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City of San José city council meeting. [Gavel]

>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for the very first meeting of the new year, January 12th, Happy New Year, everybody. We'll start our new year with an invocation. Councilmember Constant will introduce the invocator.

>> Councilmember Constant: Thank you, mayor. It's my pleasure to introduce once again Father John Asimacopoulos, he is my priest from the St. Nicholas Greek orthodox church. As council district 1, we get to choose the invocator every January. It's been my pleasure to have the priest from my church come for the first meeting of the year each of my four years here, so I'm just thrilled to have father John here. And just to remind everybody that it's just a few months before we have our big Greek festival and we hope to see you all there. (inaudible) we give Thanksgiving (inaudible) spiritual all the residents of San José. (inaudible) and of their great responsibility, as stewards of the gift of governing, and grant them patience, sensitivity, and virtue, and by their words and deeds, they can lead our city to continue to prosper and rise, shining like the bright sun, continuously moving forward and glorify your holy name forever, amen.

>> Mayor Reed: Thank you for joining us. It's a good kickoff for the new year. Please all stand again for the pledge of allegiance. [pledge of allegiance]

>> Mayor Reed: Our first item is orders of the day. I have one change to the printed agenda, that would be item 4.6, the banner policy, needs to be deferred until the next meeting, which will be the 26th day of January. Any other changes to the agenda order? We have a motion to approve orders of the day. All in favor? Opposed? None opposed. We will adjourn today's meeting in memory of Rita Megrath who served the citizens of San José for over 25 years. City Manager Deb Figone will have a few words.

>> City Manager Figone: We would like to acknowledge her son, truly her pride and joy, and all of us who knew Rita, knew that. Rita started her career in 1985 in Mayor Tom McEnery's office supporting his budget and policy director and team for six years. And following her move to the City Manager's office in 1991, Rita first supported Greg Larson, who actually moved from Mayor McEnery's office and became deputy City Manager, and then quickly, she advanced to become the City Manager's executive assistant. In that role, for over 13 years she supported four City Managers, and I can tell you firsthand that she was fiercely protective of and loyal to each. Rita was a 23-year employee of the city, but to simply recount her years, this is how special she was. She was someone who did her work with an unparalleled level of professionalism and commitment. With her institutional knowledge, which was unmatched, and her attention to detail, and endless courteousness, Rita won the respect of all who came in contact with her. She knew everyone, she forgot nothing, and she treated all with equal respect. She knew what the right thing to do was, and without exception, she did it. But beyond Rita's professional skills, there was something else that made her special, and that was her sense of humor and her great, infectious laugh. There was nothing she loved more than a good joke, she had a terrific sense of humor, and she loved to tell a story. When we heard her laugh, we knew there was a good story to be told, it was her way of helping to lighten up the entire office. And there was no better -- no one better at finding the humor in things than Rita. Second to Evan, she loved the city, and it was her life. She cared deeply for the people she worked with. She was always there with a supportive word, and the people she worked with cared deeply about her and will miss her. On behalf of Rita's son Evan and her entire family, I would like to thank all of Rita's friends and colleagues who helped her through the last year and a half of her battle with pancreatic cancer. You know who you are. We thank you for your calls, the dinners that you spent with her, the visits that you paid her, your thoughts and your prayers, you are too numerous to mention. However, I would be remiss if I didn't acknowledge and thank Diana Jamison, executive assistant to Vice Mayor Chirco, and long time friend and colleague of Rita's. Diana was there every step of the way with Rita, and I'm certain that Rita was grateful for Diana's devotion to her. Rita Megrath was one in a million, and I'm thankful for the time I had with her. Thank you, Mayor.

>> Mayor Reed: Thank you. There were many, many people in the city who worked with and loved Rita, and Evan, you can be very, very proud of her and her service to our community, and thank you for coming today. Our next item is the closed session report, City Attorney.

>> City Attorney Doyle: Mr. Mayor, we have been given authority in one matter to file an appeal, and that is the San José Silicon Valley chamber of commerce political action committee versus city. That was unanimous vote.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to invite first our City Manager, Deb Figone, our environmental Services director John Stuffbean, and the winning department directors and campaign coordinators from our combined giving campaign to join me at the podium. Every year the city is

committed to and supports charitable giving through the annual combined giving campaign. I want to thank all the employees throughout the entire city for their participation and generous donations in this year's campaign and of course we are here today to commend the departments and their significant achievement of participation and generous contributions from all the employees in the departments. The City Manager has a few more words to add to the great work done by these great folks standing behind me..

>> City Manager Figone: Thank you, mayor. I'd like to begin by adding my thanks to all our city employees for who, because of their commitment and dedication and outstanding teamwork we raised a total of just over \$286,000. This year's theme, give now more than ever was especially relevant during these difficult times. These results are truly remarkable given all that our city and our region and our nation are going through. And even though many of our employees are still wondering about whether or not they are going to lose their jobs, they still reached deeply into their pockets to help those in need. So thank you for opening your hearts, and giving so generously, and I'd like to turn it over to John Stufflebean who was our campaign chair this year, to help give out the awards. And John, I would like to thank you for your enthusiasm and your leadership in this very important year and campaign. Thank you, John.

>> John Stufflebean: Thank you very much. And we have four categories of awards. And to make them go more quickly we are going to go ahead and announce the third place, the second place and the first place in each of the categories one at a time. And then the mayor's going to give the awards to the campaign coordinator or department head from the department. The first category is the department with the highest percent participation. In other words, it was the highest percentage of the employees in that department that gave. And the third place, highest percent participation was the City Clerk's office. Second place was the housing department. And first place was the independent police auditor. So City Manager, would you give those out. [Laughter]

>> John Stufflebean: Okay. And then congratulations to the winners. Second category is the highest number of employees participating. Third place in this category was the library. Second place was the Department of Transportation. And first place was the Department of Environmental services. [Laughter]

>> John Stufflebean: It wasn't rigged. That's why there's four categories. Okay, and the third category is the department with the highest total dollar amount donated per employee. So in third place in this category was the redevelopment agency. Second place, City Clerk. They get another one. And first place, the housing department. Those three. And then the final category is the department with the most improved participation from last year. I was somewhat disappointed because environmental services we doubled the amount of people who gave and we still didn't make the top three. These are amazing results from last year. Third place, redevelopment agency, second place City Clerk, they did a great job this year and first place the independent police auditor. If I could ask everyone to applaud all the different award winners. [applause]

>> John Stufflebean: And then in conclusion, if I could just have everyone in the audience who was involved with the campaign this year to stand up and kind of be recognized as being involved in the campaign. There are some other people involved I think and just want to recognize them. [applause]

>> John Stufflebean: Thank you.

>> Mayor Reed: Congratulations, thank you to another successful campaign. These funds are really important to our community. So you're free to go as soon as the City Manager shakes your hand. [Laughter]

>>> Next I'd like to invite Mona Hemholdt from the American Red Cross to join me at the podium. In addition to your money and the combined giving campaign we also need your blood. So the American Red Cross is here. We're recognize January as national bloods donor month in the City of San José. It's an easy way, it doesn't cost you any money, easy for you to help those in desperate need in our community. One donation of bloods can save three lives sometimes. Unfortunately only 13% of our eligible donors actually donate blood. There's lots of room for improvement here. So we hope you will all take time during the next month to make a donation. Mona has a few more words to add.

>> Thank you. Thank you, mayor Chuck Reed and the city council for recognizing national donor month. The holidays and winter months are especially difficult for us to collect blood. This week especially, we've had a dire need for O negative due to a bad accident. So anyone who have O negative or B negative blood we're really in need of that. The organizations here in San José there were 70 of them who participated this last year with blood drives. We collected with those blood drives 2800

units. But as Mayor Reed just denoted, each unit, we break down into three components. And so we were able to help save 8650 lives. I also would like to personally thank the city, and building, because in the rotunda, we conducted three drives this year and we collected over 200 units of blood which again represents 600 units. So if someone here has never conducted a blood drive please give us a call, 1-800-give life because we are in dire need especially in the month of January. Thank you.

>> Mayor Reed: I have this official proclamation.

>> Thank you.

>> Mayor Reed: Thank you. Now I'd like to invite councilmembers Kalra, Liccardo and Pyle to the podium. As we separate poverty awareness month in the City of San José. I think Councilmember Kalra has the details, no, Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. My colleagues will be joining in after I make a few remarks. According to the United Nations, 5,000 adults around the world die every day of hunger or hunger-related causes, and according to UNICEF, 25,000 children die each day due to poverty. In 2008, 39.8 million Americans were living in poverty, but 58.5% of Americans will spend at least one year below the poverty line at some point between the ages of 25 and 75. According to the United States census bureau, the poverty rate in Santa Clara County in 2008 was 8.1% and rising. Sacred heart and other organizations like it work by uniting the community to ensure that every child and adult is free from poverty. They change lives and abate poverty by providing essential services, offering tools for self sufficiency and ministering with dignity, compassion, and respect while also engaging the community and inspiring volunteers to love, serve, and share. So Chuck Reed, mayor of San José, and my colleagues, Ash Kalra and Sam Liccardo, along with all the colleagues on our council, do hereby recognize sacred heart and other organizations who serve the impoverished in San José. I don't know if there's a representative from sacred heart. We will hear in Ash and Sam in just a few minutes. We urge you to do your part by volunteering and making donations of food and clothing to local shelters. Severe poverty affects 50% of the world's adults and children. That's 3 billion adults and 1 billion children. From these 4 billion persons living in poverty each year 9 million people die worldwide because of hunger and malnutrition and of those 5 million are children. With that, I will turn this over to Ash. Are you first, Ash Kalra for a few words.

>> Councilmember Kalra: Thank you, Councilmember. I want to thank the Mayor, Councilmember Pyle, Liccardo and all my colleagues for recognizing poverty awareness month, and would like to recognize Pancho Guivara from sacred heart community services as well as behind me, Greg Keperle from Catholic Charities and Terry lossino from step up Silicon Valley, all critical parts to our campaign to cut poverty in this valley. This Friday marks the birthday of Martin Luthur King, Jr. We oftentime use this month to hold him up as an ideal, in terms of the civil rights movement, and he's often seen as the leader of the African American community during the civil rights movement. But towards the end of his life he really took the mantle to become the leader on behalf of poor people, and some say that's why he lost his life. Going decades forward, the poverty rate in this country is even higher than it was during the time that Dr. Martin Luthur King started the poor people's campaign, and the divide between rich and poor is even greater than it was then. We all have a lot of work to do and I certainly want to encourage everyone to do what they can in remembrance of Dr. King to serve and I know that the agencies that have been mentioned of which we have representatives here all have different opportunities to serve, as this Monday, sacred heart community services will be going out in the community, helping to plant gardens. I'm certainly going to take part in that and would encourage all of you to find some way to serve this week, some way to certain this weekend, in hob of Dr. King as well, in remembrance and as a sign of awareness, that poverty does exist everywhere, even in this great loam we have leer in Silicon Valley. Councilmember Liccardo, thank you.

>> Councilmember Liccardo: You know, I just wanted to highlight the extraordinary work some these groups do. You know, Ash mentioned the garden program, it's actually called La Mesa Verde through sacred heart community services. Extraordinary program, it's attracting national attention. In fact I think the New York times is going to be running an article on it shortly. This is a way to engage the community to improve their economic self-sufficiency and their health through a very simple means, which is planting gardens in their own yards and yards nearby. A fantastic program, Catholic charities in my own district runs an incredible youth center, activities continue until 9:00, 10:00 at night. A wonderful way to keep kids off the street and engaged in healthy activites. These are great programs, and we encourage you strongly to get out there and support them. Thank you. Mayor.

