bacigalupi: Thank you, Sam. And just for comments on the motion, like I said, there were 31 members of the police department retiring today. Ten members of the fire department. For a combined total of nearly 1100 years of city service. And that's quite a bit of service walking out the door and it's unfortunate you see all these dates going just before June 30th. But I don't see, other than the chief I don't see any other members with a service retirement in the audience. For the record. But I'd like to say congratulations to them. And wish them all the very best in the future, at their next and best phase of their life, retirement. So okay, any other comments? Hearing no other comments all in favor all opposed the motion carries. Okay, next item. Item number 3A is change of status application from service retirement to service connected disability retirement from police officer Ed marini, effective January 12, 2008. 28.77 years of service. And for the record, Ed's in the audience, and is represented by Mr. Jim Jeffers. I have a motion and second. Any further discussion on the motion? For the record, Roger, did you have some information you wanted to input?

>> I'll just brief this. Police officer Edward marini is requesting a change of status, service connected disability. Based on heart, left lower leg, left hip left knee back left and right shoulder, left eye, left ribs and face. He's 60 years of age, he has 28.77 years of service. Medical reports are in your packet. Work restrictions include he should avoid sustained shoulder level or above shoulder level work with his right arm. He should avoid sustained heavy exertion. He should avoid heavy lifting. Is -- he currently retired January 12, 2008. And at his separation, he -- and date of application he was working full duty.

>> David Bacigalupi: Thank you. Dr. Das there is lot of information in our packet from you is there anything you would like to add?

>> No.

>> David Bacigalupi: I have a motion and second. Any further discussion? Hearing no further concession, all in favor, all opposed, the motion carries. Ed I know you've been retired and stuff we worked together for many, many years. And you know, that unfortunate accident that happened out on 10th and Alma Street where you were the first police officer that ever stopped breathing in my arms. And I am just so glad to see you here today, and I hope your retirement's you know, is as good as your work was. Good luck to you, Ed.

>>> The next one item number 3B is a application from retired police lieutenant Rick Martinez. request for change in status to service connected disability retirement effective December 12, 2009. With 28.62 years of service. Retired lieutenant Rick Martinez is in the audience and is represented by Mr. Jeffers. Roger.

>> Police lieutenant Rick Martinez is requesting a change in status from a service connected disability based on heart condition. He's 50 years of age, he has 28.62 years of service. Medical reports are in your packet. Work restrictions include he should avoid strenuous physical activity. He retired 12-12-09 at the time of separation and application he was on disability leave. There is no permanent duty, modified duty available.

>> David Bacigalupi: Thank you, Roger. Dr. Das anything you would like to add to the packet?

>> No.

>> I'll make a motion for approval.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Sam?

>> Sam Liccardo: Dr. Das I see in your comments I understand the diagnosis is hypertension. Choose environmental lifestyle and genetic predisposition. In this case I understand there may be a lot here that may be unrelated, specifically to work. Individual with diabetes, who has frequent recommendations from the doctor around lifestyle issues. Where -- how do we attribute the cause of this heart condition? I

understand there is a statutory presumption that applies outside this ruling that's often applied by analogy, but is there any way, medically, that we can understand the causation any better?

>> Well, I think what you can do is kind of rank contributing factors in terms of what role they play. And so obviously, the one probably most important factor that we really don't have a handle or a grip on would be genetic. Because that, you know, a lot of times it's independent of lifestyle. And you can do everything correctly but if your genes are going to tell you to go in a certain direction that's where you're going to go. If you do everything bad, whatever the genes are you can end up being healthy. Now, when we look at environmental risk factors, diabetes is known to be a strong contributor to cardiovascular disease so that would be very, very top on my list as far as contributing factors. Then the next one, which is a predictor would be in terms of exercise endurance, or exercise capacity, so that comes down to exercise and routinely exercising, then we look at nutrition. We look in terms of what kind of things do you eat that can contribute to cardiovascular disease. Then we look at other environmental factors which are -- can also contribute quite a bit. Cigarette smoking. Very, very high relationship between strokes, hypertension, so that's a lifestyle risk factor, I don't think that that was present in this case but that's one that you need to consider. Additionally, you know, there's a lot of discussion, medical literature about stress. And its relationship to cardiovascular disease. In terms of the direct cause and relationship between stress and cardiovascular disease that hasn't really been elucidated, but there is a lot of epidemiology out there linking the two, and that's kind of where the presumption for the cardiovascular disease arrives from the legislature. So that's the underlying presumption. So that's one of the things that we kind of assume is present in the job description for sworn officers. So that's where the link is between hypertension and the job. But in terms of ranking the contributing factors, it's a little bit easier to attribute like a disease like hypertension if all the other risk factors are gone, if diabetes is absent, body mass index is within normal limits and everything else is going -- everything else is good and then you still have hypertension then you would look and see well perhaps that's a little bit more important contributor than the others.

>> Sam Liccardo: Okay. And just so we understand or I understand better what our required findings are, I know we've talked about this in the past and I'm still a little bit murky. Is it to find that this disability is employment connected, is it that a preponderance, is it a significant amount less than preponderance? What is exactly the standard in terms of causation?

>> David Bacigalupi: Turn your mic on, thank you.

>> First and most important I think is, we have no case law helping us define this under our code. Under our statute, okay? So that's a pity. What do we look to? Well, I think we can look to analogies. The clearest analogies, the most developed analogies are under the county employees retirement law involving the 1937 act counties. And with respect to them, they require something more than -- you know the judicial comments have been I think singularly unhelpful. They say things like there has to be a measurable connection. It has to be substantial. A couple of courts, it's not Cal Supreme Court, so again it's just appellate courts of which there are many, a few of them have used percentages and required at least 20%, a relatively low standard, but there is case law under the 37 act for that kind of approach, and you'll notice that here on page 31, it is a 2005 report. It does indicate there's a -- this Dr. Tuftly indicates there's a 20% probability and he cites a report we do not have by Dr. Hyman that says there's 25% attributable to the industrial causes.

>> Sam Liccardo: He says there is not more than 25%, could be apportioned somewhat lower. Perhaps 20.

>> So if you find those case analogies from the county employees retirement law to be appropriate to interpret our code, then you could decide the 20% standard is sufficient.

>> Sam Liccardo: That would be by analogy.

>> Only, only by analogy.

>> I would only comment that the county employees retirement law does have some presumptions in it that we don't have although the case law is more on the standard, and burden of proof.

>> Sam Liccardo: Thank you.

>> That Russ is speaking.

>> David Bacigalupi: Okay, Rose.

>> Rose Herrera: Thank you. In looking through this report, I mean one of the things I was looking at in terms of the hypertension diagnosis and the diabetes was, was there smoking involved? Was that risk factor there or drinking? And it wasn't. On page 7 of 13, it talks about his diagnosis of hypertension for about four to five years. He had the perception of psychoemotional stress from his work activities. It discusses here about the relationship between psychoemotional stress and hypertension. And it seems

that his hypertension was diagnosed before the diabetes. I guess this is an individual decision here in terms of is it overwhelming, is there enough evidence here in terms of the job contributing to this. But it looks like it's pretty documented in here that the psychoemotional stress, hypertension, possible sleep apnea which also could be related to stress, and several other things that are documented in this that would lead me to support the motion to grant this.

>> David Bacigalupi: Thank you, Rose. Any further discussion? Hearing no further discussion, all in favor? All opposed, we have two nos. The motion carries. Rick, good luck to you in retirement. Sorry, I remember that stroke knocking you down, so take care of yourself in retirement as well. Okay next item is item number 3C. It's an application for a service connected disability retirement change of status from service retirement by retired police lieutenant Will Montano, that would be effective January 24, 2009. with 27.73 years of service. for the record, Mr. Montano is in the audience, represented by Rogers Jeffers. , information please.

>> Police lieutenant Wilfredo Montano is requesting a change of status. He's looking for a service connected disability based on aortic stenosis, he is age 54. He has 27.73 years of service. Medical records are in your packet. The work restrictions are, you should avoid moderately demanding physical activity. At the time of separation and application he was full time bureau of field operations control division at the time of separation. There is no permanent modified duty available.

>> Move to approve.

>> Second.

>> David Bacigalupi: We have a motion and second. Any further discussion on the motion? Dr. Das I assume you have nothing else to add to the packet.

>> Unless you'd like me to.

>> David Bacigalupi: Thank you. Turn your mic on.

>> Implicit in the board's if it decides to grant this motion is a finding that his medical condition was caused by the job. And perhaps you'd like to hear from Dr. Das on that because at least I didn't find anything in the packet presented to the board that discussed causation one way or the other.

>> David Bacigalupi: Dr. Das.

>> Well, as far as causation goes, this is an underlying abnormality in the heart so it's an anatomic abnormality that's already present. If we were trying to have a link between occupational activities and his particular diagnosis the only thing I would be able to arise at, is if he were in a completely sedentary job perhaps we have last cardiac demand or less demand on his heart. And therefore, there wouldn't -- he wouldn't get -- he wouldn't arrive at the left ventricular hypertrophy, or have some of the consequences of the aortic stenosis as quickly. So I would argue that it's accelerated, that his disease process is accelerated because of the physically demanding activity compared to a sedentary lifestyle. Of course his tradeoffs being completely sedentary, that would be the only linkage I would be able to arrive at from a causation standpoint between occupational activities and his particular diagnosis and problem.

>> David Bacigalupi: Thank you, Dr. Das, any other questions or discussion? Hearing no further discussions, all in favor, all opposed, we have one no. The motion carries. Will, take care of yourself in retirement and enjoy it, be careful. Okay, item number 3D has been deferred. Under orders of the day. Item 3E it's an application by retired police officer Richard Sanchez, to change in status to service connected disability retirement effective December 1, 2007. With 26.79 years of service. And for the record, retired police officer Richard Sanchez is in the audience and representing himself. Okay. Roger.

>> Police officer Richard Sanchez is requesting a change of status to service connected disability. Based on neck, back and both knees. He's 54 years of age. He has 26.79 years of service. Medical reports are in your packet. Work restrictions include he should avoid sustained squatting and kneeling. He should avoid sustained heavy lifting. He retired 12-1-2007, and at the time of separation and application he was disabled.

>> David Bacigalupi: Okay, I have a motion and second. Further discussion on the motion? Dr. Das you have nothing else to add to the --

>> No I don't.

>> David Bacigalupi: Thank you. Any further discussion? Hearing no further discussion all in favor, all opposed, the motion carries. Dick, be careful out there, enjoy your retirement. Item number 3 F. is a application from a change of status from service retirement to service-connected disability retirement by retired police officer David Santiago, effective December -- excuse me, effective January 24th, 2009, with 28 years of service. And for the record, David Santiago, retired police officer is in the audience, is representing himself. Roger.

>> Police officer David Santiago is requesting a change of status for service connected disability based on neck, back, shoulders, hips, and knees. He is 55 years of age. He has 28 years of service. Medical reports are in your packet. Work restrictions include he should avoid carrying more than 60 pounds. He retired January 24th, 2009. At the time of separation and application, he was on disability. And there is no modified duty available.