>> Mayor Reed: Thank you. Want to thank all of our community organizations, that help us deal with these issues. You've seen three of them here today, a very, very important in this work and I have a proclamation to present. I think I'm going to give this to sacred heart. Pancho.

>> Thank you. [applause]

>> This is really meaningful, but I think I accept this on behalf of the entire community that comes together to try to make sure we're able to do something about poverty. And that's what organizations like catholic charities and sacred heart and other institutions that care about poverty are really trying to do is not so much talk about the issue or just provide services but create an opportunity for people to actually take these ideas, these statistics that we hear about nationally, locally, and say what can I do about it? How can I actually take that information, take that knowledge, and that's what poverty awareness month is really meant to do is to say, how do we take some knowledge and use that knowledge as the seeds of change? Just as we'll be getting ready to prepare gardens and help people provide self sufficiency for their families this next coming week, and we invite people who would like to be involved in that effort and actually going out into the Washington neighborhood and making sure people are able to develop that kind of that nutritional self-sufficiency for themselves, but the seeds of change that happen in our own hearts when we're able to learn about the issue, understand the reality of poverty in our midst, to see that it's growing but to also see that we have everything that we need to address these issues in our own hands. We can do there. We can make this kind of work happen. But we all have to take responsibility foster it. Not only in terms of the resources that we give, our time that we give, finding public policies that really prioritize the needs of the low income first and foremost and understanding that that opportunity is really what makes sure we can grow the next generation of work. So thank you, God bless for your wonderful support and leadership and spread the word and let people know that they can get involved and they can make a difference. Thank you. [applause]

>> Mayor Reed: We're going to try to form up for a photo, one more time. All right, thank you. Next I'd like to invite Mexican consul General David Figueroa to the podium. The year 2010 marks a very special year for Mexico. Please come on down but it's also a special year for San José as we celebrate the bicentennial of the Mexican independence movement. Because before 1810 we had a group of explorers settlers, Los Publidores we call them, 1877 created the California's first city, that would be San José. They were flying the flag of Spain, for the Spanish empire. For the first few years of our existence we were part of Spain. But with 1810 with the declaration of Mexican Independence Day, that is our Independence Day as well as Mexico's because we were still part of Spain at that time. So we are looking forward to celebrating this bicentennial year with Mexico as part of our other than heritage here in San José and we've invited consul general to come in to accept the commendation on behalf of us acknowledging Mexico's work in founding the City of San José because the folks who founded this city were 66 people from Mexico all born in America. So a small group of Mexicans started San José and so we have a very, very long history with Mexico. And we are really happy to celebrate this bicentennial together. And consul general would you like to say a few words?

>> Thank you. Mui buenas tardes, Honorable mayor Chuck Reed, Honorable ladies and gentlemen, a Representative of the Mexican government, it is a great honor to be in this chamber today to receive a proclamation that recognize that bicentennial of Mexican independence and promotes 2010 as a year of informal celebration of the City of San José. I have no doubt that the celebration of the Mexican independence started here in San José 200 years ago, when El Pueblo de San José ceased to be a Spanish colony of Alta California. The Mexican bicentennial will be commemorated in the Silicon Valley through a series of official and associated events. The main official events will be coordinated by the Mexican Heritage Corporation in this Santa Clara County and the consulate of Mexico with the privilege of the sponsorship of the City of San José. The official events will start with visual arts exhibition, Los Bresaros, in the Mexican heritage plaza next February. We plan to have a very big fiesta during September through a very special official Grito ceremony and a very rich program for a San José mariachi and Mexican heritage festival annual event. At San José City Hall we will hold a very important exhibition, the last murals of Miguel Corvorrubias. This year is also the centennial of the Mexican revolution. For we will prepare an official commemorative event in November. There will be also many other associated cultural events in which the community of San José will commemorate the bicentennial. I would like to convey the City of San José and its representative to join us with a spirit of celebration and to invite our community to enjoy the city's cultural richness and long history for the celebration of the bicentennial of Mexican independence and the Centennial of Mexican revolutions. Thank you, Muchas Gracias, [Spanish] a Mexico. [applause] (inaudible)

>> Mayor Reed: Our next item of business is the consent calendar. Are there items councilmembers would like to pull off for discussion? City Attorney?

>> City Attorney Doyle: Item 2.10.

>> Mayor Reed: I have request to pull 2.7 and 2.8 as well. So we have a motion to approve the balance. All in favor opposed, none opposed, balance is approved. 2.7 a grant for something, I got to look at the agenda. David Wall wants to speak on that. 2.7 is the grant for alternative and renewable fuel vehicle technology program.

>> David Wall: The biomethane fuel production facility is something I oppose. A time lag for this discussion was way too short and is ill conceived. I believe this project will create, utilize more energy than it will produce. Pursuing a \$10 million grant is a folly considering the cost of this proposed project, could be in the hundreds of millions of dollars. This project is basically a privatization of a plant process, and that is a problem because it's just not talked about. But where is this money actually going to come from, for this whole project? Are it's going to come from the sewer service and use charge primarily supported by single family residents. This project will create odors and emissions that will concern or have a lot of concern with the Milpitas McCarthy road development. I can't see why you go along with it. If par 9 is to be used for this project one has to remember par 9 has inadvertently been created into a restored lab at that time. It was done this way by hundreds of thousands of cubic yards of soil removed from city construction projects that were nutrient rich. There is a lot of diverse plant life out there that is now on the fringe of the bay. And if this is so good of a project, it should be located within the plant area, where the digesters are because in your memo that you've seen the digesters are no longer utilized for plant operations, from the memo I talked about yesterday, to the treatment plant -- or the transportation and environment committee. And if it's placed within the plant infrastructure, you have a lot of infrastructure cost you save from electrical hookups, plumbing hookups. This is a very bad project for a \$10 million gambit from a state who has no money, who's on the verge of bankruptcy, and can't even pay its employees. This is bad for this time period.

>> Mayor Reed: That concludes the public testimony on this item. Is there a motion? We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 2.8, is a recommendation to approve a support position on assembly bill 202 for biofuels. Mr. Wall you wanted to speak on that one as well.

>> David Wall: This is kind of humorous because this piece of legislation should have gone prior to the one I previously talked about. I oppose AB 222 because it relaxes air quality standards. AB 222 permits incinerators to be called biorefineries. Biorefineries are incinerators. Biorefineries will incinerate fats, oils, greases, and yard waste. This refining, biorefining incinerating process is not one that is complete. There will be emissions and foul odors will further degradate our air quality. This legislation is primarily designed for profit making by special interest corporations. If you can look on who supports this group, or this legislation, you'll find a lot of governments want it because it's -- they don't have to spend much money, it's an easy way out. But there are a lot of corporations waiting to make a fast buck. It also allows green politicians an ability to come out and say hey, look what I've done, I've done something great when in reality they have done nothing. AB 222 is bad for the quality of our air. It's bad for the environment. And this type of legislation is a red herring. It needs more work. This is faulty on its face. The people who hate this, who oppose this, number one on the list, the American lung association. Another one, the clean water action. The global antiincinerator alliance. Let us not fool ourselves, biorefineries are incinerators. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Is there a motion? We have a motion to approve, all in favor, Councilmember Liccardo did you have something to add?

>> Councilmember Liccardo: I was actually going to suggest a deferral for one week. If the maker of the motion would be inclined to allow that.

>> Mayor Reed: It would be two weeks. We don't meet next week.

>> Councilmember Liccardo: Two weeks, thank you. It's a consent item.

>> Councilmember Pyle: I'm not sure where it is in reference to the assembly. It was in special committee for health and education.

>> Councilmember Liccardo: If we could be informed if it's time sensitive that would be level.

>> Betsy Shotwell: Yes, Betsy Shotwell director of Intergovernmental Relations. I believe it's being heard today, and there is some deadlines coming up this month to get out of policy committee onto the floor, for bills that were introduced in 2009. So we are in a pretty tight time frame here.

>> Councilmember Liccardo: I see.

>> Councilmember Pyle: Two weeks would be tough.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: The motion, do you want to move ahead on it? What's the reason for delay, Councilmember Liccardo?

>> Councilmember Liccardo: I could be mistaken, I don't believe this has actually come through committee and I know that often they don't come through committee and that's okay. I just noting the organizations that are in opposition, it seems to me, there is a significant number of environmental concern out there and I'd just like an turn I think to be sort of aprides of both sides of this issue a little more fully. So that would be my request. I understand there was a motion on the floor.

>> Councilmember Pyle: It was presented at Rules Committee.

>> Councilmember Liccardo: Okay, understood.

>> Mayor Reed: So Councilmember Pyle are you have the motion. Is it to approve for today or defer for two weeks? So the motion is to approve it today. Further discussion on the motion? All in favor, opposed, one opposed, Councilmember Liccardo, that is approved. Item 2.10, rules for conduct of a meeting. City Attorney?

>> City Attorney Doyle: Mr. Mayor, this is an item that is amending the council's rules of conduct. It's come through the Rules Committee and there are just some technical changes that I want to -- more clarifying. And I want to point those out. The first is, dealing with the sunshine requirements on any real property deal over a million dollars. We have a 14-day requirement to have the staff memo. The draft in your packet includes the actual agreement being in the packet 14 days in advance, and that's not our practice. The staff memo is there, and the agreement is -- or a substantially final version of the agreement is in the packet ten days in advance. So I want to make that commendation.

>> Mayor Reed: Could you point us to which section that needst to be changed?

>> City Attorney Doyle: I can give you the page number. It's page number -- I'm going to have to dig it out, I'm looking here at the page 8 --

>> Page 8 D.

>> City Attorney Doyle: Under D, 1, 2 and 3. And it deals with those contracts over \$1 million. It's the 14-day notice and it's take out the requirement that the agreement be also attached.

>> Mayor Reed: So that's your recommendation to make this change here?

>> City Attorney Doyle: Right, that's consistent with current practice.

>> Mayor Reed: Okay, anything else?

>> City Attorney Doyle: There's two other changes. One on page 26, dealing with appeals of generally public records act request that go through the Rules Committee and then they can be appealed to the elections commission and then an appeal can be taken from the elections commission to the city council. I want to make it clear that any party can make that appeal, and not just the requestor. And lastly, on page 28, this is under item -- essentially it's a new section and it basically provides that the city's failure to follow these procedures will not invalidate or will not result in the invalidation of any inaction of the council. That's just to make clear that if there is a technical violation of the process, that it doesn't nullify a contract or an ordinance or any action of the council.

>> Mayor Reed: All right. Any questions on those recommendations or anything else in the memo? Is there a motion to approve as amended here? We have a motion to approve as amended. All in favor, opposed, none opposed, those are approved. That concludes the consent calendar. We will now turn to a joint city council and City of San José financial authority item number 2 which are actions related to the RFP for solar photovoltaic power production.

>> John Stufflebean: Thank you, Mr. Mayor. John Stufflebean, environmental services director. Wear pleased to recommend after many hours of weeks and months of work a solar power company for installation of solar panels at the yard. Thank you.

>> Mayor Reed: We've done a lot of work here and done a lot we want to make sure that gets shared with other cities. I know Joint Venture Silicon Valley has an effort to try to do a solar RFP for 28 cities that are interested in it. There's no reason to make all of the difficult mistakes that we made and the things that we learned just as we benefit from their pioneering. So I assume that you've talked to joint venture Silicon Valley and will share this. It is not copyrighted, it's not patented. It's not proprietary. This is part of the research and development work we're doing in San José to make it easier for other cities to do this. I want to thank the staff for getting it figured out and done, it's more complicated than any of us would have imagined when started but that's the way these things happen to be. I'm really pleased to see that we've gotten almost over the goal line and will soon be moving ahead with it. Vice Mayor Chirco.

>> Councilmember Chirco: Thank you for all your good work. I know this has been an evasive goal for quite a while. On page 4, they show the rankings of the companies that responded. And my office found it interesting that the three that got the local preference, all of them were high. Which I found interesting, because then somebody in San Lorenzo, easy for me to say. They wind up getting the contract. And I thought are our local providers not sharpening their pencil enough? Always want to do, you know, business as locally as possible and here are three companies that are local and all got the preference and still did not get about bid. Are I was just -- is this an ongoing problem we have with our local businesses?

>> John Stufflebean: I really can't say but other than to say in this particular process, this is how the scoring came out. Those companies did get local preference points for that. It wasn't enough to put them into the lead.

>> Councilmember Chirco: Which without those local preference points, they would have been even further down the line. Thank you. Good job.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. John, am I correct to assume in the last time we tried doing this before, it came off the council agenda, that sunpower was the only bidder at that time? Or was that the same project?

>> John Stufflebean: That was the same project. They were determined to be -- all the proposers were determined to be nonresponsive. They were the one company that actually did submit a proposal.

>> Councilmember Oliverio: And On the price before, on the first time they submitted, versus the price they submitted the second time, was there a difference?

>> John Stufflebean: Yes, and beyond that they submitted a certain price and then through negotiations that price was reduced even further. So it's a significantly different price than we are looking months ago.

>> Councilmember Oliverio: So the sole bidder was more expensive?

>> John Stufflebean: Yes, sir.

>> Councilmember Oliverio: The second time they submitted, they were less expensive?

>> John Stufflebean: Yes and city staff got it down to a more competitive cost.

>> Councilmember Oliverio: I want to thank you for having more involvement in the procurement cost. Thank you.

>> Mayor Reed: That's part of the process that we've gone through to figure out how to get that competition. Because the last time through we had a lot of people interested but only one company actually submitted paperwork. This time we got four good qualified companies, and I think that's good. So I want to thank the staff and look forward to some more of these as we get through on our way to 50 megawatts. That's just the beginning. Councilmember Liccardo.

>> Councilmember Liccardo: Could I make one very small edit in the memo? It identifies sunpower as Richmond California and I hate to believe we lost them to Richmond. They're still here, last I checked, is that correct?

>> John Stufflebean: The address they put on their proposal forms, where the person who submitted the forms was housed.

>> Councilmember Liccardo: We're not disowning them.

>> Mayor Reed: They're not allowed to leave. Anything else? We have a motion to approve. All in favor, opposed, none opposed, that's approved. Next item is 3.1, report of the City Manager.

>> City Manager Figone: Mr. Mayor, I have no report today, thank you.

>> Mayor Reed: 3.2, report of the Rules and Open Government Committee for December 2nd, 2009. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 3.4, report of Public Safety, finance, and strategic support committee of December 17th. Councilmember Nguyen chairs that committee.

>> Councilmember Nguyen: Thank you, Mr. Mayor, the minutes are in your package. If there are no questions, I move for approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion to approve. I have one request from the public to speak. Mr. Wall.

>> David Wall: In regards to 3.4, item C, redevelopment agency monthly financial report, I gave testimony at that committee in relation to, it would be appropriate to have an inventory of all redevelopment high density living projects as their vacancy rates and their vacancy rates applied to their ability to meet their debt service. And at what point is the inability to meet their debt service going to occur

and at that point how are bankruptcy proceedings going to be put forward on those properties. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve. All in favor opposed none opposed that item is approved. That takes us to 3.5, actions related to the San José Conservation Corps.

>> City Attorney Doyle: Mr. Mayor, this item represents a settlement of claims that the city had against the conservation corps. The memo is in your packet and we're here to answer questions.

>> Mayor Reed: I have two requests from the public to speak on this item. I'll take that testimony now. Bob Hennessey and David Wall.

>> Mayor Chuck Reed, members of the city council, my name is Bob Hennessey, executive director of the San José Conservation Corps. And I ask you for your support and your vote of approval for the audit that we have just wrapped up. And it's been a tough year. But it's tough on everybody. So ask for your approval and we'll need your help as we go forward. So thanks so much, all of you.

>> Mayor Reed: Mr. Wall.

>> David Wall: I am not sympathetic, and given a Mulligan to a nonprofit that can easily cash their paychecks. But forget how to build the City of San José correctly. I am not here to give testimony to negativitate the outstanding work of the office of City Attorney recoup what type of moneys that the office of the centering allowed to go down whatever rat hole you decide to define it. But in that rat hole of rat holes comes one department in specific, the environmental services department. A department replete with a director, five deputy directors, for a tune of about 1.million of administrative cost that can't monitor contracts and a parent that can't monitor contracts. But no word in here in this agreement is the need for aco-laid, unbridled accolade for the office of audits. They are the true hero. You point them in a direction, they find problems, they point them out. The City Attorney has to bail them out, bring what money we can, from services in kind of what appears to be an organization of monopoly, a decade of monopoly. The auditor doesn't make mistakes, the City Attorney doesn't make mistakes. It gets to the issue of why I say, redo the city charter, amend it in relation to section 411, so you can take direct control. This settlement doesn't include the cost of the auditor or the cost of the attorney time or the actual moneys lost. Thank you.

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

>> Councilmember Pyle: Thank you, mayor. I would like to thank the staff and the corps for the fair way that the issue has been settled. Fortunately, the umbrella agreement with the Conservation Corps is unique to the city and I believe unique to the Conservation Corps. Eliminating the use of the umbrella agreements will help to clarify expectations and increase accountability for nonprofit organizations who are already trying to do the most good with every single dollar that they receive. A city is probably not easiest partner to work with. No aspersions to staff, it's just that we may be seem to be a little difficult at times. Nonprofit organizations however, need to be held to the high standards that our residents expect. Changes by the City Manager's office to eliminate the umbrella agreements will do several things. One, it will set up procedures that ensure that the honorable intentions of our nonprofit partners are not tainted by confusion caused by the complexity of our agreements. And I would like to make some disclosures of people that I talked to. San José Conservation Corps, Mark Lazarini and Bob Hennessey, Team San José, Dan Fenton, Cindy Chavez, and Megan Horrigan. I'm sorry, just Mark and Bob for this one, I'm going to other points, sorry about that. Sorry about that. So I think there were a lot of lessons learned, perhaps on both sides of the table, and I applaud the fact that we were able to hang in there and work them out and I appreciate that very much.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just want to thank Ed Shikada and his team, Bob Hennessey and his team as well as the board from the Conservation Corps that started off as a pretty rocky ride. I want to thank the audit for the work they did that started off as a bumpy ride but I think we've come to an agreement that I think we all can at least be satisfied with and close this chapter and continue to write the book of the Conservation Corps and all the great work that the young men and women have done for this city over the past couple decades and hopefully for many decades to come. And so with that I'd like to make a motion to approve the staff recommendation on both A and B.

>> Mayor Reed: We have a motion to approve staff recommendations. Councilmember Oliverio.

>> Councilmember Oliverio: Hi, on page 2, it says, additional services shall only, underlined, include new services projects provided within and for the benefit of the city. So does that mean, like, landscape median maintenance would not be eligible for this settlement? I guess that would be a question of staff.

>> City Attorney Doyle: I think the basic --

>> Councilmember Oliverio: Or lawyer.

>> City Attorney Doyle: The basic tenet here is to the extent it's over and above the currently level of services. I could be the same type of work but it's over and above the current level that qualifies as new services.

>> Councilmember Oliverio: So to my specific example we have various landscape medians that the Department of Transportation is ripping out because we don't have the ability to maintain and we're putting rocks instead where we have fairly decent looking shrubbery, whatever you want to call it. Could this be qualified for this Conservation Corps to maintain it?

>> City Attorney Doyle: If it's above and beyond what they're currently doing, yes. What exactly they're doing now --

>> Councilmember Oliverio: They may not have that contract now.

>> City Attorney Doyle: Yes, it would qualify.

>> Councilmember Oliverio: Okay, perfect.

>> Mayor Reed: Bob, don't snatch defeat from the jaws of victory here. I think we're about to approve this, which is I think what you wanted. Just let me handle the council here, because I think we're okay. And we all love the Conservation Corps, just want you to know that, and the work that your kids do is tremendous. We all want them in our districts. At least when I was in a council district. Motion to approve, all in favor, opposed, none opposed, that's approved, congratulations, thank you for your work. That will take us to 3.6, Team San José status report. Take a minute for the staff to swap out. Paul Krutko will be handling the reports.

>> Paul Krutko: Good afternoon, mayor and council, Paul Krutko, chief development officer. Let me get the -- so council, and mayor, this is a very brief report, based on your direction at the meeting, last meeting we had before Christmas. There was a direction for staff to do two things. One was to communicate the council's desire that the Team San José board revisit the decision relative to labor at the convention center. And second was for the -- us to ask Team San José to give us a revised marketing plan that would respond to some of the issues raised in the media since that labor decision was established. So one of the things to share today is that that direction asking for reconsideration was communicated to the board. I believe I received this yesterday morning. There was a letter from the executive committee of the Team San José that was addressed to all the councilmembers and really responds to point 1. But I did -- for the record I just wanted to quote from the letter. It was a very short letter, three paragraphs and we can make copies. But the direction from the -- the response from the board to the council was that the board of directors of Team San José voted unanimously to authorize our CEO and selected members of the board, including at least one hotel-affiliated member, to resolve the current issues with the national decorating companies. The principal purpose of these discussions is to ensure a better work relationship with the decorating community resulting in greater business opportunities, greater economic impact and more jobs for San José. Additionally, the purpose is to provide a structure for explaining the agreement to clients and the potential clients of the San José convention center. There's only one other sentence. And it says the CEO was directed to instruct Team San José staff to explore and present to the executive committee all available options for addressing the concerns by the decorators to support the mutual goals that they had. To that end it is our understanding and we have had a conversation Dan Fenton as well as leaders of the national decorating companies, that were in a conference in Dallas, that we understand Mr. Fenton attended. What we here are showing on the screen is what we have heard from both Dan Fenton and our independent conversations with the decorators, that they have a road map to work together and three are working together. That the decorators have told us and Dan has told us that the conversations would continue, the tone was very good, they're working together in a collective way and all believe that the decision that I believe the council also received a copy of, I think before we went on break, that the Teamsters joint council providing local 287 jurisdiction, was an important step forward. So in terms of our view of where things are right now, we believe that the substantive progress has been and is being made. So the second point, in the last slide that I have -- well, actually, there's two slides -- is what our evaluation of the revised marketing plan. Team San José did provide and we did have an opportunity to look at yesterday a revision of some of their strategies to deal with sort of the negative byproducts that we have in some of the media relative to the labor issues. And so the plan they presented we believe will help, in terms of our evaluation. We did suggest, and you see those points listed on the slide, some key components of the marketing strategy that we think should be emphasized going forward, relative to the focus on San José,

on excellent service and product flexibility as opposed to folks seen on Team San José as the issue. The issue we hope in the marketing will be how good a place San José is to do business and what a great product that we have. That we want to be able to identify and benchmark bookings so we can celebrate the fact that people have booked and we're getting that out into the media, and that we continue to track, to make sure that we're seeing how well our message is being received. So in closing, the City Manager will continue to do what we have been doing over the first six years of the contracts. We meet monthly, we review performance, we talk at length with Mr. Fenton and his staff about where things are going, where we can improve, what we can do better, that's ongoing and we have dedicated staff from the manager's office, from budget, from finance, and other departments, where appropriate, that meet monthly. We will continue to keep council informed as appropriate about where things stand with these particular issues. In terms of info memos and we do have a regular on the Community and Economic Development Committee work plan. We have a regular series of reports from Team San José on their work, not only with the convention center but with the other facilities. And we will continue to do that. So it's with that, mayor, I'll conclude my presentation. Be happy to answer any questions.