>> David Bacigalupi: Thank you, Roger. Dr. Das anything to add to the packet?

>> No, I don't.

>> David Bacigalupi: Thank you. Go ahead.

>> Just a question for you on your status as you are leaving. Your last full duty in 2009 and service retired in 2009. But then were on disability in 2009. Is that all -- and then retired right after that or how did that exactly transpire, the timing?

>> David Bacigalupi: Push the button on there so the microphone goes on. There's a little white button. Perfect, thanks Dave.

>> Test, okay. I was on disability when I retired due to my injuries I felt that I would no longer do the job. I wanted to do my full 30 years, but I just was taking too much of a chance of really injuring myself to the point where I wouldn't be able to have a decent retirement life. So yes, I was on disability when I retired. Could you rephrase the question, though?

>> Sure. I'm just trying to understand the timing. There's information here that says you were in full service and then also said that you were in disability. So on that month of January were you -- how long were you on disability before you'd retired?

>> The disability was approximately three weeks.

>> Three weeks. And had you been cleared to return to work?

>> No, that would have been only modified duty, permanent modified duty.

>> And then did we have an information here about the availability of permanent modified duty?

>> Yes, there was no permanent modified duty at the time.

>> David Bacigalupi: Page 14.

>> Thank you.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: Dave, I have a couple of questions here. It's on our report, page 9. It looks like you have a doctor's report on January 4, 2009, looks like you could return to regular work on January 11, 2009. There is also another doctor's report, a progress report on February 4th, 2009 that indicates you're able to return to work. It doesn't indicate modified, on both of these it's regular work and you indicated you told the doctor that you were retired. So I guess I'm a little confused on the modified, that you were modified because we have the two notes here from the doctor indicating that you can go back to regular duty.

>> Well, on pages 25, pages 7 and 28, there is indications there that I was only qualified for permanent modified duty. These were from the functional capacity assessments, as well as reports from Dr. Newman who did my QME on page 21.

>> So I guess Dr. Newman's decision changed?

>> It appears --

>> From January?

>> Yes it did.

>> Conrad Taylor: Because you were ready for regular duty and.

>> Also it states on page 94 I was -- I should be -- I was permanently injured, I do have two prior ratings on my neck and back for permanent injuries.

>> David Bacigalupi: Rose.

>> Rose Herrera: David, I had a question. Page 27, prior to the information you were talking about page 28. The patient chose to retire, this was his choice and was not recommended by his PTP.

>> Well, yes, I did choose to retire due to my injuries. And -- I just refer back to the functional capacity assessments that were done after I retired that state that I should be on permanent modified duty only. You can see this on page 28, 7, and page 25.

>> David Bacigalupi: Did you have additional questions Rose?

>> Rose Herrera: No.

>> David Bacigalupi: Okay, Scott.

>> Scott Johnson: Thank you. David, I'm just a little bit confused about your injuries. On this report on page 5 it indicates that you had two motorcycle accidents but you did not report the injuries and you did

not seek treatment immediately. So the disability that you are on, prior to retirement, did that disability relate to these two accidents, motorcycle accidents that were not reported?

>> No, the disability I was on was from a different injury. These other injuries, from the motorcycle and that -- and I did report two of the accidents that I had from the motorcycles, which did cause the injuries to my neck and lower back. The other injuries that occurred after that were possibly related to that. Just made it worse. And to the point where I couldn't take the chance of any other injuries after that. It was just painful. I was getting nerve pain through my spine, through my legs, shoulders and neck. So I was -- would not have been able to return to full duty.

>> Scott Johnson: Okay, so as a follow-up question, David, on page 5 it also states that you also cite many other injuries to your shoulder during the course of duty. Were there dates or specifics related to those injuries, and were they reported?

>> Well, on page 8 and page 54, it covers injuries to my shoulders which I received cortisone injection for.

>> Scott Johnson: But I'm sorry, that provides the medical treatment, but it doesn't provide me with the information on when the -- when the injuries occurred. I'm just trying find the connection for the work related injuries.

>> Well, the shoulder injuries occurred back when I was -- had my motorcycle accidents. And --

>> Scott Johnson: Okay, so they did occur between those two accidents that were not reported?

>> They did occur during those, and also, they were reinjured during the last few injuries that I reported. One was a combative suspect that I had to arrest and the other, the last one, of course, that was the fall.

>> Scott Johnson: Okay, thank you.

>> David Bacigalupi: Sam.

>> Sam Liccardo: Lieutenant, I'm not sure if I'm allowed to ask this question, but I thought I'd ask it anyway. I understand we are supposed to consider whether or not there are positions available at the time of the retirement. But the question I'd ask and I'm not sure this is relevant or not, lawyers can tell me. Is there any exempt or officer equality programs available today?

>> You can ask the question. But you're right, the question is whether there were exempt officer positions available at the time.

>> Sam Liccardo: Okay, I'll withdraw the question, all right, thank you.

>> David Bacigalupi: Okay, Scott.

>> Scott Johnson: Can I ask a follow-up? Related to that, on page 28, I think there's a statement here that David would be able to work the modified position of the airport job that he had been working at the time of his retirement. So it's a little unclear to me whether or not he was on modified duty or if the doctor is characterizing his position as a modified position at the airport.

>> David Bacigalupi: What page is that Scott?

>> Scott Johnson: Page 28, first paragraph on the top.

>> David Bacigalupi: Did you have an additional question? Okay. Any further discussion? Go ahead.

>> Sean Kaldo: So it said you -- on January 6th -- just trying to piece together the dates here, if you will oblige me, on January 6th you went off for your most recent back injury, to get treatment for that, went off disability and then retired on January 24th. And then the doctor cleared you to return to your assignment May 20th. That most recent back injury, what was that? Because you went off for the back, not for the legs, shoulders hips or knees. Was there an exacerbating event?

>> I went out for back, shoulders, on that one. And it -- and Dr. Newman advised me that I would be on permanent modified duty, had I been able to return to work.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: If there's no further discussion I'll entertain a motion. I need a motion to approve or a motion to deny. Okay, I have a motion and second to deny the application. Any further discussion on this motion? Hearing no further discussion, all in favor? All opposed, the chair will register an opposed. And the motion passes. Dave, I'm sorry, the motion's been denied.

>> Thank you.

>> David Bacigalupi: Okay, the next one item 3G is an application for change of status from retired fire engineer Thomas Warren. A change of status from service connected disability retirement effective June 30, 2009. 25.01 years of service. for the record, retired fire engineer Thomas Warren is in the audience and is represented by Mr. Swift. Roger.

>> Fire engineer Thomas Warren is requesting a change of status. Service connected disability. Disability based on neck, low back, left knee, right knee, medical reports are in your packet. Work restrictions are, he should avoid sustained kneeling and squatting. He retired June 30th, '09, at the time of separation and application he was on disability leave. There is no modified duty available.

>> David Bacigalupi: Thank you, Roger. Dr. Das do you have anything to add to the packet for us.

>> No I don't.

>> David Bacigalupi: Okay. Mr. Swift do you have any comments you'd like to make?

>> Only that there are restrictions in the packet from the treating doctors which include the neck and back as well, there are MRIs that show herniated disks in the neck. So he has restrictions with regard to his neck, his back, and both knees. Dr. Das gave him restrictions only for the knees, but nevertheless there is no permanent modified duty available within those restrictions. So on that basis I'd ask the application be granted.

>> David Bacigalupi: Thank you, questions comments?

>> Sean Kaldor: Mr. Chairman, I have a question. Has there anything been done besides massage or physical therapy? I think.

>> You're talk about neck and back. He had surgeries on the knees.

>> Sean Kaldor: I had another question with the knees, looks like he injured his knees while exercising, was that work related?

>> There are 20 different injuries listed in your packet. The last one I show was 10-31-08, moving a patient. There's also an uneven terrain on 9-12-08, fall from stairs on 11-29-06. I don't have the page reference but they're all in the packet. So yeah, there are numerous injuries. There were four injuries in 2009, two injuries in 2008, two injuries in 2006. Some of which involved neck, some of which involved the back some of which involved the knees. The physical therapy, was there any other treatment on your neck or back other than therapy?

>> Not at this time.

>> David Bacigalupi: Sam.

>> Sam Liccardo: Dr. Das, the issue was raised that was in my mind as well, I see the work restrictions related to the knees regarding squatting and kneeling. I don't see restrictions related to neck and back. Is there a reason for that?

>> I felt that the pathology that had been demonstrated in the neck and back had been existing for a long period of time. And that the treatment had been rather minimal for the lower back and the neck. So I didn't even feel that prophylactic restrictions were warranted in these particular cases. Because there hadn't been a lot of treatment directed at those particular problems.

>> Sam Liccardo: But he had been able to work with those injuries before, and the presumption would be he would continue to be able to do so?

>> With the pathology, it was all primarily symptomatic.

>> Sam Liccardo: Focusing on the knees, the restriction is to avoid sustained kneeling or squatting. And forgive me I'm not always aware of what all the job task force are that are required. How is a fire engineer, would that become something that would preclude someone from being able to work as a fire engineer?

>> The medical calls require kneeling and squatting quite a bit, when you have patients -- and I think Sean can attest to the extent of kneeling and squatting done by a firefighter in responding to medical calls, primarily. You have to be down on your knees with the patient.

>> Sam Liccardo: Thank you.

>> David Bacigalupi: Rose.

>> Rose Herrera: Thank you. So Dr. Das if I'm understanding this, so the back issue was, in your mind, not, you know, not one of the conditions that would be the most serious, because it sounds like it sort of gets better or gets worse over time and he's been able to continue to deal with this. But the knees, you did mention there that you have those restrictions. And based on those restrictions, there would -- it sounds like there would need to be a modified position, if we were going back in time at that point, am I right?

>> Yes.

>> Rose Herrera: And it is my understanding there was no modified position available at that time?

>> I would defer to the department on that.

>> That's what the memo says.

>> Rose Herrera: That's what the memo said. So I would move to approve this.

>> David Bacigalupi: Okay, I have a motion.

>> Sam Liccardo: Second.

>> David Bacigalupi: And a second. Is there any further discussion? Hearing no discussion, all in favor, all opposed the motion carries.

>> Thank you.

>> David Bacigalupi: Okay, necessary next item, item number 4, deferred vested. We have three applications. I don't see any of the applicants in the audience but the first one number 4 A is a application for a deferred vested retirement benefit from police lieutenant Ruben Chavez effective July 15, 2010 with 28.9 years of service. I'll entertain a motion.

>> I'll make a motion.