>> Mayor Reed: Thank you, Paul. I think I'd like to ask Dan Fenton to add any additional comments he has because he was in Dallas I think yesterday with a meeting with the decorators. He may have some additional comments before we get into question.

>> Dan Fenton: Thank you, Mr. Mayor and city council, Dan Fenton with Team San José. Really just to reiterate Paul's comments. And that is, if you go back to the slide before that, very positive conversations with leaders of the decorating community yesterday, with a specific road map that we think will achieve mutual goals, and quite frankly, thinking from from an aspirational standpoint, we think there's an opportunity together fairly soon to really talk about a campaign, as Paul mentioned, that will really talk about San José as a flexible destination and as a destination that really goes above and beyond for the clients, and they have ways to help us do that, and they're interested in getting the issues resolved and getting to the good times, which are collectively working on that messaging. So we're more than optimistic that resolution is very close.

>> Mayor Reed: Okay, thank you. See if council has any questions for either Paul or Dan. Before we do that I wanted to disclose that in preparation for this meeting my staff or I have had meetings or phone calls with Dan Fenton, Megan Horrigan, John Southwell, Clifton Clark, Aaron Bloodworth, and and our Teamsters Local 287 president Bob Blanchette. I want to thank the Team San José board for moving decisively to get this moving. Seems to me we're moving in the right direction here, and the meeting yesterday I think was proof positive that we're going to get this resolved. We appreciate the update. I think the PR campaign is very important to overcome any negative impressions that people may have gotten from the media that covered this. I would like to make sure that we get a status report on this whenever the discussion about expansion of the convention center accommodation back to the council. We've got that referral out, that's probably February 23rd.

>> Paul Krutko: Mayor, that's what we're working towards, is February 23rd.

>> Mayor Reed: I think that would be a good time to update us on the status of this. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. As the liaison to the Team San José board, I had the opportunity to sit in on the board meeting where this was discussed as a result of our council direction. And I think I can tell you really clearly that the board gets it. There was a long discussion about this topic, and the impact of these decisions on Team San José, the convention center and the city. And there was a sincere commitment on the behalf of all the members there to move forward towards resolution. As we heard, we're making positive steps in that direction. I think the PR and marketing strategies sent to us are good. I look forward to seeing those kinds of roll out, and really promoting San José as a destination, so that we can get more -- more companies looking to us as we go forward here, and the economy starts to rebound. I think it's going to be important that we directly reach out to and target clients and potential clients directly. We need to not only just broadcast out there through the conventional messaging, but we need to have that one-on-one contact. I think that -- excuse me -- I think that we, as a council, need to continue to support these type efforts that bring economic development, bring businesses and industries, large industries, to bring all their top people here to San José, so they cannot only have their convention but they can see all that San José has to offer, and just continuing to bring visitors to the City of San José. I was thrilled to see that we made the progress with the letter from the Teamsters, and I think that overall, the more we've discussed this either as a council or through the board, that the more I agree, that the decision that was made was the right decision. It's going to definitely

have a positive impact on the people who use the convention center. I think it is going to reduce costs. Of course, I wish we wouldn't have had the controversy that went along with it but I think we're going a long ways towards resolving that and moving forward. So I think as we go forward, I'm comfortable with the recommendations that staff is making. I think it's important that we continue to keep informed with the information memos to the council, and I would like to make a motion to move that forward.

>> Councilmember Campos: Second.

>> Mayor Reed: So the motion is to approve the report, and have an update February 23rd, would be the -- or whenever it comes back with the rest of the convention center items.

>> Councilmember Constant: My assumption is that we would get kind of a detailed information memo, maybe right before that, so that we have the information by then.

>> Paul Krutko: Well, mayor, what we can do is, there's a staff team now working, agency staff, finance, budget, general services, Public Works, are working on responding to the referral about the feasibility of moving forward with a scaled-down expansion program. We are working towards being able to put that memo with the full sunshine time frame out by the end of this month. We can certainly include in that memo what we know at that point, or we could do a supplemental closer to the actual meeting on anything that pertains to this. Would be whatever the council's pleasure is.

>> Mayor Reed: Councilmember Constant you want to get a supplemental memo, at a little bit later than --

>> Councilmember Constant: Well I just think whenever we have the information, I'm hoping that it's sooner rather than later. But if it's right up to that meeting then a last-minute supplemental would be fine with me. I just want to make sure that we're not holding it to then if we have a resolution sooner.

>> Paul Krutko: What we are recommending is that as we have information we will provide it through informational memos right away. We are working on a substantive piece of work. So we can keep them separate, and just make sure we're having that as part of the update when we do the presentation on the 23rd.

>> Councilmember Constant: I think that's good, I want to make sure that we just don't hang onto it. If we got it, let's get it out, keep it rolling, so that we keep the messaging very positive.

>> Mayor Reed: Okay, that's the message then. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Dan, thank you for your efforts to resolve the dispute with the Teamsters and the jurisdiction issue and resolve that in favor of the local 287. I think that's a great step forward. Last night I saw the business journal and I thought you might want to respond in some way. I understand you're trying to repair relationships here with decorator companies and I understand they're an important piece of this whole puzzle. My concern with the whole implication is we're sending out letters from our attorney threatening them with lawsuits if they spoke out publicly about the problems they're having and I'm concerned about how that impacts our relationship with those companies.

>> Dan Fenton: Sure.

>> Councilmember Liccardo: Did you want to respond?

>> Dan Fenton: I think what's happened Councilmember Liccardo is what's happened in recent conversations. There has been early on correspondence between all parties to make sure that information that was being delivered was accurate. Our intent was, never to stop the conversations that have sort of led us to yesterday and make sure that we were constantly working on how to create solutions that worked best for all parties involved. So really, the goals were to make sure that everyone was constantly working with as accurate information as they could. So never meant, and you've heard my comments many times, about the importance and the value of the decorators and our relationship with the decorators. So never meant to diminish that or change our stance around how vital that relationship is.

>> Councilmember Liccardo: Okay, and I haven't seen the letter so I don't know what it says other than what was reported. I guess my question was, as a strategic matter, would it have been better for us simply to make phone calls to the decorator companies saying, here are the facts, please, you know, if you think it's any different check in with us but we'd prefer that these misleading messages aren't disclosed publicly. Because I think the message that came out was very different.

>> Dan Fenton: We were -- this was very early in the discussions and we were trying together to make sure that we did have clarity on issues. There were -- there were opportunities for us to essentially improve policies that we had, so some of that really was trying make sure that all of the information that was being delivered was current and accurate and timely. It wasn't necessarily meant to be adversarial in its nature. And we think that it helped in the sense that we continue to work together on improving

essentially some of the initial concepts that we had, and again, how those concepts got to today, or got to yesterday, if you will, so it was designed not to be adversarial.

>> Councilmember Liccardo: Okay, I appreciate that, and frankly I'm glad that at least in terms of the dispute, that chapter seems to be behind us. And that's great. From my limited vantage point it seems as though it was the decorator community bringing the attention of these issues to the mayor that helped surface this issue. And particularly when we're dealing with public funds and public issues, I'm just very leery of any kind of litigation tactic, or similar approach that says, hey, if you guys speak out, you'll be sued. So I'm hopeful that in the future, we can be careful, in using those kinds of approaches. Anyway, thank you, Dan.

>> Dan Fenton: Okay.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I think it's so important to support Team San José, we have to work as one voice, let you all know we are all working on this together, that shows strength all by itself. We have to keep in mind the fact that a certain amount history has been made here. If we had gone back to the status quo you would continue to work with San Francisco, we'd have to wait for the Teamsters to come down here in order for the people coming here with a show to set up, there's going to be some growing pains with this obviously. And you've made huge strides with the Teamsters. That as I understand it is not a problem anymore. That will bring more jobs here locally which I think is terrific. So working with the decorators, I think they must be seeing the strength of the fact that we are basically asserting ourselves in a market that is very prolific as long as we stick together, become more prolific, so I would like to encourage us to stick with the informational memos, give you the time and the effort that you need in order to do the job with the decorators. That doesn't sound right. To work with the decorators. And I'd also like to mention that I did talk to Team San José, Dan Fenton, Cindy Chavez and Megan Horrigan. Thank you.

>> Dan Fenton: Councilmember Pyle, if I could say one thing about a comment I made. One of the best outcomes of this is in the meeting we had yesterday, the decorators have ideas. And so we believe the final result here will really be a joint effort of their thoughts as well about how we can make San José as competitive as possible. So there was some good collaboration and a lot of the thinking we value in terms of some of the ideas they have in terms of moving this forward so it's really going to become very much a joint solution here.

>> Councilmember Pyle: Sounds like they want to be part of the solution.

>> Dan Fenton: Absolutely.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Just want to thank you, Dan and Paul, for the presentation and I truly believe particularly in the marketing area that we can certainly benefit from work together. And again this process may have started rocky but I think we're going to end up with a better product, a better end product. I want to thank you, Dan, for the tremendous amount of work you and your staff have put in to try and resolve these issues. Reaching out literally and figuratively. To the decorators at the conference, speaking to them directly. I'm confident that has made a big difference in moving in a positive direction. I want to thank the local leadership of Local 287 as well as the joint council for providing a letter which allows us to have some clarity that we will have not just local Teamsters but have the opportunity to lower cost and provide the best quality service to the clients which ultimately is really going to be what will spread around the convention community as that San José is doing it right. And so I support the suggestion from Paul, that further information be done through information memos. My understanding from the suggested or the motion that's on the table is, is support of that -- of Paul's recommendation that further updates will be done through info memos and my understanding is that Paul you've indicated just to keep it separate from the convention center expansion, it doesn't mean we can't get updates parallel to or as we kind of move forward but from what Councilmember Constant was saying basically as soon as there's an update, provide us with information memos. I think that's the best way to go about this, just to make sure we stay informed. Because it sounds like we're going in the right direction, and it sounds like things are starting to work more in unison and along with the other suggestion that you know, any appropriate updates at the committee level that are already given can be given to the CED committee where councilmember Pyle chairs. So I just wanted to -- I just wanted to thank you for your work. I completely agree with Councilmember Pyle that we need to, especially at this time as we're hopeful that the economy in the next year or two will start to turn around and we're hopeful to make some headway on

the expansion of the convention center that we need to certainly be cheerleaders of our convention center because we know we have a good one and it's going to get better. So thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First I want to disclose that my chief of staff communicated with Megan Horrigan through e-mail, and I just wanted to make sure that was on the record. I'm going to thank my -- make all my thanks in one breath, and that's to thank Paul for your work and your team and to thank you, Dan, and the Teamsters for working through this, and looking at the end goal, which is to provide the best customer service and create jobs. So thank you for this last couple of months that have been very trying, but we're here today to, as Councilmember Pyle said, to move forward to speak as one voice, and support Team San José's efforts in making our convention center the best place for people to hold their events. But Paul, I just want to make sure and I won't go through it since my colleague Kalra already went through it that we're very clear with the intent of the motion. And that is to receive this those info memos but to keep the discussion separate from the expansion of the convention center. I just want to make sure that that's the intent of the motion that you heard.

>> Paul Krutko: We were, councilmember to be real clear, we weren't making a recommendation about that at all.

>> Councilmember Campos: No, no, I understand.

>> Paul Krutko: We'll follow the pleasure of the council as to how you would like us to proceed on that.

>> Councilmember Campos: Maybe I should ask the maker of the motion I know that Councilmember Kalra outlined, that is what I interpreted but I want to make sure that that is what the intent of the motion is so that there is no confusion as we come back with February 23rd. Is that when we're having the other discussion?

>> Paul Krutko: We are as I said we are targeting internally working with our colleagues at the redevelopment agency to come back to council on the 23rd with response to the referral that council gave us on the feasibility of expanding the convention center. So that's what we intended to do on the 23rd. I was just responding to the mayor about an alignment with that on that issue.

>> Councilmember Campos: So from me, it's important for me to understand what the intent of the motion is, so that I can support it, and I think I took the intent of the motion, what Councilmember Kalra outlined it but I would like to ask the maker of the motion to outline it so we know what we're supporting.

>> Councilmember Constant: My intent was to have the information come to us as soon as it's available, so not for staff to hold it to the expansion. I hope that it does not take that long, and that the resolution, as the board directed and I think the council has been clear about, to push forward full steam ahead for resolution. And as soon as the information is available to make it available in an information memo to the council.

>> Councilmember Campos: Thank you.

>> Mayor Reed: All right, that is the motion. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Last we heard from Team San José, when we talked about this issue, the very positive feedback that we received about the work of our local Teamsters. It was kind of frustrating for me at that point to think that we're hearing all this great feedback but we're having this jurisdictional issue that was stopping us. So it's great to hear today that that has been resolved and that local 287 has jurisdiction. I'd like to thank you Dan for staying positive and working with this and Paul all the work you're doing also. I agree with what my colleagues have said and I think it's very important that as a council we speak with a unified voice and support Team San José's efforts. In this economy we need to support revenue generating partners like Team San José. I think it's obviously in the best interest of San José to have local labor do these jobs so I think it's great the way it's worked out. I support Team San José's intent with this Teamster agreement of increasing customer service and job creation and even though I see this as a separate item from the convention center project I think these modify things that will happen as a result of rolling out this campaign and promoting San José as a destination and coordinating with the decorating community are going to lead to the more positive I think outcomes in terms of our other project as well, so thank you.

>> Mayor Reed: Okay, I think you're off the hook, Paul, and Dan. We're talked-out. I believe. I have no cards from the public to speak on this item. We have a motion to approve, with the reporting back as described by Councilmember Constant. All in favor opposed, none opposed, that's approved. Completing that item and taking us to item 3.8. An audit of pensionable earnings and time reporting. Sharon Erickson, our City Auditor, is here.

>> Sharon Erickson: Good afternoon. If I could just take a few minutes of your time to summarize the audit findings. The City's pension systems rely on accurate information regarding employee contributions and pensionable pay and hours. The purpose of our audit was to verify the accuracy of that information. We had three findings. The first was that we did find some errors resulted in higher pensions, specifically we found that some individual retroactive pay increases weren't spread across pay periods correctly. We also found that higher class pay was erroneously treated as pensionable. The estimated difference of about \$1.6 million in lifetime pension amounts was just for the employees in our sample. In addition, the city administration previously discovered that a portion of nonscheduled overtime hours was incorrectly pensioned for fire department employees. The city has corrected that error on a go-in order basis. Still pending are an estimated \$1 million in overcontributions by the city and firefighters with a pension impact to be determined. Our report includes recommendations to improve these processes, correct the errors, and clarify what should be considered pensionable income. The second finding in our report was about time reporting codes being unclear and duplicative. Our payroll system has 144 time-reporting codes and 233 earning codes, many of which are not clearly defined or documented. We did find a few instances in all of those where codes were used improperly, employees miscoding items or took a few more hours in pay than was allowed by policy. We forwarded those issues to the administration for resolution, and our report includes recommendations to periodically review those pay codes, to cull duplicative and unused time reporting codes, and to provide written procedures on proper use of codes to time reporting -- time approving supervisors. Our third finding is that some pensioners benefit from the city's definition of earnable income and highest salary. Under the current approved federated plan employers pensioned based on salary earnable rather than salary paid and receive a full year of service credit even though they would be 1739 hours as opposed to 2080 hours in a full year. This can result in a 16% increase in pension and has the city and the employee in those case undercontributed for the pension. The estimated difference of about \$700,000 in lifetime pension amounts was just for four employees in our sample. Second, both retirement systems have base final pensionable salary on the highest 12 months. This provision has been in place since 1970 for police and fire and since 2001 for federated employees. Many retirement systems use a three-year average. For our sample of employees from the years 2007, 2008, we estimated \$2.5 million difference in lifetime pension amounts if those employees had received a pension based on three-year average. Our report also includes recommendations to consider amending the Muni code to redefine final compensation, hours of credit and highest salary. With that we ask you to accept the audit report, the administration generally agrees with the 15 recommendations in the report, and will be coordinating implementation or proposals that would come back to you among the relevant departments and with the input of the City Attorney, of course. Thank you.

>> Mayor Reed: We have a motion to approve the audit report. Councilmember Constant.

>> Councilmember Constant: Thank you, and thank you, Sharon, for this report. We've had an opportunity to discuss it in committee. But I think this report really points out some serious flaws that we've had. And I want to thank you for finding those. Because some of those have significant impact of our retirement funds. And as you know I'm a trustee on the federated employees fund, which has that unique thing about being able to retire on what you could have earned versus what you should have earned. And I think that's something that we as a council really have to address going forward, because we were given that one example, and a couple other related examples. But we really don't know how often that has occurred in the past. And when we have pension funds that are seriously underfunded, when you have situations like that, when people are being awarded lifetime pensions for something they didn't pay into, nor did the city, so nobody paid in in those particular cases, I think it's something we have to put very high on our priority list. I know when we see our actuarial evaluations, we're going to see that the federated plan that was somewhere around 80% funded is going to be significantly less than that. And it's going to be in a zone that, if we were a private retirement fund, bells and whistles and red lights would be going off and people from the outside would be looking in and saying, what's going on you're in the danger zone. So these are serious issues as they relate to our pension system. Thank you Sharon for finding them and pointing them out and I encourage council to make that a top priority as we move forward.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Sharon, thank you again for excellent work. I wanted to echo Councilmember Constant's points about how important it is that you continue to find these ways for us to save money, particularly where we're not spending well. What -- relating solely to finding 1, relating

to the 1.5 million in lifetime potential savings that we would be able to secure by correcting the errors that you identified or your team, my understanding is that came from review of about 133 cases out of the 486 retirees over a period of about four years. My question is, is there any way that we can extrapolate as to what the savings might be if we were to do this system-wide, is there any reason to believe that it's going to be a linear relationship that we'll find roughly the same kind of magnitude of errors, or are these totally random sort of mistakes that we simply don't know what we will save?

>> Sharon Erickson: It would depend on a case-by-case review. And that's where we've been talking to retirement staff and payroll staff about how to move forward from here. It's an extraordinary amount of staff work. No? We can't extrapolate based on our sample, because we oversampled firefighters in that case. So we can't extrapolate from ours. We do think that it's worth pursuing, but it is a subject of discussion between departments because it's an extraordinary amount of work to go back. On a go-forward basis is one thing but to go back is a very complicated issue. As you can imagine, a lot of people have to sit down in a room and talk about it.

>> Councilmember Liccardo: Right, and some of those folks are lawyers, probably. Okay, well, thank you very much.

>> Mayor Reed: Further council discussion on this? We have a motion to approve. All in favor opposed, none opposed, that is approved. Thank you for your work. Good work by the City Auditor's staff, as usual. Our next item is 4.1, it's a report of the Community and Economic Development Committee from December 14th. Councilmember Pyle chairs that committee.

>> Councilmember Pyle: Thank you, mayor. Normally I like to do some bragging about all the good work that's happening with the CED. But today what I'd like to do is tell you we are sending those to each individual so you have a chance to get a more comprehensive view of what's going on, so I'm going to let it go at that. I will just say that everybody is working very hard to make things happen in the City of San José. And with that, I move for approval. All the information is in the packet.

>> Mayor Reed: Motion is to approve. I have one request from the public to speak, Mr. Wahl.

>> David Wall: Don't worry. You run an outstanding committee meeting. Nothing but good work comes from you. However, this issue, item 4.1D subsection 5, special events merits some testimony. I'm all in favor of reducing fees where necessary. However, this whole fee structure needs to be looked at, in my opinion, by the auditor. I also believe that a lot of these events could be carried off as far as the organization, in coordinating city departments and services can be done by your individual council staffs, because there's a lot of good administrators hidden behind those name plates. And that could have great cost savings. I am not sympathetic to giving any more Mulligans to the downtown business association. They have had plenty of time open the public trough, and their noses are well wetted. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. All in favor, opposed, none opposed, that's approved. We'll now take up the inclusionary housing ordinance. Item 4.2. Give our staff a minute to get in place. Councilmember Liccardo, did you want to speak on this before the staff report? Okay, I'll be back.

>> Councilmember Nguyen: Mr. Mayor.

>> Mayor Reed: Yes, Councilmember Nguyen.

>> Councilmember Nguyen: I believe I received a memo asking to bifurcate the item to avoid a possible conflict of interest. As advised by the City Attorney, I want to state for the record that I will abstain for voting for the communication 8.320 F on the Communications Hill exception in the ordinance, Section 5.08.320.F and G of the proposed ordinance because I own property located within 500 feet of vacant property in the Communications Hill area of the city which has potential under the proposed ordinance to be treated differently than other property in the city. So if we decide to take this item as one then I will have to abstain for voting from the entire item but if we decide to bifurcate then at least I have an opportunity to vote on all of the items except for the part on Communications Hill.

>> Mayor Reed: Okay, let me suggest that we bifurcate this, take this in two parts that way Councilmember Nguyen can participate in the first discussion. We'll vote separately on both if it's okay with the council. I see no objections, that's the way we'll do it. And so we'll let staff take it away. And we'll have really two mini hearings here, let the public speak to either one.