>> David Bacigalupi: We have a motion and second. Any further discussion? Hearing no discussion, all in favor, all opposed the motion carries. The next is an application for a deferred, item number 4B application now a deferred vested benefit from former police officer Stephen Gallagher. And that's effective September 2nd, 2010, with 22.05 years of service. And I'll entertain a motion. We have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed the motion carries. Item number 4C is an application for a deferred vested retirement from deputy fire Chief Nicolas Thomas, effective July 22nd, 2010 with 29.02 years of service. I have a motion. And a second. Any further discussion on the motion? Hearing no further discussion, all in favor? All opposed? The motion carries. Next item, on the agenda, very unfortunate part, Death notifications. item number 5 is the notification of the death of Virginia Adams, retired police officer, retired June 14th, 1977, expired 4/23/10. Survivorship benefits to Roy B. Adams, spouse. that will be noted and filed. Item number 6 is the notification of the death of Jim Cornelius, retired police sergeant, retired 8/10-85, passed away April 14th, 2010. Survivor benefits to Tanya Cornelius, spouse. And that will be note and filed. Item number 7 is the notification of the death of Bill wiskel, retired police officer, retired 2/6/96, passed away April 9, 2010. And that will be noted and filed. I'd like to take the moment of silence from those present today for the passing of these former employees. Thank you. Okay, item number 8, under new business, it's an approval of change much retirement date for Keith Keesling, former board member, former fire captain. Fire captain I think was it? Fire chief. Effective from June 30th, 2010 to change the date to June 27th, 2010.

>> Rose Herrera: Motion to approve.

>> Second.

>> David Bacigalupi: Motion and second. I wonder if we denied the motion would he have to come back from Hawaii? Yes.

>> Rose Herrera: I just want to congratulate Keith for his retirement, and thank him for his service on the board. It was a pleasure working with him.

>> David Bacigalupi: I agree, thank you. Okay. I have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor? All opposed, the motion carries. Lucky him, he gets to stay in Hawaii. Okay, item number 9 is an approval for the secretary to negotiate and execute the second amendment to the agreement with Palo Alto medical foundation for exit physicals to, a, increase the agreement amount by \$40,000 for a total not to exceed agreement amount of \$261,025. And B, extend the term of the agreement from December 31, 2010, provide a maximum amount for compensation payable for period July 1, the agenda says 2020, we're not going that far out, July 1, 2010 through December 31, 2010 of \$69,000, for a total new not to exceed amount of \$330,025. There is two memos, 9A and 9B in your packet.

>> Motion to approve.

>> David Bacigalupi: I have a motion and second, and that is to approve A and B.

>> Sam Liccardo: Yes, and my understanding is, this is simply to extend until we get the second RFP out and secured, is that right?

>> David Bacigalupi: And that's what I understand, as well.

>> Sam Liccardo: Okay, that also includes A and B.

>> David Bacigalupi: And that's also with the second, also for A and B. I have a motion and a second. The only thing I want to say this is a very worthwhile program. I didn't realize I had a heart situation until I went through my exit physical. The only sad thing I see here is the low percentage of use and I appreciate the department reporting that to us. Because 30 to 40% is not a very high percentage of a benefit like that. Okay, motion and second. Any further discussion? Hearing no further discussion, all in favor? All opposed --

>> Can I make a comment?

>> David Bacigalupi: Yes, I'm sorry.

>> Aricelli Rodriguez from the office of employee relations. I just wanted to mention this benefit did not go through the negotiation process. It was an item that was approved by the board back in 1999. And one of the things to consider is some of the benefits or the services that are provided as part of the exit physicals are services that an employee can seek through their health insurance plan and they would simply pay a co-payment and the insurance would cover the bulk of the cost. It's something to consider as you approve this item. Thank you.

>> David Bacigalupi: Thank you. Okay, Rose, did I miss you? I'm still trying to figure out these lights.

>> Rose Herrera: Yeah. So if I'm understanding here correctly then, the medical benefits that are in place would cover these procedures, and this was an additional -- why -- how did this come to be, then? Did the medical benefits increase coverage providing more things, so that there's sort of a dual aspect here or --

>> So in 1999, the board for whatever reason decided that they wanted to add this benefit. But if you look at the services that are provided such as mammograms, you know, blood test, those are services that the health insurance plan does provide. And the employees do have that plan available to them at the time that they're employed and these employees can seek that service. You know, before they retire. Because it's my understanding that the employees can seek this request prior to retirement, so they're still considered an active employee. Because it has been a benefit that's been provided for over 11 years, if the board wanted to seek modifications to that we would provide notice to the unions that we were seeking modifications and give them an opportunity to meet and confer over that item.

>> Rose Herrera: Yeah, I think in this time looking at cost containment given the fact it's already covered by insurance, I would support having some discussion about changing this. For example I think there should be some notification as people are reaching end of service that it's a good idea to go and have these tests. We certainly could communicate that and then have the regular medical program take care of it. So I would be supportive of taking a look at this, taking a second look, because it seems like we've got duplicate situation going here.

>> I think if that's the sense of the board we need to go back and take a look at how this came to be. Because it's very unusual for it to be a benefit that's provided by the retirement plan that is outside of the negotiations process.

>> Rose Herrera: Take a look at it at least before we just pass it. I mean, if we could just go back and review how did this come into play, so we don't miss any -- maybe there's some important reason why it should stay in place. But maybe it should be modified, and I think we should look a little deeper into this.

>> If I'm reading this correctly the agreement is going to expire June 30th. So if the amendment is not passed, you will not be able to have this available after June 30th. I -- if this is our standard contract, in a contractual sense, the agreement can be terminated on very rapid notice at any point if the board wants to do that. So approving the amendment would not necessarily mean it's going to go on for another year if that's not what the board wanted.

>> David Bacigalupi: Okay, next is Sean and then Conrad.

>> Sean Kaldor: Just a question and a quick comment. You of course don't work for the insurance company. But if I were to understand, if a person about to retire goes in and says I want a complete battery of tests before I retire, will all those be approved or is there a potential for the health care provider to say, you don't meet the risk criteria for some of these tests that we are offering as part of this?

>> Some of the services may be provided that's why I mentioned you may want to consider the services that are being provided. Some of the services are provided 100% by the insurance and the employee would simply have to pay a co-pay of \$10 at this time. So you could look and maybe consider removing some of the services that are covered by the health insurance plan and maybe offering the services that are not covered by those plans. Because that would reduce the cost of the accessible program.

>> Sean Kaldor: Well, I'm all for reducing costs, and there's no reason to duplicate efforts. If someone can go to their current provider and get the same level of testing maybe we consider covering the co-pays to encourage them to get the level of testing and something simple like that. As I understand this is a benefit for the unions that has been negotiated with the union?

>> It was not negotiated by the unions. The board decided in 1999, based on the minutes and the memo that came forward in 1999, the board had decided at that time that they wanted to fund \$70,000 a year to provide this benefit.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: I'm next then Conrad then Rose. I would ask the maker of the motion, hearing everything that we've heard so far, because this is going to run out here and we don't have a board meeting in July, and like Mollie told us, this can be cancelled at any time, I would -- I would request the maker of the motion to approve the extension of this but to bring this back to another board meeting for discussion and maybe the city and everybody involved can give us some information. Are we duplicating effort, are there things that maybe we can eliminate from the program? Are there things that we've discovered that should be part of the program that aren't and they can't get from their medical? Human resources can tell us, you know, what is already available, what's a duplication. So since this is kind of a stop-gap measure because of the time of the contract and the money amount, I would request the maker of the motion to modify the motion in that we approve it now, but we bring this back at our next board meeting for discussion and possible modification.

>> Sam Liccardo: David, I think I made the motion.

>> David Bacigalupi: I couldn't remember who did and who seconded.

>> Sam Liccardo: Yeah, I'm open to the modification. I guess I would add one additional modification which is, this wasn't negotiated. I think it would probably be appropriate to get some opinion from the City Attorney or the cities as to whether or not it ought to be.

>> I'll take a look. Like I said it's very unusual for the board to have grafted a benefit. I wasn't aware of the history of this. So it's something that we will look at, and be part of bringing it back. It needs to come back.

>> David Bacigalupi: As the maker of the motion is that acceptable?

>> Sam Liccardo: Yes, I would include all of that, that's your suggested modification as well as the additional information.

>> David Bacigalupi: Is that good for the seconder? Okay. Oh, Scott.

>> Rose Herrera: I had --

>> David Bacigalupi: I thought it was you, I've lost track, too. Next speaker is Conrad,

>> Conrad Taylor: He answered my question.

>> David Bacigalupi: Next is the attorney, and Scott.

>> Scott Johnson: Thank you. Can I make a suggestion that the modification be modified? That I think we need some answers to some questions. But I'm hoping that, you know, this can come back in August because I -- obviously it's not under our purview as the board to provide benefits that were not negotiated. I'm wondering if this can be extended through August instead of all the way through December 31st. That way, it provides staff sufficient information to provide information at our August meeting and therefore we can decide whether or not to extend it any further or not.

>> David Bacigalupi: The only thing I would say, if we extend it to August, September, October, it can be cancelled at any time. If this board was to make a decision in August it can be cancelled immediately at that point. What I hate to see is having to come back and also schedule it for another extension if the board had additional questions.

>> I'm a bit out on a limb because I don't have the contract in front of me. But typically the contracts do have a seven day notice provision for termination. Sometimes it's a 30 day notice provision. But when we do this amendment I can make sure that it has a seven day notice of termination provision in the amendment, so that it could be terminated on seven days' notice. You can extend it just to August if you want to but the contracts are -- can be -- will be made terminable anyway.

>> David Bacigalupi: Right. I think that's what I was saying, is most of our contracts we can terminate at almost a moment's notice. But if the board does not come to a decision in August, my concern is, or if the board decides they want more information before they terminate it, we're only putting this off until August. My thought is, we can cancel it. It's easier than going back and trying to --

>> I've just been given a copy of the contract. It has a 30-day termination provision in it. So unless that's changed, you would need to provide 30 days' notice of termination. If -- we can make a shorter termination provision in the amendment, though, if that's the board direction, as well.

>> David Bacigalupi: Could we modify that as part of this extension, to a seven-day termination?

>> Yes.

>> David Bacigalupi: Okay. I would ask the maker of the motion to include that as part of the motion.

>> Sam Liccardo: So just so I'm clear, our City Attorney is going to be renegotiating --

>> The contract is -- the amendment has not yet been done.

>> Sam Liccardo: Okay.

>> This is your direction to us to do an amendment.

>> Sam Liccardo: Got it.
>> So if your direction is to put a seven day termination provision in the amendment, that will be done.
>> Sam Liccardo: That will be part of my motion, thank you.
>> David Bacigalupi: That would be agreeable to the second?
>> Rose Herrera: I.T. agreeable.
>> David Bacigalupi: Good, Scott, I'm sorry, Donna.
>> Just the one comment about the origination of this, what the board was trying to do in 1999, ask to make it, all the tests done at the same time and not go to different providers, we also have women sworn officers that have to do mammograms and different tests. For us, we would have to go to different providers. Palo Alto medical, and the people before them, I guess it was always Palo Alto medical, just provides it all in one place. So somebody can go get a test, and all the tests are done at one time, at the one place. I think that was one of the benefits of what we were trying to do back then.
>> David Bacigalupi: Okay, I have Sean next and then Sam. Thanks for the history, Donna.
>> Sean Kaldor: That's a good point, as we revisit it understand why we did it, I can see as we have many service related disabilities coming in after the fact, later found conditions, more we encourage me to make it easy for them to identify the disabilities as they're considering requirement, the more we could identify those issues up front, rather than revisit them later on. So going back as part of this motion, thinking about why we did this would be critical.
>> David Bacigalupi: Okay, Sam.
>> Sam Liccardo: I just add, I think all those points may be very valid and very good but we're really exceeding our own authority if we think we can create benefit to the board. So this really ought to be -- we really need the legal analysis to understand whether or not this should be negotiated and brought to council.
>> David Bacigalupi: Okay, any further discussion. Rose.
>> Rose Herrera: Just the thought that if it does become, if it doesn't is it our purview, if it's decided it's not our purview and it goes back to negotiation, I think one of the negotiations ought to be with the health care insurance companies to provide an exit physical as part of the negotiation with setting up a contract with them. There's no reason why that can't be negotiated as well. To get some greater efficiencies there and have it part of the plan.
>> David Bacigalupi: Thank you. Okay. Is there any further discussion on the motion with all the amendments to the motion?
>> What is the motion?
>> Sam Liccardo: I give it a shot? We are going to approve this --
>> David Bacigalupi: We're going to approve this but we're going to bring it back in August and the maker of the motion can correct me but I want to make sure I understand it. We're going to approve the memo in the package but we're going to bring it back in August, we're going to modify the contract to a seven day cancellation period from a 30 day cancellation period and the city attorney's office is going to come back with a report on the legality of this, of implementing a benefit?
>> We'll come back with an analysis of you know how the benefit was originally approved by the board. And when an analysis -- with a legal analysis on the implementation of the benefit by the board.
>> David Bacigalupi: And with the input from HR.
>> I think there will be input from staff and from HR also to --
>> David Bacigalupi: And I think it would be helpful to the board to see what the history was as well in the minutes because I haven't looked at that. Okay.
>> Sam Liccardo: That's the motion.
>> David Bacigalupi: Have we stated it correctly? Hearing no further discussion on the motion, all in favor, all opposed the motion carries. Thank you. Okay, item number 10 is an approval for the secretary to negotiate and execute the third amendment to the agreement with the Segal company for an amount not to exceed \$775,000 and discussion regarding the issuance of an RFP for fiscal year 2011-2012 actuarial services.
>> I have one question, I'm sorry, for staff. On the not to -- is the new total not to exceed amount, 775? This amendment is not, 775 is it?
>> No, it's the new total, not to exceed the 775.
>> So when I draft it, I'll know.
>> David Bacigalupi: So we'll amend the motion and the second, if everybody's agreeable, we'll add in not to exceed, a total of \$775,000. And Scott.

>> Scott Johnson: Thank you. So can we clarify what the amount that's being added to this contract is? It also -- just want to get a clarification. Because I'm a little confused in the memo. On the conclusion, it talks about this -- okay, so the 775 is for fiscal years 2009 through 2011, so the 775 covers three fiscal years?

>> The 775 will add to the existing contract that will carry the agreement with Segal through the end of fiscal year 2011. So June 30, 2011. And so the valuation for June 30, 2011 will fall into the new contract. This is pretty much to carry the plan forward for the next fiscal year, as the plan is going to have annual valuation through June 30, 2010. Valuations will need to be done and going out for an RFP at this time would put it into very short time frame to come back with an RFP and still meet the annual valuation deadline.

>> Scott Johnson: Thanks, Veronica. So the compensation that we would be paying Segal, is there an increase in the hourly rate, or is it based on an hourly rate, or is there a not-to-exceed per valuation, a flat fee?

>> There is a not to exceed for the valuation portion. It is 32,000 for the health valuation and 53,000 for the pension.

>> Scott Johnson: And Veronica, was that an increase from the prior year?

>> I believe there is an increase from the prior year. I don't have the exact amount. I can communicate the exact increase amount.

>> Scott Johnson: Okay, because I'm sure most people are aware, the city is very actively working with our vendors to reduce our costs and we're actually asking them to reduce the amount that they're charging us early on an hourly basis or on a fixed basis. We just went through an RFP process for audit services and saw our costs were reduced. I would request we go back to Segal and ask them to reduce our costs consistent with what we're doing citywide.

>> Second.

>> David Bacigalupi: Okay, I -- is that a motion?

>> Scott Johnson: That's a motion.

>> Rose Herrera: Second.

>> Scott Johnson: Can -- I'm sorry, can that be a friendly amendment to the motion?

>> So there was a motion to approve on the table, okay. And this is a request for an amendment to the motion, and that would be to defer it while we go back to talk to Segal?

>> David Bacigalupi: Yes, I think the original motion was to approve this and a second. But Scott, you want to -- do you want to make a friendly amendment to the motion? Good substitute motion?

>> Sam Liccardo: Why don't you make a substitute because I went to the restroom and didn't hear your reason so maybe it would be better for --

>> Scott Johnson: Okay. Consistent with what we are doing citywide, we are going to our vendors and we are requesting if they have multiple year contracts, we are requesting they reduce their cost. We are asking our city staff to reduce their compensation. In consistent with that, many of our vendors are reducing their cost to continue to do business with the city. So what I'm requesting is staff go back to Segal and request that Segal reduce the costs compared to what we're currently paying.

>> David Bacigalupi: Scott, would you like to make that a substitute motion to --

>> Sam Liccardo: I'll second it.

>> Scott Johnson: Okay.

>> Substituted motion? (inaudible).

>> David Bacigalupi: I still haven't gotten Scott to say yes, he would like to do that. I think that's where we're going here is to take this back and bring it back to us.

>> Scott Johnson: That's an amendment to the motion.

>> Sam Liccardo: Okay then I'll accept the friendly amendment.

>> Scott Johnson: Thank you.

>> David Bacigalupi: My only question is going to be, I have to ask staff, what's this going to do to our report? Are we going to be --

>> There may be some timing delays and I actually was able to find the difference in the increase and for the OPEG study, it is a \$2,000 increase and for the pension it's an \$8,000 increase from last fiscal year. But there would be obviously a delay until a contract would be put in place, Segal would not be able to perform the services. They can perform the services but there's no contract in place.

>> They can perform the services without a contract. It's at their risk of not being paid. So typically they don't want to do that.

>> Scott Johnson: Mr. Chair, I think the --

>> David Bacigalupi: I have Rose up next.

>> Scott Johnson: I'm sorry.

>> David Bacigalupi: And then Scott.

>> Rose Herrera: I guess my question's to Scott. Is there a percentage that we've been seeking, a specific percentage reduction with our vendors, we're looking at 5% or -- 10% or --

>> Scott Johnson: We're looking at at least 3% but some have agreed to reduce the fees even greater than that.

>> Rose Herrera: So I would add to this, if we could put a percentage, we should have a target for these, we should say minimum 3% that we're requesting, whatever we decide, sounds like 3% is the floor. I think we should include that in our motion and ask for a response and let's put some time on the response so that we don't hinder the production of our actuarial work.

>> David Bacigalupi: Well, I think we're going to hinder it, because we don't come back until August. Nothing's going to happen until August.

>> Rose Herrera: Can we approve it given -- can we have an approval, given that they're able to work out this reduction? We can approve this with the consideration that they have to work out some kind of reduction. And I guess I'm asking to change the motion for that.

>> Scott Johnson: Well, the recommendation is -- I'm sorry, the recommendation is approval for the secretary to negotiate next. So if we ask, if we provide direction to the secretary to negotiate a reduced cost, then that's okay.

>> Well, I guess the question is, the -- is the secretary going to be authorized to execute an agreement for \$775,000 or not. That's the question. If they're not authorized to execute an agreement for 775 then we need to know what the number is that they are authorized to execute an agreement for. The contract has to have an amount in it. And it has to be consistent with what you've approved. So -- and if not, I know it's not 3% less than 775 because that includes services that have already been performed. So someone would have to make a decision about what the authorized contract amount is.

>> David Bacigalupi: Okay, next up is Sean.

>> Sean Kaldor: My point, if we could give approval to move forward with something that would be 3% less and let them go and if Segal does not agree with that, then my question would be, what is that going to do with our work flow? It's going to be two months before we can meet again, can emove on piece of this and resolve the rest of this or what can be done?

>> If I can just add, the 3% reduction, are you looking for that for services to be provided from today forward or for the new fiscal year?

>> Scott Johnson: Well, this is for the new fiscal year, isn't it?

>> It's for the new fiscal year, but portions are for this fiscal year as well. To cover the services that we need to complete the year. There have been a lot of additional services provided by Segal in this year. So I'm seeking a contract amendment for a portion of this year and for next fiscal year.

>> Rose Herrera: My intention on 3% was for both. It's a negotiation so --

>> Scott Johnson: Right.

>> Back to Scott's original question, Veronica, how much is being added to the contract by this amendment?

>> \$230,000.

>> Scott Johnson: So reduce that by 3%. And that would be the minimum reduction we would be seeking. We'd appreciate more.

>> Sean Kaldor: For clarification, that amount includes an increase already? That includes an \$8,000 increase to one and -- so you would want to take those back to baseline of zero and decrease by 3% after that.

>> Scott Johnson: Right.

>> David Bacigalupi: So I'm clear on this we're going to authorize the secretary to negotiate a contract extension, with \$220,000, minus 3%?

>> Scott Johnson: But I think the 220 includes an increase in fees.

>> No, the 230 included an increase in fees. So I think he's already taken --

>> David Bacigalupi: That's what I was thinking. Going back to what Sean said, go back to the baseline of what we're currently paying or the current rate. So that would take it back to 220. And your suggestion is the 3% reduction, and that's the most that we're going to authorize the secretary to execute an

agreement. So my question now is, if that's declined, then we -- it has to come back to this board, in August, for another decision of what we do. Is that where we're going with this?

>> Sam Liccardo: My motion would contemplate they would have to come back to the board if they're not amenable to reducing the contract, both baseline and to 3% beneath the baseline. So it would be essentially \$6,600 beneath the \$220,000, so we'd basically be looking for a contract that I think \$213,400, for that portion of the contract and then of course the remainder would be paid at the current rate, is that clear?

>> I think I get the base, just clarification pieces. I'm also working off a work paper here so my numbers may not be exact on the contract amendment amount because there's multiple moving parts on this that I'd like to reconcile. If I can summarize, you're looking for a 3% reduction for the new services for valuation services at a baseline of what they were offered for in the last contract amount?

>> Sam Liccardo: That's right.

>> And then a 3% for services that have been provided throughout the year, is that correct?

>> Sam Liccardo: That's correct. I believe that's the sense of the panel. Am I right?