>> Leslye Krutko: Thank you, mayor, council, Leslye Krutko, director of housing. We first started discussions about inclusionary housing in 2007 and a lot of activity has happened at that time. We've had dozens of meetings, we've had stakeholder groups and we've had several discussions in front of the council itself. A year ago the council approved inclusionary housing policy and directed staff moving

forward with developing the ordinance. So it has taken a significant staff effort to get here today, to this point, which would be approval of ordinance, and is the last step in the process of creating a citywide inclusionary housing program in San José. I want to particularly thank Vera Todorov, who is to my left, from the City Attorney's Office, and Jackie Morales Brand, the assistant director of Housing, who have worked steadily, very hard on this difficult ordinance, as well as in the ordinance I have Colleen Lopez and Melissa Whatley from the housing department, and they have expended a great deal of time as well. So just a reminder of what we started with. When we talked to the council and when the council adopted the policy. We were looking to develop an ordinance that was simple, flexible, had certainty, was consistent and fair. Some of the policy recommendations that we'll be talking about today have been adjusted slightly in order to ensure consistency with these guiding principles. As staff went to develop the ordinance, there were issues that they had to work through. As well as stakeholder concerns that were brought to our attention before the ordinance was developed, and then in the ensuing days since the ordinance was published. We've worked hard to address these concerns that have been raised by the development community and other stakeholders. And you will see and they will see that we've listened and have made changes. Additionally there are a few provisions I'll talk about today as we go there that just provide a little more detail than when we last talked as the ordinance needs to do, provide a little more detail. First, on applicability, which is the -- how the ordinance will apply. It's going to apply citywide. And the ordinance would have an onsite requirement of 15%, an offsite requirement of 20%. What this does is, it offers ease of administration and also certainty, and responds to a concern that redevelopment areas be treated consistently with the rest of the city. We wanted to ensure that projects in redevelopment areas were not disadvantaged in any way and did not have a more onerous requirement. In order to encourage integration of units, the offsite requirement is higher and that is intentional to try to ensure integration or to promote integration. The percentage set-aside for, there are two different percentage set-asides, one for rental, and again, the onsite requirement is 15%. The way that that would work is -- is that of the 15%, 6% would be affordable to low income households, or those earning 60% of the area median income and below, and 9% would be available to moderate income households, those earning 80% of area median income or below. If the developer instead chose to build these rental units offsite, 8% of the units would need to be affordable to people earning 50% of area median income and 12% to those earning 60% of median income and below. And again with the intention of incentivizing the integration of units onsite. For the for-sale requirement, if the developer decided to build the units onsite, it would be 15% moderate income units, and that's up to 120% of median income. But the sales price would be set at 110% of area median income. Or offsite, the developer would have two choices. One is to build for sale in the same configuration as onsite, to 20% moderate income at 120% of median income, sales price at 110%, or they could choose to develop, instead of rental project, with 8% very low income and 12% low income. Again, as I've said before, incentivizing the construction onsite. One point to mention is that the for-sale requirement would apply to both projects that were initially built as ownership developments and those that are designed with condominium maps. On the issue of operative date, there are two changes that are being recommended. First, that we are recommending that the ordinance become effective, either as was laid out before, six months before the first day of the month, it's a very long sentence there, but it would be once -- once a certain number of development permits had been issued. That remains the same. With one change that I'll mention in a minute. And then or January 1st, 2013. And the council, when it first had suggested this, had suggested that this come back to council before that date. We're recommending that it actually be stated January 1st, 2013. Should a future council want to delay implementation or make changes, this doesn't prohibit that action. The administration plans to prepare as directed by counsel an information memo six months prior to the operative date which would alert all parties that the ordinance would become operative and the council could take action at that time. I think our concern is just reraising the policy issue. It's been a very difficult one to get over the goal line but clearly that is the policy, just the determination the council needs to make. The minor revision that we're making to the language on this slide is just a -- there was concern raised that it was not clear about the units that are coming from North San José. So this minor word change just makes it clear that 1250 is a minimum number, not a maximum number. In the policy component of exemptions, there were exemptions that were included in the original policy that required that a number of steps go -- that developments would have to go through a number of different steps with a number of different dates. And then they would be grandfathered. In discussions with both the development community and the Planning Department, we have simplified this process, and instead are exempting projects that meet the three requirements listed on the slide, as long as one of those three

happens prior to the operative date, then the project would be exempted. So we have approved development agreement, residential development with a disposition and development agreement and an approved planning permit, with exhausted appeals. So it's much simpler for everybody to figure out if you're exempt or not. On the issue of residential development in a planned community and exemptions for larger projects --

>> Mayor Reed: Anything that has to do with Communications Hill, we'll come back to that later.

>> Leslye Krutko: Okay, okay, we'll skip that --

>> Mayor Reed: Same thing with public testimony, we'll do that later.

>> Leslye Krutko: Okay. So going to the in lieu fee, the in lieu fee for residential development, it's important as we developed this in lieu fee methodology and sharing that it would be legally defensive and justifiable, there is legal precedence that helps us define this and determining what would be legally justifiable. We did complete a thorough financial assessment to develop what we would set the fee at, the fee methodology. So where we are with rental residential development is that the in lieu fee would be set at an amount no greater than the average city subsidy for the previous 12 months for affordable housing but if there had not been sufficient development to come to a reliable number then we would use the real estate construction report index that's published by the real estate research council of Northern California. I do need to strike a sentence that was inadvertently placed in the ordinance. The sentence that says the in lieu fee shall be based on the percentage difference in the new home prices in Santa Clara County published in the fourth quarter report for the then-current year from the immediately preceding year. That was inadvertent.

>> And that is the last sentence in section 5.08.520.E2A1-2. And the sentence before that also needs to include some language that says that the in lieu fee shall be updated annually using the change in the real estate construction report. And so that language change, in the, would be added to the previous sentence.

>> Leslye Krutko: For a for sale residential development the in lieu fee would be set according to the difference between the median sales price of an attached ownership unit over a 36 month period and what the affordable housing price is. We're not making any suggested changes to the reduced in lieu fee for high rise housing and council would still have the opportunity to make those changes when they desire. On preservation, the ordinance -- originally the policy would have required that every five preservation units would receive one credit. In order, been, toll legally defensible We've worked this through and have changed it to two units. So for every two units the owner would receive one credit. And what we would -- we are suggesting that the units remain affordable for 40 years. Inadvertently the ordinance says 55 years. But the memo, the staff memo stated 40 years. That's correct. Based on feedback we have received we're recommending further changes that would make it clear that should HUD funding for the preservation units no longer be provided then the affordability period would end after additional five years of affordability. For acquisition rehab -- did you want --

>> What I was going to say is we have the proposed revised language available for council and I'll have you pass it down.

>> Leslye Krutko: So under acquisition rehab, again, we did make the change. Previously we had in the policy said for every four unit the other than would receive one credit. We have again changed that to two units, for every two units the other than will receive one credit. The length of affordability, it's been set at 55 years which is consistent with state law requirements for affordable rental housing. On legal cases, there have been a number of recent legal cases that relate to inclusionary zoning programs in California, most recent is palmer versus the City of Los Angeles, with some exceptions were in violation of the Costa Hawkins act. The Costa Hawkins act we know most is a rent control act, and it requires that rent control programs have what is known as a vacancy decontrol feature. So when a tenant leaves the owner is able to raise the rent and then again the unit is subject to rent control but there is the opportunity upon the change in tenancy to change the rent. The court determined that for rental housing only inclusionary programs, that set rents upon occupancy and do not have the vacancy decontrol feature are not legal. The Palmer case did not invalidate inclusionary programs for for-sale housing but it did bring into question the validity of rental housing. So the ordinance that's before you today includes a provision that the rental requirements would become operative only if the Palmer case is overturned or if legislation is passed that clarifies that Costa Hawkins is inapplicable to inclusionary rental programs, should the legal case remain in effect the city would not implement the rental portion of this ordinance. Last, just in summary, we're recommending council approval of the ordinance with the changes we've recommended and have read into the record and the changes that the City Attorney had passed out. The ordinance

would not be operative immediately. However, it will eventually have good benefits that we think are very important increasing the supply of affordable housing, promoting home ownership and dispersing affordable housing throughout our neighborhoods. So should the council approve the ordinance today we'll come back in two weeks with the second reading and then would come back again, what might be two or three years down the road, with more details of implementation. So we're available for any questions you might have. And then we'll take up the second part.

>> Mayor Reed: Thank you. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor.

>> Mayor Reed: I'm sorry, Councilmember Liccardo, before we get started I want to do my disclosures so I don't forget to do that. In preparation for this meeting my staff or I have had conversations with Mark Lazarini of Dell Properties, Jerry Strangis regarding Communications Hill, Ray Panic of KB homes, Joe head of Summerhill, Tim Seal of Sobrato, Pat Dando and Pat Saucedo from the chamber of commerce. Sorry, councilmember Liccardo.

>> Councilmember Liccardo: Thank you, Mayor. I have met or discussed the matter with Joe Head of Summerhill, as well as Joan gallo regarding Communications Hill. I'd like to be able to put a motion on the floor which would be the staff recommendation as modified, minus the provision of Communications Hill for lack of a better descriptor. If there's a second, I'll proceed.

>> Councilmember Chirco: Second.

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

>> Councilmember Liccardo: I would like to thank Leslye and the her entire team. Jackie Morales Brand, Colleen Lopez, Melissa Whatley and others. This has been an extraordinarily difficult ball to carry over the goal line because of the complexity of the matter, and obviously has very widespread implications. I also want to thank Vera Toderov of the city attorney's office, for her overtime efforts in light of Palmer and Patterson and all the other legal ground that keeps shifting beneath us. I want to thank Regan Henniger from my team for her extraordinary work on this effort, and I know there are many people here who have been advocates of affordable housing and were involved in various ways. And I wanted to thank them. I see, for instance, Timon Norimoto, see Carey Hamilton, Bonnie Mace, many of the folks who have been pushing for many years, Bob Brownstein, at working partnerships, James Zaretka from the law foundation, Shiloh Ballard, from SVLG, Michelle Beasley from Greenbelt Alliance, and many others. And I also wanted to acknowledge those developers who have participated in various ways, came to the table to engage constructively, to talk about how a policy could be fashioned in a way that would minimize the burden on developers and be flexible enough to ensure its ready application. I see Joe Head here, Mark Lazarini, and others. So I also wanted to thank them. I'll certainly continue to push to ensure that superseding the Palmer and Patterson decisions becomes a legislative priority for us, certainly hope that we'll be able to see a local representative carry legislation, my conversations with colleagues in San Francisco indicates to me that there will be folks up there who may well take this up in Sacramento. So I look forward to that endeavor. And I also wanted to thank any colleagues. I know this has been a very long process and I appreciate your patience.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Kalra: Thank you, Mayor Reed. I wanted to thank the same folks that Councilmember Kalra has expressed earlier. But first and foremost I just wanted to thank councilmember Sam Liccardo for his continued leadership on this critical issue. We wouldn't have this opportunity for this item today if it wasn't for Sam's persistent and willingness to really see this happen in the City of San José and I know that it's been a long time, you know, this coming to the full council. But I also wanted to thank Leslye Krutko and your entire staff for all your hard work and dedication and commitment to this issue. Ensuring that we have an ordinance that provides fair and equitable housing options for all residents of San José, regardless of their economic status or income level. For me personally, I grew up on affordable housing. And if it wasn't for the opportunities that local government give my family, I wouldn't be here today. So this is a very personal issue for me and I think that, you know, with the approval of this ordinance today, it's going to be a great history in the making for the City of San José and for the residents of our city. I strongly believe that you don't need to make a six figures to be able to afford a home in San José and that is what the message that we're sending to our residents. And I thank you and hope that my colleagues will support this ordinance.

>> Mayor Reed: I have a question regarding the legal, some of the legal issues, in particular the former case and the rental housing issue. I know that litigation is often difficult to predict where it goes next. My concern is, why does rental housing, I believe you said that if something has a condo map when it's

approved that it would be treated as for-sale housing. With but I also understand and maybe the market's changed, understand that nobody builds rental housing without a condo map because they don't know what they're going to be doing with their property ten years from now, in fact a lot of people build it knowing it's going to rent for ten years if you pass the latent defects statute. So I haven't read the Palmer case. I'm not the lawyer. I'll let the lawyers speak to that. But are we drawing the line in the right place to avoid you know losing the whole rental provisions by dealing with condo map projects that are in fact rental properties even though they have condo maps?