>> Scott Johnson: For any future services that will be receiving, we're asking for a minimum of a 3% reduction from the baseline.

>> Right, so future services or prior services? Are we only looking for future services?

>> Scott Johnson: Not prior services. We've been billed and we have paid those.

>> Okay, so for future services, a 3% reduction.

>> Actually I'll have to clarify. I think this amendment is needed because there have been some prior services performed that can't be paid for. I think that part of this amendment, so you have some prior services that have been performed that exceed the current contract amount. And how much of this \$220,000 is for those prior services is not known. So if you're looking for a 3% reduction off the \$220,000 it would include a reduction for services already performed.

>> Sam Liccardo: Okay, I would incorporate that in my motion, because I think if they're performing services beyond the contract, then they have no reasonable expectation that they're going to be paid the same amount or more. That obviously is all subject to negotiation.

>> David Bacigalupi: Rose.

>> Rose Herrera: I just want to stress again what Scott said. 3% is the minimum. We should be asking for more.

>> Scott Johnson: And can I just add, I -- we may have asked for 5%. Because I think we started this when -- so I'm sorry, I didn't anticipate, you know, this discussion. But we -- I think we may have asked for 5% in our forms that we sent out. And because originally council was asking for a 5% pay reduction of city employees but then it was increased to 10%. We have reductions with contracts all over the board from our current vendors that we're working with.

>> David Bacigalupi: Okay, is everybody satisfied with the motion as it stands?

>> That piece just for information.

>> Rose Herrera: I'd like to make it 5%. That's why I was asking Scott in the first place what the city was doing. I'd like to make this 5%, not 3%.

>> Sean Kaldor: Do we have an answer to what happens if Segal, who is the only responder to our RFP to begin with, says you know, that price doesn't work, what will that do to the reports we have to produce over the next few months?

>> David Bacigalupi: Everything stops, as I understand it. We come back in August and decide what we want to do, so that will hold all that reporting information even longer.

>> Sean Kaldor: All that information -- are.

>> David Bacigalupi: As I understand it.

>> Sean Kaldor: Are there any reporting requirements?

>> David Bacigalupi: Donna?

>> The date of the evaluation for -- the CAFR will probably report last year's thing. So --

>> But we still need them to perform those services.

>> Oh, yeah, they still need to perform those services for the CAFR for this year.

>> But annual valuations are the board's decision so this is not --

>> It is not going to affect the valuations.

>> You decided to go to your annual valuations but your actual minimum is every five years so --

>> David Bacigalupi: So we're okay legally?

>> Yeah, I mean, Scott will be bugging us at budget time about where the numbers are, but that's about as far as the Board's concerned.

>> Scott Johnson: Well, hopefully Segal will be in agreement, and it won't be an issue.

>> We had a substitute motion. I guess the substitute -- we had an amendment. The amendment was accepted at 3%. Now is there another amendment to 5%?

>> Rose Herrera: I'm asking the maker of the motion if he would accept 5% instead of 3.

>> Sam Liccardo: You know, I think maybe Rose it would probably be best to go ahead and make a substitute. I'm a little concerned we're playing a game of chicken right now, in terms of what we're going to need. And I understand the need to try and negotiate down. But I am a little concerned about this timing issue.

>> Rose Herrera: Yeah, we're talking about 6,000 at 3%. I mean -- and I think that we picked 3% kind of as an arbitrary number because we were asking -- we were getting input from Scott on it and now he's saying it's 5%. We're not talking about a lot of -- we're not talking about big nudges here. I think you know the 5% is what we've been consistent with other vendors to the city. I think it's a good number. Perhaps we could have 3% if they actually refuse it. I'd like to be asking 5%, it's more --

>> Sam Liccardo: The question is what is our authority, if you are saying our authority is at a maximum -

-

>> You can give direction to staff to ask for the 5% off the base. But you do -- if you want a contract to be executed, we have to know what the maximum or minimum amount is that we can execute that for so --

>> Sam Liccardo: I'm happy to do that. I mean I'm not sure it's going to matter much because they're going to know what the vote is. But I'm happy to say that staff should be authorized to ask for 5% or more.

>> David Bacigalupi: Then not accept it if -- there's no contract to be executed if that 5% isn't accepted.

>> That wasn't my understanding. My understanding of the motion is still that if 3% is accepted, the contract can be executed.

>> Sam Liccardo: That's correct.

>> David Bacigalupi: We're going to ask for, we're going to direct this convoluted motion is going to direct staff to ask for a 5% reduction for this extension and to decline extending it, unless a minimum of 3% is negotiated. Clear as mud. Clear as mud. Donna, do you have that?

>> Yes.

>> David Bacigalupi: Veronica, do you have -- if they don't see this, they're fools.

>> So for the total amount you're looking for a reduction of between 3 and 5%, 3 minimum, 5 desirable for the contract amendment amount which some of the services have been performed, some have not been performed for, is that correct?

>> Sean Kaldor: Reduction from the baseline, not from the proposal. So whatever they charged last year, we understand they're charging 8,000 and 2,000 so a total of 10,000 more go back to what they charge last year instead of giving them an increase, we want to propose to them 5% we'll take a 3% decrease.

>> David Bacigalupi: Okay, Rose you're up.

>> Rose Herrera: Yeah, it's 4,000 more than we're talking about, I just wanted to make that clear, and if they are watching, we're asking all vendors to reduce their cost. We're asking employees to take less. We need vendors to take less. I think hearing all this discussion that should motivate them to do it.

>> David Bacigalupi: Okay. The only thing I'd like to add is I think the idea of reducing our costs is a good idea any time we can do it. I'm just not sure that we went about this in the best way. [Laughter]

>> David Bacigalupi: But if we can succeed and as long as I'm hearing that it's not going to cause -- if this gets delayed a couple of months or whatever, then it's not going to cause any problem for our department. I'm not as concerned, you know, if we don't have a booklet out in time. But as long as the department and the services needed by the department are functioning which I heard they could and that will still work then I can support the motion as well.

>> Okay, so as long as it's clear that there is a potential that the CAFR disclosure items may not be available in time if the contract isn't agreed upon.

>> You would disclose based on the current valuation?

>> I cannot disclose on the current valuation. The accounting requirements would have to be the new information.

>> But you would be in effect back to a two year valuation cycle if this valuation is not available. You've been disclosing for years and years based on two year valuation.

>> Yes, but this year is the second year. So the June 30th, 2009 valuation which was done at the beginning of the fiscal year is a disclosure that I need for this financial statement period.

>> And that's the prior services piece of this amendment.

>> Yes. But Segal usually doesn't provide those services until this time period now for the disclosure period. So those services haven't been performed nor build.

>> Scott Johnson: Mr. Chair, so Veronica I would encourage staff to communicate that to Segal. The board desires to have the most up to date valuation so let's encourage them to work with us based on our proposal.

>> I will definitely go back to Segal with that.

>> David Bacigalupi: Okay, any other speakers.

>> I do have a question. So can it hold it up? It appears that it can hold up. So I'm a little bit confused now.

>> I'm a little bit confused, myself, because it sounded like some of the work for the valuation has already been done. And that's why an amendment is needed because some of the work has already been started. So I will say this: That if this amendment doesn't go through, Segal's not going to be paid for that work that they've already done. So there will be some motivation, I think, on their part, to want to have an amendment. But I'm a little confused about what exactly would be done between now and the beginning of August, anyway. I'm not --

>> David Bacigalupi: Maybe Donna can answer that.

>> I can clarify what the disclosure items are. It is the actuarial section of the CAFR that the actuaries provide. Even though the services for the valuation are all completed during the valuation period, it is not until we get closer to year end that staff goes back to request that information from Segal. So it's services that we requested just recently that would come back in the next couple of weeks that we would use in our financial statement disclosure, and our CAFR actuarial section. So it's kind of like a summary that they provide, that the source document is the valuation. But it's the financial statement and a comprehensive financial statement reporting summary that the actuaries provide. (inaudible)

>> They provide us with additional schedules. I mean, they have the valuation that we've all approved but then they provide us specific schedules that we have to put in the CAFR, and these are the schedules that we need to get from them.

>> Scott Johnson: And just for clarification have they already started that work? To Mollie's point, they started that work although we didn't have a contract provision for that work?

>> It's a standard request that we have every year. The notion was that we would come back to the board to have the amendment, to have that in place. They haven't returned the information yet.

>> Scott Johnson: Okay because -- I'm a little confused about the timing, because I know that we've amended their contract. And we were assured at our board meeting that there was sufficient funding in the contract and in the budget, you know for those services. So now what I'm hearing is that work, that we're expected to be delivered within the next two weeks, we don't have a contract in place to authorize you know, payment for those services that the consultant has already started working on. That's what I'm hearing?

>> What happens with Segal is they have a delayed billing process. So the contract amount that we have, because they bill quarterly, not until you get closer to the quarters do you know how close you are going to the limits of what they're providing. They haven't returned anything back to us. That was all funding. They were aware that I was coming to the board to ask for more funding for those services. It's a combination of the delayed billing, we have the budget amount for it but it's the timing on how much services are being performed and in this year the board has asked for a lot of additional actuarial services to be performed. And so each of those as they come back have a cost to them. And I can tell you now that at least half the billing that I'm waiting for on Segal is a large portion of what I'm asking for here and that's only because I've reached out to Segal to say how much do you have outstanding so we can get those pieces but there has been a lot of additional requests by the board this year that are beyond what normally are actuarial services for the fiscal year.

>> Scott Johnson: I would suggest that in the future, as we're working on these contracts, we have a not-to-exceed amount in the contract. We clearly specify the scope of work for each of those services, not-to-exceed amount in the contract and when we're exceeding prior to them work we anticipate this work then you know it usually goes through the board. I thought that the last time that this issue came up with the Segal contract that we did add amount in the contract for Segal and we were assured there was sufficient funds available in the budget as well as in the contract for the services that were anticipated

through the year. So I'm just saying on a go-forward basis let's -- it sounds like we need to clean up our contracting in regards to our contract with our actuary. Because it puts us in a very uncomfortable position right now, that work that we're anticipating we need for our financials for our disclosures, the backdrop would be that we would use the information that was in the prior two years, which is not desirable. We want to provide the most current information. So I think they have an incentive to complete the work and to work with us in regards to the contract amendment.

>> Can I ask a question of Veronica? What is the amount specifically associated with the schedules that you're looking to get before the end of the year?

>> It usually ranges between 2500 and \$5,000. And just to clarify, Scott, the last amendment that came forward for Segal was just to carry them forward until another RFP could be completed. So at that time, when I came to the board, the amount that I did request was within the contract not-to-exceed limit and was within the budget limit, as well.

>> Scott Johnson: Thank you.

>> David Bacigalupi: Okay, any other discussion?

>> Sean Kaldor: One more question.

>> David Bacigalupi: Okay, go ahead.

>> So the current work that is between 2500 and \$5,000. I think we should pay for it. That 2500 to \$5,000, we need the information, we're going to need the information. We might as well just pay for that amount, and -- 3% of that is a very small amount.

>> Rose Herrera: Yeah, I agree.

>> Sam Liccardo: I'm certainly persuaded by that logic. So we'll grant authorization for up to 5,000 for the work required to get us through this CAFR, is that correct?

>> There would be two alternatives, one would be for a very minor amendment, to just add \$5,000 to the contract. To get the work for the schedules.

>> Sam Liccardo: Right.

>> The other alternative would be to go for the full reduced -- for the full amount, with the reductions. Okay?

>> Sam Liccardo: Yeah so I would --

>> David Bacigalupi: So we would stay with the motion and the amendments to the motion, adding another amendment excluding up to \$5,000 worth of work.

>> Sam Liccardo: That's right.

>> David Bacigalupi: Rose.

>> Rose Herrera: I think that's a better alternative than to just scrap it and say \$5,000. What if it's \$5500 or something, I don't know? I think we should allow for that range and maybe within a margin of 5% or whatever in case it's more than 5,000 to allow this needed work to get done immediately.

>> That's only if we're not able to get the full amendment executed, okay?

>> Just one clarification. Veronica, there -- as I understand the amendment, the reduction is not only for the work performed after the beginning of the next fiscal year, so 7-1-10 thereafter, the reduction is also to be applied during this fiscal year, except now, for the carved out 5,000? And -- but to the degree there's other work for which they have -- they have completed and billed and not been paid, or work that they have completed but not yet paid, but it's work being done in this fiscal year. Except for the CAFR work, we're requesting that they reduce that, by a target of 5% and a minimum of 3%.

>> My understanding is anything outstanding of the current not to exceed amount is the portion that you're asking for the 3 to 5% reduction with the CAFR portion being carved out.

>> Correct, that's my understanding too, Veronica, and the way this exactly gets played out in the contract and what pieces of it they may want to reduce, you're looking for an overall reduction, not an item by item reduction. But the second piece of it is if you can't negotiate that you want an amendment of up to \$5500, it sounds like, to cover the schedule work. I think we both understand that, I think.

>> David Bacigalupi: Rose.

>> Rose Herrera: Yes, just to reiterate, yes, so we want to go for the 5% for the whole thing including the CAFR portion but if that isn't doable then at least we don't tie your hands from getting the work done.

>> David Bacigalupi: Scott.

>> Scott Johnson: My questions have been answered, thanks.

>> David Bacigalupi: Good. Okay, any -- Scott.

>> Scott Johnson: All right, sorry. So the work that has been done that we haven't been billed for, okay, is that only related to the CAFR, the disclosure? So it's roughly around \$5,000?

>> The portion that hasn't been billed?

>> Scott Johnson: Hasn't been billed.

>> There's a portion that hadn't -- there's a portion that's been billed but there's not sufficient contract amount to pay for. And then there's an amount that hasn't been billed at all, as well, so it's a combination of the two.

>> Scott Johnson: Okay, Veronica, do you know the total amount for what we're looking at in regards to the information we need for the CAFR?

>> Yes, that's the 2500 to \$5,000 range.

>> Scott Johnson: So you're comfortable with the \$5,000, if we have that ceiling of 5,000 --

>> It's 5500.

>> Scott Johnson: Okay, 5500. Because actually, I'm going to think out loud for a minute. If -- well, I feel we need more information in regards to what the additional services are for the next fiscal year. So if we just approved an amount let's say up to \$10,000 for work that's currently being done and then this comes back to staff after they've had an opportunity to talk to Segal to try to negotiate this additional work for next fiscal year then we wouldn't be so jumbled up. I'm wondering if I can offer a substitute motion to approve a not-to-exceed amount of \$10,000 for the work that has been done that we have not been billed for, related to the CAFR, and then related to any extension of the contract, then that would come back to the board after staff has had an opportunity to negotiate a reduced fee with Segal.

>> Sam Liccardo: That's with no specific number so there's no telegraphing where we're going to approve it?

>> Scott Johnson: Right.

>> Sam Liccardo: Okay, I'll second that.

>> Can I just add one comment to that, and that is just that there is a time period now until August, if you limit any services down to \$10,000, we are moving into tax qualification period that does have to be completed by the end of the year. I don't know how quickly some of that information is going to be necessary by the actuary. If we limit it to \$10,000, you may not have any services until after August for that portion of it.

>> Scott Johnson: Can staff tell us how much we need to get us through the next board meeting?

>> It's dependent on what services that they need to provide. If you are looking at the valuation of June 30th, 2010, then you're looking at right now what Segal has budgeted at 53,000 and \$32,000. Now, any additional services that you'd want to have Segal do is on an hourly basis, so you're looking at things like pension limits, you're look at CAFR documents, you're looking at any tax qualification information they're providing, you're looking at splitting of assets for the health portion, all the additional service that the board has out there, to the actuaries at this time.

>> Scott Johnson: Well, in the future I think that forecast should be included in the staff report on the scope of work that's being requested.

>> Maybe I didn't -- I summarized a little too much on it but I did try to put that in the analysis, the second paragraph where Segal's currently working on actuarial assistance and benefit taxation issues where they can provide critical expertise and operational knowledge to the plan and the tax qualification review and it's developing several asset division methods to allocate the health assets between the Police and Fire members.

>> David Bacigalupi: Okay, Donna.

>> Maybe the reduction for the 3% to 5% needs to be on the hourly rate rather than on a dollar amount for the contract. If we can negotiate a reduction to the hourly rate would that be acceptable? Because a lot of these projects as Veronica said are not fixed cost. It depends on how long they spend working on it. We get charged on an hourly basis. In fact most of the projects other than the valuation itself is not a fixed cost, it's an hourly cost. As we have listed it we have a lot of ongoing things we need to get. So if we can maybe negotiate a reduction to the hourly cost would that -- and then we can sign a contract before August, would that be acceptable?

>> Would you want a reduction to the things that are a fixed cost too? I mean that's the question.

>> They base the cost of the fixed based on what they're going to charge us hourly so we can talk to them about that as well.

>> David Bacigalupi: Okay, Russ.

>> If the board is interested in Donna's approach, I just want to say on this tax qualification review it is not necessarily likely the actuary's going to do anything between now and August, but there's a chance they

will. And I don't think the board wants that process held up on this issue, because we have the inflexible time limit at the other end.

>> I think that's why Donna is suggesting that we stick with the not-to-exceed amount but that we negotiate the prices that they actually charge us for the services so you'll have flexibility to get more services for your dollar.

>> David Bacigalupi: Chuck. Has everybody given all the discussion they want to, to this motion? [Laughter] (inaudible)

>> My only question is the same one I asked before, what are we about to vote on?

>> The motion on the floor was for a reduction in the not-to-exceed dollar amount. I think staff made an alternative suggestion, that there would have to be -- I think it's about our fourth substitute now -- in order to implement that.

>> Rose Herrera: I'd like to make a friendly amendment to the substitute motion, to add staff's recommendation, instead of the \$10,000 limit. It sounds like that's going to be too restrictive and kind of not workable. And then I think we should move on, because I think we're getting a stream of accountants here --

>> I just want to understand what I'm voting for. I agree with the you know 3% reduction to whatever their hourly rate is. We should pick some kind of dollar amount otherwise we haven't said how many projects they can do over the next two months.

>> I understood it was going to go with the not to exceed 775 which is in the staff memo.

>> Sean Kaldor: Okay.

>> And that the hourly rate and any fixed prices that are established in the contract will be taken back to the baseline, in the existing contract, and reduced a minimum of 3% but staff will ask for 5% on those. Did I understand that correctly?

>> David Bacigalupi: And if not it will be brought back to this board in August.

>> Right but if they are agreeing with those reductions we can go forward with the contract at the 775 dollar level.

>> David Bacigalupi: I think I understand it now. Rose.

>> Rose Herrera: That was it, she got it. Call for the question.

>> David Bacigalupi: Okay, having discussed this thoroughly, all in favor? All opposed the motion carries. That was easy. [Laughter]

>> David Bacigalupi: Okay, item number 11, discussion and adoption of the placement agency policy. You have a memo from Russ here. Any questions on that? Otherwise I'll entertain a motion to approve.

>> Scott Johnson: Motion to approve.

>> David Bacigalupi: Any further discussion? All in favor, all opposed the motion carries. Okay, item number 12. Item number 12 is discussion and notification regarding the administrative implications to the retirement contribution provisions of the City's retirement plan. And there's a couple memos in here from Alex to Donna, you want to explain what this is all about?

>> There's a couple of things. The -- I guess a lot of times on the federated side, a lot of this is on the federated, because on Police and Fire we already do have the Police and Fire split, and it was a matter of whether we could take contributions at different amounts for different bargaining groups. And this was in preparation, at least mostly on the federated side, we have set up the system now that we can at least identify all the different labor groups. And we are working with finance now to test to see if we can get different contribution levels in. On the Police and Fire side we already can do that and we already do do that.

>> David Bacigalupi: Okay, all right, so that notification will be note and filed. Item number 13, review of proposed ordinance amending part 2 of chapter 3.36 of title 3 of the San José municipal code by adding a section 3.36.205 to exclude from membership in the Police and Fire retirement plan a fire chief or police chief who has no prior service credit in that plan. And provide recommendation to city council on proposed ordinance pursuant to San José municipal code section 3.36.485. And you'd like to address the board?

>> Sir, good morning, Mark Danaj, director of human resources for the City of San José. This item before you is to seek your review and/or recommendation of a Muni code change as described by the chair. Just to reiterate, it is to exclude from membership in the police and fire plan a police or fire chief who does not otherwise have prior service credit in the plan. It does not change the current muni code that would provide for existing police officers and firefighters or future existing San José police and firefighters if they

are appointed chief to stay in this plan. Again, is to focus on people who come, potentially appointed fire chief or police chief who do not have service in this plan, and is essentially focused on correcting a recruitment issue. Essentially broadens the pool, the vesting requirements for the Police and Fire plan, most notably the ten year vesting and the 20 years of service to be eligible for retirement in the plan. Essentially acts as a barrier for external candidates and the city goal is to attract the broadest and best qualified people to serve both as police chief and fire chief, whether they are from within our respective departments or from outside. So with that, we look for your review and/or recommendation.

>> David Bacigalupi: And if I understand this correctly Mark, it's in the code, that the council -- it comes to us for a recommendation, but that basically this is a council decision that with or without this board's recommendation?

>> Correct. It's the board is entitled to make a recommendation, basically.

>> David Bacigalupi: Okay, thank you. Rose.

>> Rose Herrera: I'd like to move -- I'd like to make a motion to support this recommendation, that the board support it. Looking for a second. Okay, got a second, speaking on the motion.