>> Leslye Krutko: Just in response, mayor, to the number. We also thought that most of the rental properties had condo maps. And our research showed that not to be the case. In the last, we looked at working with the Planning Department, and four of 11 had condo maps. So it was somewhere around 36% did. I think the concern would be to get around the ordinance, everything could be condo-mapped and what we are trying to do is make sure that there's not that intention to try to make everything be considered rental housing when it's actually intended to be for-sale housing.

>> Mayor Reed: What if we dealt with it at the time that it becomes for-sale housing as in a condo conversion, because in a rental property if it's not mapped gets picked up by this ordinance when the condo conversion occurs?

>> Actually the way this ordinance could operate would do that. When something is mapped as a condominium, it can be sold the day the final map is approved to a third party as a condominium. Despite the fact that the rest of the project is rental, you could begin selling units immediately. So really, it is a for sale project because the moment the final map is approved those units can be sold individually. If the developer, the other than of the project chooses to rent that project for a number of years ago or for a limited period of time, the way that we can structure our guidelines, the way that we can structure this to implement it, and this is how I think it was foreseen was that the moment that one unit is for sale, then the entire -- then the entire project would have to provide inclusionary, the moment that first unit comes up for sale. So what happens is, the time the development approvals occur for the tentative and final map, at that point you begin starting the agreement process over how the inclusionary housing will be provided eventually. And it doesn't have to happen until that first unit is sold. It doesn't have to happen until the rental project goes away. Now, we can't consider that a conversion, because a conversion is the conversion of a project that does not have a tentative and final map approval. From rental to, you know, from rental to a project that does have tentative and final map approval. So the mechanics are different but we can accomplish the same thing the way we have envisioned it.

>> Mayor Reed: Well, we don't know where the courts are going to do with this or where the legislature is going to go with this. Sometimes we have to make our best guess with the best lawyers, but lawyers often disagree. In fact, usually they disagree. The question is what do the judges think. We'll take some public testimony at this time. Again, for those of you who didn't follow what we're doing, we're not talking about Communications Hill so if you want to speak on that I've got a couple of cards on that. We'll do that in the second part of the hearing, after we've dealt with the first section. But if you want to speak on both can you come back, when we do that. So I will call your name. Please come on down. So you're close to the microphone. Carrie Hamilton, David Wall, Chris San Giles and then Charles McCabe. And if you intended to speak on Communications Hill matters, tell me and I'll set your card aside.

>> Good afternoon, Mayor Reed, and members of the council, thank you. Carey Hamilton, speaking on behalf of siege. We continue to support inclusionary housing and understand that these are very challenging times for everyone. And we also support the recommendations made by the law foundation, we think they make a lot of sense. And supporting overturning Palmer and supporting the legislative efforts to do that. We hear all the time such as last night at the general plan task force about the economic projections for the future, the demographic expectations, and the expectations for the kinds of job growths that we expect to see. And we know that the need for affordable housing will still be there. And as some of you have said you have personal experience with affordable housing and how it helped you. I think we also understand the pressures that families are under, and the societal outtake of that. And the problems that it creates and the other costs if that affordable housing isn't there. And it will also have extreme implications for the future if we don't have it. So we'd like to thank staff and thank Councilmember Liccardo and all of you who have recognized the need and supported this. Thank you very much.

>> Mayor Reed: David Wall Chris San Giles, Charles McKeeg.

>> David Wall: Before I proceed, I do have comments about Communications Hill but I will defer to your judgment.

>> Mayor Reed: I will call you back later.

>> David Wall: I am no fan of inclusionary housing whatsoever. But I'm not a fan of any more housing, period. Predominantly, we don't have the resources to maintain a sustainable water supply, but on focus, to inclusionary housing, this is more or less part and parcel of the City of San José's communist manifesto. You're basically saying to people, ah, don't go to school, don't have a trade, don't have a job, and it doesn't matter, you can still live in some of our most pristine neighborhoods. I don't buy it, not one single bit. Subsequently, should there be a disclaimer on these properties, a disclaimer, you could be taking out a mortgage, you know that you could have five different families living next to you that is going to trash your house or your investment. My advice to these people is first of all to the developer community which I have no sympathy for, period, but do not invest in San José in these projects. Take your money somewhere else. These things are nothing more than government sponsored housing projects that just sustain the housing department part and parcel. But above all, the amount of money that's going to be spent here do not invest any money into these redevelopment housing projects or any project that deals with this inclusionary housing policy.

>> Mayor Reed: Chris Ann Giles, Charles McKeeg, David land Furman.

>> Thank you, honorable mayor, city council members. I appreciate the opportunity to speak here today, I'm Chris San Giles, and I'm the executive director of the home builders association of Northern California. I take no pleasure in standing before you in opposition to this proposal today. But I feel the need to comment on the potential negative impacts the proposed ordinance will have in light of our current economic conditions. We've all been reading, seeing and living the news. Bankruptcies are up over 50% from last year. And we're still experiencing record foreclosures and surging unemployment. No one wants to touch housing except a few investors who are pick up bank owned homes, scattered throughout otherwise sales starved neighborhoods. Lenders aren't lending, builders aren't building and would be homeowners are fearful, to purchase new homes. Yet the pent up need for new housing is still growing, being masked by the reality that so many people in this region are out of work. Adopting citywide inclusionary zoning now will delay our economic recovery. I get the attraction, it's a policy that feels good, it sounds good. 15% affordable housing. But the reality of inclusionary zoning is, it does not deliver enough affordable benefit to justify its cost. That's why inclusionary zoning is not endorsed by the Department of Housing and community development as a tool to increase affordability. Basic economics tell us that inclusionary zoning projects act like a tax on new housing construction. Those financial burdens are passed on to housing consumers, housing producers and local land owners. As a result, inclusionary policies worsen the affordable housing problem that they're designed to help. The housing industry can't get projects to pencil now. The ramifications of this ordinance will further constrain financials to plan new projects for the City of San José. Housing options are reduced, we further cripple affordability.

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

>> Thank you.

>> Mayor Reed: Charles McKeeg, David land Furman, David Zaretka.

>> Good afternoon, members of the city council. And the staff. My names is Charles McKeg, I'm here representing both the home builders of the Northern California and the vice president of acquisition and development for citation homes, a company that's been here for the last 40 years. Chris Ann made some very good points about this industry and the city in general and the region and the country, but this issue is about more than the economic burdens that we face in seeking to comply with the inclusionary zoning mandate. It's as much about equity and fairness as it is about economics. Our industry has long since embraced the notion that we have to pay our fair share with respect to impacts our projects bring on local public services and local infrastructure. We go to great lengths and take great economic risks in bringing our projects forward. We employ hundreds of thousands of people throughout the state of California and generate billions of dollars in economic cut of. We also generate billions of dollars in contributions to local public services and we build the infrastructure and the parks and the streets and all the other public amenities that cities can claim and crow about when times are great. However, when we make these contributions we do so knowing that those correction are based on equitable notion that we are paying our fair share for the project impacts that we create. If we create an impact on a public service we either provide an in-kind contribution that's related to the actual impact we generate or we write a check to cover that cost. This is a rational notion that's based on equitable principles and it's the foundation on which most of our land use laws are based. Unfortunately the same rational and equitable approach is entirely absent from and is not reflected in the inclusionary housing ordinance recommended by staff. Despite my

participation in numerous stakeholder meetings and my banging on the table a number of times about the importance of conducting some sort of nexus study, we still have an ordinance --

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

>> Thank you.

>> Mayor Reed: David Lanfurman, James Zaretka, and Anil Babar.

>> Good afternoon, honorable mayor and members of the city council, my name is David Lanfurman. I'm a land use attorney. I'm appearing here this afternoon on behalf of the home builders association and its members. I appreciate this opportunity to elaborate on some of the points that were raised in my letter that was delivered yesterday and I wanted to focus on one or two issues. I'd particularly like to start off by emphasizing that I think the association and its members share the positive views on affordable housing in general as a worthy and important community goal. I don't think the concerns that we express have to do with the goal of expanding the supply of affordable housing. Instead they have to do with the method that is proposed in this ordinance. And one of the fundamental concerns that remains notwithstanding the numerous improvements that were achieved during the process, one of the fundamental concerns goes to the point of demonstrating the underlying fair share or reasonable relationship between the percentages that are required under the ordinance. As the mayor pointed out, lawyers disagree, judges disagree. I guess I should thank that's economically Provential for me. One of the things that have been tried and gone through the course of the appeal, all the way through the Patterson decision, took it to the United States Supreme Court which denied review in November, the Patterson court of appeal stated that the evidence presented in this case reveals that the amount of the fee was not calculated based on the cost of the City's affordable housing need attributable to the development at issue nor was it based on the affordable housing need attributable to projected future development in the city. That underlying weakness appears to be continued in this proposed inclusionary housing ordinance. It does no one any good, it doesn't do the development community nor the affordable housing advocacy community nor anyone on the council any good to adopt a policy that has fundamental flaw that has been exposed by the court of appeal and a decision that is now final.

>> Mayor Reed: Your time is up.

>> Thank you very much, I would refer to my letter that has been submitted. Thank you.

>> Mayor Reed: James Zaretka, Anil Babar, Timon Norimoto.

>> Thank you, Mr. Mayor and council, thanks for the opportunity to talk to you again about inclusionary. And I'd also just like to echo the thanks to all of you for standing up for this and the city staff that's worked so hard to make this a reality over these several years of work. The council has developed a good policy and the staff recommendations are going to make it even stronger and better. We urge adoption of it. You have a letter from the law foundation with four points I don't want to reiterate those for you in any depth but I'll just say briefly that the palmer case it is something to be concerned about but it we believe very poorly reasoned legally and from a policy perspective. I'm very glad to hear Councilmember Liccardo state the city is going to make this a legislative priority. You definitely should put your money where your mouth is, and work up in Sacramento and we will help you with that. If we can be of assistance we would like to. This is both substantively important and also it's an issue you should care about as city officials, because the state is not only taking money away from you in its grab from the redevelopment funds but it's taking power for you to regulate land use here and that's something that you should oppose. As the -- so two specific provisions of the ordinance that we'd like to highlight for support. One is the for-sale definition including the condo developments. You heard the City Attorney say that that can be dealt with any wrinkles on that through the implementation guidelines and also the date certain without council action, this has been through a very thorough public process and the staff process. There's no reason for you to come back and do it all over again before it comes into effect. Finally I'd just like to say that palmer did not address the inclusionary requirements that the city has in its redevelopment areas. So when those implementation guidelines are developed we'd like to encourage the council to direct staff in consultation with the City Attorney to consider reaffirming those requirements. Palmer did not address redevelopment law which contains a specific requirement for affordable housing those areas. Thank you for your time.

>> Mayor Reed: Anil Babar, Tori Norimoto and Pat Saucedo.

>> Good afternoon council and mayor. My name is Anil Babar, I represent the 6,000 members of the Santa Clara County association of Realtors. It should come as no surprise that we are in opposition to this ordinance, frankly, the affordability of homes in this area over the last two years, since this measure was first announced has doubled. The California association of Realtors measures housing affordability,

measured it at 25% of all households could afford a house in this area. Two years ago, we are at 52. People can afford homes. The inventory has dropped considerably. There is not enough, it's dwindling and in these tough economic times when builders aren't able to build adding further burden to them will make even harder to build houses. You know, in conclusion, we have opposed this the whole time and we continue to oppose it and we hope that the council will oppose it today. Thank you.

>> Mayor Reed: Timon Norimoto path Pat Saucedo.