>> David Bacigalupi: Who made the motion --

>> Rose Herrera: Speaking in favor of the motion, I think this is -- would be helpful to -- I think the board would want to take a positive approach on this because I think this allows us more flexibility in looking for recruiting these top positions, and giving us a broader pool of applicants so that we're not just limited. And currently it is my understanding, I guess, that unless someone was vested and had ten-year vesting in Police and Fire, if we were looking for a police or fire chief, they would not be able to receive benefits I guess in the Police and Fire Retirement system. So it would sort of preclude -- I mean, why would someone want to come here and then not be part of that system and receive benefits? I think that would mean going maybe out of the Bay Area, looking out of state, this could not be a good -- maybe if we had somebody great we wanted to recruit, pick a city around here, that would not be in our system, then we wouldn't be able to you know, they probably wouldn't want to come here. So that's why I would really support this.

>> I do -- I want to -- I do want to add, if they are from a jurisdiction that is reciprocal, the reciprocal service does count towards the vesting but it doesn't count towards the benefits. So the reciprocal benefits is somewhat helpful but it doesn't really count towards a calculation of their benefit. It does help torts vesting but it will also count towards their vesting in federated as well, these people will go in the federated system if they are not in Police and Fire and their vesting period is shorter.

>> David Bacigalupi: Sean, then Conrad.

>> Sean Kaldor: So as a Police and Fire retirement board representative this is one person, so allowing one person in our out of our plan isn't going to have a financial impact to us. I can certainly see the recruitment issues with having them qualified and not qualified and not just by changing the entire plan. I could see other issues with that, and as we try to recruit other people who might be lateraling in from other organizations that have organizations that have no reciprocity with us, to extend the same privilege to them but as this is limited to only one person, and I can understand the broader nationwide search that we engage for that person as the retirement board I can understand the favorable attitude.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: What is the plan for the federated plan? I know the Police and Fire. That's just for the pension part?

>> The pension vesting is five years, the medical vesting is 15.

>> David Bacigalupi: Okay, I -- as a retirement board member, I could not support the motion, in that I haven't talked to anybody from the federated board to feel -- to see how they feel about this. As a member of the community, I understand why the council would want to do this and it's probably a good thing. I just have a hard time in my position, endorsing this recommendation without hearing at least from the other board. You know, on their feelings about the impact to their plan, on how this would go. So I -- for that reason, that reason only, I would not be supporting the motion. Okay, Scott.

>> Scott Johnson: Can the retirement staff maybe comment on, Mr. Chair, on that? Because it's my understanding that -- if someone's coming -- if this goes into effect and just want to acknowledge that we're talking about potential recruitments for police and fire chiefs only. They are City Manager appointees, they are at-will employees. And so you know obviously we don't set the benefits. But it sounds like what's being proposed here, is the change in the ordinance, would provide for more openness, due to recruitment process and I think we should support that. But also, in regards to the impact on either our plan or another plan, if we have -- someone is promoted up, from the existing plan, I

guess there's no impacts, because that's already anticipated through our existing actuarial studies. If someone comes from the outside, I would assume that there's no unfunded liability that comes along with that, because you know, you're paying for future -- you know current and future service, the employee would pay their portion and the employer would pay for their portion. Is that correct, Donna?

>> Well, there's a couple things. The -- this is only two individuals in two very large plans -- in two fairly large plans. So the -- and we did -- we did have a provision like this once before, in the Police and Fire plan, where a former fire chief was in the -- was put in the federated system. So that happened once before, in, I can't remember what year, 1999 or something like that. The -- so in response to the comment about federated, I believe -- the pretty code doesn't need to be amended, because the federated plan is the default plan, the way it -- the way the code works, it just doesn't need to be amended. However, I believe this recommendation is on the federated agenda for next week, so that they can weigh in on it if they want to. Even though it's not an amendment to their code, it doesn't have -- and so it doesn't technically have to go to them, it is on their agenda.

>> David Bacigalupi: And I'm acknowledge the fact that we're just asked for a recommendation. We're not passing this or not -- you know, it's up to the council.

>> Mr. Chair, just a bit more history. When the earlier ordinance was adopted to this effect, federated board responded by initiating litigation in superior court. But that litigation was rejected by a superior court judge and obviously, and I suppose it's obvious to everyone that the composition of that board, none of the board members who made that decision at that point are on the federated board at this point.

>> David Bacigalupi: Okay, Sean.

>> Sean Kaldor: So in the proposed ordinance it says that people who wouldn't qualify, people being recruited who wouldn't qualify, shall not be a member of this retirement system but doesn't say they shouldn't be a member of any other retirement system or doesn't give them the ability to choose to be a member of this plan.

>> Correct. Because you can't have the individual make the election. So the way our code works, the federated plan says that if you're not a member of police and fire and you're a full time city employee are you a member of federated.

>> Sean Kaldor: By default.

>> By default.

>> Sean Kaldor: Thank you.

>> David Bacigalupi: Okay, hearing no further discussion on the motion, all in favor? All opposed chair will be a nay, the motion passes.

>> Mark Danaj: Thank you.

>> David Bacigalupi: Thanks Mark. Okay, item number 14, oral update on committee assignments. We have some new faces on the board. Keith Keesling is no longer on the investment committee, so I'm going to appoint Conrad Taylor to replace Keith. I think with Conrad's being of accounting procedures he should be an asset to that investment committee. Not letting Sean skate and not do anything, I'm going to appoint Sean to the Real Estate committee in Conrad's place. Okay, number 15, oral update on City Auditor's projects. Sharon is here, long meeting, Sharon, thank you.

>> Sharon Erickson: Good morning or almost good afternoon. Hope this one goes faster. My purpose is here to keep lines of communication open regarding a couple of audit projects that we're working on. The first is pension sustainability. The purpose of that review is to assess the long-term sustainability of pension benefits and the potential impact of cost increases on city operations. This is an audit that was approved by the city council as part of our audit work plan. Given the difficulty of defining sustainability, which we've run into, in the first few weeks on this job, my current thinking is that what we'll be doing is providing background information that can help other people who are far more capable at making that decision, to help in those decisions. The way we're going to do that is, what we've done is we've gathered 30 years, basically back to 1980, of actuarial reports. We've got provisions from the city charter, Muni code changes, city and retirement CAFRs. We're compiling that information. The plan's economic and demographic assumptions over that time. We'll be analyzing actual additions and deductions to the plan, what other people would call revenue and expense. The timing and impact of benefit enhancements. Other demographic and economic trends. We'll be researching other jurisdictions' pension systems and the actions other folks have taken to address pension and OPEB funding challenges. We'll be attempting to do some cost savings information on second tier retirement options. Although how we're going to do that is going to be difficult. We'll be interviewing and have already interviewed some of you individual board members to understand your process for adopting

actuarial assumptions. And perspectives on board member roles. So some of our next steps on that project, we're continuing the analysis of this 30 years worth of data. We hope to make that publicly available once we have that information scanned and we can put it online. We'll complete our research of other jurisdictions. We hope to complete our field work this summer and release an audit report sometime in the fall time frame. The second project is, disability retirements. The purpose of that one is to assess potential factors leading to a high disability rate in San José, again that's the scope of work that we were given by the city council. But when the city council gives us a scope of work, that really is it. So it's that broad. What we're doing on that project is, telling the number of approvals, denials and changes in retirement status over the next ten years. We're obtaining an understanding of the process, definitions, standards, and financial advantages, and incentives. Again, we're interviewing individual board members who are volunteering. To obtain an understanding of the factors that the boards consider before approving disability retirements and your training regarding those decisions or lack thereof. Our next steps include continuing analysis of the process, including some sample cases, we'll be comparing San José's process to other jurisdictions, and again, with this project, we hope to complete our field work this summer with the release of a report in the fall. The third project that I'll mention very briefly is just the annual financial audit. The contracts are complete. The next steps are entrance conferences with staff. We'll be completing the bulk of the auditor's expected to complete the bulk of their audit work by September 30th with issuance of the CAFRs sometime after that. I am asking Macias, Gini & O'Connell to bring into town their top executives to sit down with staff on those audits so that we have a very thorough understanding. I am reflecting back to you the board's and staff's concern that this audit is -- it's very important, not only to the retirement systems but to the citywide financial statements and can't just be rolled up beneath the city in that case. That's the status of three projects that are -- that have to do with the boards. I'm happy to answer any questions. And let me say if anybody would like to sit down with us and give us your thoughts or perspectives on being a board member and how that relates to any of these, please feel free. We've got some scheduled.

>> David Bacigalupi: Sharon, thank you. Thank you for keeping the board in the loop in terms of what's ongoing and thank you for taking the time to come to the board today. Questions for Sharon? Okay, thank you very much. Okay, item number 16, update on FLSA pensionable earnings issue. Veronica, you going to handle that?

>> Yes. Macias is completing their work, we're hoping to have a report back to the board on August on their findings on the FLSA so it's just a wrap up now.

>> David Bacigalupi: Okay, questions. Sean.

>> Sean Kaldor: Just briefly, in August then will they be saying that they've resolved the issues, have an action plan going in terms of dates and time lines or will that be an assessment at that stage?

>> At that point they'll report their findings of their review of the city's FLSA correction.

>> Sean Kaldor: The city has done the person by person line by line they're reducing it and they'll basically say it's good or whatever the issues?

>> Yes.

>> David Bacigalupi: Okay, next item. Scott.

>> Scott Johnson: Sorry. Veronica, so if the auditors are finding any areas that need to be corrected, is - not sure, staff hasn't told me this. Is staff working on any corrections that the auditors have identified, that need to be made?

>> Yes. Once we have the summary we'll definitely coordinate with finance before the report is issued to kind of go through the pieces and hopefully have corrections or proposed corrections from a staff perspective.

>> Scott Johnson: Okay great, obviously this issue has gone on for quite a while. If we can do corrections that can be done real time I'd really appreciate that, thanks.

>> David Bacigalupi: Thank you Scott. Okay. Next item number 18, update on outside counsel for tax qualification review. Whoop, 17, missed one. Discussion and action on final compensation for pension calculation purposes.

>> So the board asked for an explanation of how the final compensation calculation in the Muni code works. And you have a memo in your packet from me on the development of the language that's currently in the code, and there is an attachment A, that demonstrates how the calculation works under two -- under the code as it existed in 1970, and the code as it was amended in 1992. I think that -- so it -- I don't really have any particular recommendation for the board. It's an informational item for you to analyze the code language. And I'll respond to any questions, of course.

>> David Bacigalupi: Okay, Conrad.

>> Conrad Taylor: This issue here, is this to be referred to either the POA or local 230 for this? If it is a drafting error?

>> Well, my conclusion, you know -- it certainly would make sense for -- if the board thinks that it looks like it was a drafting error, and that there was not an intent to change the 1970 language. Then it would certainly be appropriate for the board to notify the city, and the employee bargaining representatives, because you have to work with the language that's actually in the code. But nothing that I -- nothing that I was able to see in any of the history of this indicates that there was an intent to change it. It doesn't affect that many people, probably, but the change would affect people who did not have their highest compensation in their last year.

>> David Bacigalupi: Sean.

>> Sean Kaldor: So I guess in looking at the analysis you prepared, it does lay out just as you describe, that there was a request to clean up and kind of tidy up some language. And as a result of that process, there was some material changes made to the code. So the question would be the results of that. Do we have any feeling for how many people were impacted, and were they overpaid or underpaid? And in the other side --

>> I believe pension gold is set up to take the language into account. So it's not an overpayment underpayment issue in the sense that they're being calculated as the code currently reads. But -- and there aren't a -- I don't have a comment. They're -- most people their final compensation is in their last year of service but Donna could probably comment on how many people may have something other than the last year of service as their highest.

>> The reason this whole issue came up is because we did have a member who was affected adversely by the language as written, and we asked Mollie to take a look or the member did. And actually, I think the staff actually needs some direction because currently, that member is being calculated and being paid according to the Municipal Code and I think Mollie had made some suggestions on perhaps going to the unions and agreeing that this was a drafting error and until the code was changed would we be allowed to calculate that member and any future members as we thought the code was in '92.

>> Well, I mean the code that -- I think the options that -- the board could -- (inaudible)

>> The board could refer it to the city and the union for their acknowledgment, is the way I put it, that it was a drafting error, and that the error should be corrected. But if there was an acknowledgment that it was a drafting error and we were going to move forward with an amendment, that would give us some level of comfort that we could go back to the old language.

>> Sean Kaldor: As you've described it here, it seems there's you know certainly evidence to indicate it's worth exploring more it was a drafting error. I don't think we can simply pay people differently because that's our belief. I mean the code is very explicit and this is the way it's written for us to follow. But I think we go to the unions which I mean it's -- having raised the issue it should be general knowledge to be looked at. We need to give them some feeling for does this affect 10 people, does it affect 200 people how far back toss it go and what does it mean for those people good or bad, and for the plan as well, are we paying people less than we had set aside for them or more than we had set aside for them? What's the impact of this? I would like to see it get further exploration from a staff standpoint.

>> David Bacigalupi: I think we have the report here. And I think the next step is to agendaize this in our August meeting for further discussion but refer this to the city and to the unions and make sure that there was intent to change it, and not just a mistake in the language, that arbitrarily made a change. Let them talk to each other, and then come back to this board. Because again I think like you stated this board can only execute the language that we have in front of us. And so it would be my suggestion that we, now with this report-out, that we request the unions and the city to get back to us and see what their discussion and feelings are about this, and then we discuss it again in August.

>> Rose Herrera: So moved.

>> If I can just add. Generally the process is to send it to the City Manager's office, so it would be facilitated through our office and then we would communicate with the unions and provide the information that has been passed down from retirement services. So it is a process that has been followed in the past.

>> David Bacigalupi: I'm not sure if I understood that. Are you saying we shouldn't talk to the unions, we should just send it to the city or --

>> No it's a process that has been followed in the past. If you are seeking changes to the municipal code or exploring changes to the municipal code it would have to go through the meet and confer

process. Because it is a change in the municipal code that you may be contemplating so we would facilitate that process.

>> I don't know that the board is seeking a change in the municipal code.

>> David Bacigalupi: Let me speak to my direction. My direction wasn't seeking a change in the municipal code, it was just to make sure it didn't get changed my mistake, just let everybody know. I'm not sure, you know, what's the better way, but it's not my decision to make. My job is to act on what the codes they give me. So I'd just like to hear back from those three parties and then we have some discussion in August with more information.

>> My understanding of the motion would be that you just -- you want a copy of this memo, directly provided to the city, and a copy of the memo provided to the unions, and you want to notify them that you're going to be discussing this again at your August meeting. And they're invited to come address you on the issues outlined.

>> David Bacigalupi: Exactly, exactly. Scott.

>> Scott Johnson: Thank you, player. I'm just reading off the city attorney's memo and conclusion. I'm just a little bit confused about the motion. Here it's suggested that the board can notify the employer and employee bargaining representatives and counsel when it becomes aware that code language may be the result of a drafting error. And we can request that the employee and employer bargaining units acknowledge a drafting error or provide documentation sufficient for the board to ascertain that the language as written accurately reflects the understanding of the employer and employee bargaining groups. So is that the action that we're taking today, then? Or are we -- because I'm a little confused about coming back in August and having another discussion as opposed to notifying the employer and the employee bargaining group and if they provide information to us in regards to documentation or acknowledge that this is a drafting error.

>> As I understood the motion it would and as I intended the language, it would be that they would be notified of the issue. And then, in August, if they want, they can come back and they can say we think it was a drafting error, we think it was not a drafting error. We have documents that say it means something else. And they could do that in August. So the point -- this is a public memo, so they may have already looked at it. I don't know. But they weren't invited to come to this meeting for the purpose of addressing this.

>> David Bacigalupi: Right. And I think you've laid the groundwork of what the problem or maybe not a problem is, send it to those three parties, let them come back to us and let us know that we're just going to continue on with business as usual or that there is something else that needs to be done. And if the three parties don't agree that still doesn't change anything for us. We just continue acting on the code as we have it.

>> Right.

>> David Bacigalupi: Rose.

>> Rose Herrera: Yes, I just think we need to get resolution as to whether there is an agreement there was a drafting error, and this process will just do that.

>> David Bacigalupi: Thank you. Any further discussion? Hearing no further discussion, all in favor, all opposed the motion carries. Okay. Okay item number 18 now, update on outside counsel for tax qualification review. And is that you Mollie?

>> Very quickly. We do have Icemiller under contract now for the tax qualification review, and we've had our first conference call with them, and we've provided them with a number of documents they need in order to start the review. We're still in the process of providing documents. We've -- we've discussed the possibility of their coming in to do a presentation for the board, maybe in September. But we're thinking that we might want to do that as a special meeting of one or the other of the boards, so that they only have -- so that they can do both the federated board and the Police and Fire board on one day, one in the morning and one in the afternoon. So we'll -- in August we'll bring back to you probably some more information about whether or not we want to do a special meeting that's not on any board meeting day or we want to pick one of the board meeting days for the other board to agree to have a special meeting.

>> David Bacigalupi: Thank you Mollie, any questions of Mollie, okay. Item number 19, update on board governance change.

>> So the tentative calendar for that is for the ordinance to go to council on -- for first reading on June 22nd. At which point then it would come over here to this board and the federated board, for you to look at, and make a recommendation on, just like you made a recommendation earlier today in August. And

then it would be -- go to second reading, to council, after the board meetings in August for an effective date sometime in September.

>> David Bacigalupi: Okay, thank you. Questions of Mollie on that? All right. Standing committee reports, recommendations, item number 20. The next meeting of the investment committee is scheduled for June 17th, 2010. Not and file. Item number 21, the investment committee of the whole, the next meeting is scheduled for August 19th, 2010. Be note and filed. Next part of our calendar is the consent calendar. Usually the items are taken in one motion. Items 22 through 29, unless there's any specific items that any board member would like pulled, are there any -- okay I have a motion, do I have a second? I have a motion and second. Are there any items desired to be pulled? Yes. Okay. (inaudible).

>> David Bacigalupi: Okay. And the second.

>> Scott Johnson: Can I make a comment on one item, and that's 29 E.

>> David Bacigalupi: Can you hold off a second? Can I have a second on the amended motion, pulling item 23 out.

>> Scott Johnson: Second.

>> David Bacigalupi: Okay, now comments on the motion. Go ahead. Number 29 --

>> Scott Johnson: 29 E.

>> David Bacigalupi: E.

>> Scott Johnson: Would like to congratulate staff and commend them for the continuous excellent work they do in financial reporting. We really do appreciate it.

>> David Bacigalupi: And I think the entire board feels that way, thank you very much. Okay, with that, we're now approving the motion is to approve the consent calendar, minus item 23 A. Is there any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, the motion carries. Okay, item 2003A. Go ahead Conrad,

>> Conrad Taylor: On 23,A, just for my classification, I'm going to San Francisco for training in July. Does it have to be indicated on this form?

>> David Bacigalupi: Yes, it would normally be here, did we approve that last month no?

>> I believe it was approved in the past agenda.

>> Conrad Taylor: Was it in the past agenda?

>> Yes, I believe it was approved in the past agenda.

>> David Bacigalupi: Travel, month it wasn't in last month.

>> Maybe -- I'll double check and see.

>> Conrad Taylor: Okay, thank you.

>> David Bacigalupi: You make a motion for approval of 23?

>> Conrad Taylor: Yes, I make a motion for approval of 23.

>> Rose Herrera: Second.

>> David Bacigalupi: Okay I have a motion and second. Any further discussion? All in favor, all opposed the motion carries. So you have a preset up trip? Educational trip?

>> Conrad Taylor: To San Francisco.

>> We'll look at the policy. There maybe something because it's in July when you don't meet that will allow it to go in August.

>> David Bacigalupi: I know we've done that retroactively in the past, it's not right way to do it.

>> Our new policy is a lot -- it's different so --

>> David Bacigalupi: We'll have to take a look at that. And Donna if you could find out why we missed that. It might have been set up on the July agenda which there is none. Okay, consent calendar. --

>> Scott Johnson: Mr. Chair, could I ask a question?

>> David Bacigalupi: Go ahead.

>> Scott Johnson: If board members do want to participate in any training that are listed here, do we just notify staff, and then staff will put that on the agenda for approval? Okay, thanks.

>> David Bacigalupi: We're now at proposed agenda items. Are there any proposed agenda items? Hearing none, this is the time for public comments, anyone is invited to come and address the public -- address the board. And if you could just push the microphone button on, and stuff and state your name please.

>> Darryl Von Raesfeld: Thank you, Darryl Von Raesfeld, fire chief for City of San José. It was interesting to hear my name announced today getting ready for retirement. But I just wanted to address something to the board so they can become aware of it. As I've been going through my retirement because of the salary range I'm at, I'm impacted by an IRS 415 law and actually three years ago, I mean six years ago

today on June 3rd, 2004, the board passed a draft ordinance concerning the section 415M. And I've been working with the city attorney's office, Mollie Dent to work through these issues. I would like to have the board explore and see what happened to that. It was referred to OER for moving forward to talk with the bargaining groups and city administration, and it seems to have kind of just dropped in a black hole. This 415M is the solution to some of the problems that you reach when people get to higher salary range for retirements. It's common throughout PERS and other benefits plans like this. I would request that the board at least explore and find out what happened to that motion on June 3rd, 2004 for the 415M plan.

>> David Bacigalupi: Okay, we'll set that up on next agenda, agenda setting meeting and we'll ask staff to provide some history and you know current result of what's going on, what happened to that.

>> Darryl Von Raesfeld: Perfect, thank you very much.

>> David Bacigalupi: Thank you for bringing that to our attention. Last item on the agenda is education and training. Item number 30 is an extensive memo of numerous training programs. These have all been reviewed by the retirement director, and highly recommended. So if you make yourself available to training to help you improve you doing your board duties, that would be a positive thing. Okay, with that, I would adjourn this meeting. Thank you.