>> Organic, mayor and councilmembers, my name is Timon Norimoto, I'm the vice chair of the housing and community development advisory commission. On behalf of Bonnie Mace and my fellow commissioners, I'm here to reaffirm our support for the proposed citywide inclusionary housing ordinance. San José has significant need for affordable housing, both for the short term and long term. The city needs to plan for development of 19,000 affordable housing units over the next seven years as required by the state regional housing needs allocation. A citywide inclusionary housing ordinance can help San José meet those needs, by providing an additional tool for the development of affordable housing. The housing community development advisory commission strongly supports the efforts by city council members and staff to bring forward a citywide inclusionary housing ordinance that fairly and effectively addresses demands for affordable housing in San José. I would also like to thank the housing staff for their incredible difficult gent work in working with not only the stakeholders but the broader community. I too believe it was an incredible effort, much more above and beyond what was necessary. But in doing so, the policy that has been created is -- has taken into everybody's account and does not need to be revisited again. Therefore, I hope that the city council moves to approve the new recommended ordinance. Thank you.

>> Mayor Reed: Pat Saucedo.

>> Mayor and council, Pat Saucedo, San José Silicon Valley chamber of commerce. I do want to go on record the chamber of commerce does not support a mandated citywide inclusionary housing ordinance. There has been great debate and work on this and the reality is we have a proposed ordinance before daw. Should that ordinance be adopted we'd like to recommend that the six month memo that is talked about in the staff report be one of the steps that's taken that gives an accounting in a six-month time frame to advise whether the benchmarks have been met that would initiate this particular ordinance going into effect. We also would like to say that we support staff's recommendation of a useful 15% onsite.20% offsite for ease of implementation and understanding and clarity. And we also support the exemptions. We would like to comment, though, that we feel the recommended time requirement of 40 months be suspended due to the significant and the documented uncertainty of the financial markets today, and for the foreseeable future to ensure that those particular development opportunities are not hindered or prohibited from being able to fulfill their objectives. We do feel this is negative, we feel it's a negative statement regarding economic development, but we do respect the work and the effort that's gone into this effort to date. Thank you.

>> With regard to Ms. Saucedo's comments, the 40-month restriction is in the Communications Hill exception provision, so let's save that comment for later. Thank you.

>> Mayor Reed: I'll let you come back and talk about that when we get to the next section. That concludes the public testimony I believe. I have a couple of people who I believe wanted to speak only on Communications Hill. I will call them when we get to that. I believe that concludes public testimony on this section. We have a motion on the floor as put out by Councilmember Liccardo. City Attorney.

>> City Attorney Doyle: I just want to make a brief statement about the legal issues that have been both addressed in some written correspondence as well as in the testimony today. And we're well aware of the two cases that have come down since the council gave us direction to come back with this ordinance. Both Palmer and -- the Palmer case, let's talk about that first. That has to do with the rent control and I think as Leslye has pointed out, the provisions in the ordinance that apply to rental units are not operative so long as Palmer remains law. And that's something that I think we've tackled and we can move forward safely on. The Patterson case is one that caused concern as soon as it came down and there's been a lot of commentary within the City Attorney community. One, where we've tried to do in this case, is address the issue of the in-lieu fee, rather than require in-lieu fees, this is something that is not part of this ordinance. It's not a requirement. Just some fact background in Patterson. The fee went from a \$700 amount to \$20,000. And I think that so offended the court and the court found that there really wasn't any kind of rational relationship between that, the new development and that fee, that it raised great concern. But we've structured this so that it's not a requirement and somebody can opt to pay the fee. But it's not a requirement of the ordinance. And then the other issue has do with how it's

calculated. And rather than take the cost of units and make a division, similar to what Patterson did, we have structured a different type calculation which essentially takes the difference in the median sales price, and what the price of an affordable housing cost for a moderate income household unit is, so we've really tried to address those concerns. And, you know, this case, this area of the law may continue to evolve and we have an operative date if the council adopts it of 2013 and we will keep the council apprised as to any additional issues that may come up and any tweaks that we may need to bring forward.

>> Mayor Reed: On the motion, Councilmember Constant.

>> Councilmember Constant: Thank you. I just wanted to restate my opposition to this policy. I know I've given my reasons, many times before, and would just like to say I agree with many of the comments that were given by the opponents of this policy. So I will definitely be voting against.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Wanted to thank the tremendous work done by the housing staff on this, on putting this policy together, clearly took a lot of time and energy and thank Councilmember Liccardo for his leadership as well as the comments of Councilmember Nguyen which were personal I think profound. I thank Timon Norimoto coming on behalf of the housing and community development advisory commission and all those that came to speak from the development community as well as from the nonprofit community and others. I don't think that it could be said that this hasn't been fully debated and discussed, I know it's been a couple of years in the making, it was in '07 that it was first raised and for well over a year now that this policy has been discussed and I think it's a good time to get that basically up or down vote as to what the council, the council sense of this is. A lot of the comments both for and against referred to the current economic state we're in but the reality is, this is a policy that I think can have long standing positive impacts for looking out to generations. This is not some -- a policy I'm considering solely looking at just 2010 brings to the table. It's unlikely to be -- it's unlikely to be implemented until 2013. And even then, I think the long term impacts are really going to be decades in the making. And so I feel that this is an important step, I feel that the market will adjust and ultimately the end result is going to be to provide housing for folks who otherwise would not be able to have their own home in our city, including teachers, janitors, administrative assistants, and so many of the folks that work with us and work around us, and be more than happy to have -- live in their own home amongst us as well. And so with that just want to indicate my support for this policy but ask the staff continue to work in particular with the development community as well as some of the nonprofits that are expressing interest so that we can continue to fine-tune this policy particularly given some of the legal uncertainties moving forward. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you Mayor Reed. I've spoken on this issue twice at length so I won't dab. I will not be supporting the measure. I don't agree with it at this time. I don't agree on the principal on raising the price on the market rate buyer. Even the fact that we're considering exempting some areas, shows the fact that this is a cost to housing to all in the end so -- but do I -- we've had plenty of dialogue that's for sure so thank you.

>> Mayor Reed: All right I have a motion on the floor as made by Councilmember Liccardo. Staff recommendation, with some modifications in the staff presentation, are part of this motion. Any further discussion on the motion? This does not include anything having to do with Communications Hill. All in favor, opposed, opposition Oliverio, constant, so we have two opposed, so the motion carries. Concluding some of the work not all of the work. We now need to take up the other section, Councilmember Nguyen is going to abstain on that because she lives in the neighborhood. And that -- the section are dealing with matters that affect Communications Hill directly. So staff, you want to talk about those? I have a few cards from the public of people that want to speak on this and we'll take that as well.

>> Leslye Krutko: Certainly. I have two slides on Communications Hill. Actually it's really more broad than that. It's on a residential development and a planned community. And in -- originally when we talked about this with the council we were looking at large project and trying to put a definition of what large project is. So we have -- we've changed it a little bit to be more legally defensible and what we have before you is the language that was in ordinance. And what I'm going to do then is go to the second slide and talk through a couple of changes that we're recommending be made. So first, the ordinance had said that a specific plan that was adopted by the city for the -- for a planned community prior to 1992 would be exempted. And this was just an error in drafting. It really needed to say no later than 1993. So again it's a fairly minor change in wording, but it made a difference. We've made that change or recommending that

change. Secondly again, a rather minor language change to the second bullet which is one or more phases of the development, we says is completed, and that needs to be changed to "has previously been completed in conformance with the specific plan." We think that resolves that concern. The other two bullets remain as was in the ordinance as published and therefore, I think the one change that we're at this point not recommending a change to is the 40 months that I think was raised earlier. Basically that's -- it's 40 months after the operative date of the ordinance. And our recommendation would push that out almost seven years some assuming a 2013 starting point for the ordinance, and the ordinance is operative six months later. To take that 40 months off would essentially make these planned residential developments and planned communities exempt entirely from the inclusionary policy. We did not think that was council's intention. That's why we put it in there but it's a policy decision that council needs to address. So that's really all the presentation we have on Communications Hill or as I said more generally the residential development in a planned community.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I have a question, just because I'm not intimately aware of all the different specific plans and plans that we have. Are there any other residential development, specific type plans that were produced after this state, that wouldn't be entitled to this exemption? Or is this the only one we have on the books so to speak?

>> After this date there may be some. I would defer to the Planning Department if anyone is leer for that information. I do know that this is, I believe, the oldest one on the books, and it's one that has done a substantial amount of infrastructure, and already has a substantial amount of the project completed. So the findings here are appropriate to finding that there is a certain amount of effort that has been done based upon the current specific plan.

>> Councilmember Constant: I guess my question would be, once Joe gets a chance to answer here, have we done that analysis on every one of those, or is this something that the developer brought the analysis to us? I just want to make sure we're treating everyone alike if we're going to be doing this.

>> Joe Horwedel: Councilmember Constant, Joe Horwedel, Director of Planning, Building, and Code Enforcement. Planning staff has not done an analysis of the specific plans compared back to the exemption, anything I've seen, we may have done something independent. But we do have some more recent specific plans, the one we've done south of downtown, and the Martha gardens area, that does not have a substantial amount of infrastructure to the scale of Communications Hill that we're building water systems but it does have major investments that are related about public facilities that are going in there. But it's certainly not the scale of Communications Hill. That's the one that jumps to mind straight-out. I know there were a couple of them that were done about the same time as Communications Hill and I don't know if they're before or after.

>> Councilmember Constant: The reason I ask is obviously I don't support the policy but I support this exemption. And I think that we should grant this exemption, but we should also make an analysis of any other plans that are out there. Because if other people have made significant investments we should know that and we should be treating each similar situation in a similar fashion. So I don't know if Nancy was going to make the motion, since it's your memo but if you do, I'd like to see that staff direction as part of the motion.

>> Mayor Reed: All right, why don't we go to Councilmember Pyle who does have a memo out on this topic.

>> Councilmember Pyle: Thank you. It is a blue page, and it basically asks that the ordinance subsection 5.08.320G item 5 say that as of the operative date there has been no construction of residential units in one or more remaining phases of the residential development within the specific plan area and within 40 months of the operative date the developer has attained city approval of at least one building permit in any such remaining construction phase. In other words, how do we ask a developer to come up with \$300 million since they're not going to get any help? That's an incredible amount of money in this particular case with Communications Hill. And there is no future funding mechanism to provide for that. It would help to ensure that the development plans can continue, and that will remain consistent. So it's a complicated paragraph. But Leslye, can you give some elucidation on that or opinion?

>> Leslye Krutko: Trying to find your memo. It's not blue in my packet. Here we go.

>> Councilmember Pyle: Okay.

>> Leslye Krutko: So as I understand your recommendation is to remove that recommendation of 40 months. So it would be -- again there would be no -- it would basically be exempt is my reading of your memo.

>> Councilmember Pyle: Uh-huh.

>> Leslye Krutko: So regardless of whether or not construction started at any time it would be exempt. And again, that is a policy decision that the council needs to decide. From our perspective, what our -- what this paragraph means is that if they start any phase, any piece of it within 40 months after the operative date which would be six months, likely six months after January 2013, then if they did not do that, then inclusionary would go into effect. But if they did, then they would be exempt.

>> Councilmember Pyle: Uh-huh. Is that our understanding?

>> I think that was the third request made by Joan Gallo on behalf of her client, letter to council.

>> Councilmember Pyle: It is the same.

>> With regard to the two corrections I had already said to Ms. Gallo and to others that we could certainly support the changes no later than 1993. I think her language was prior to 1993. And I believe the language for subsection 4 was, has been completed rather than has previously been completed. It's apples and oranges -- it's the same meaning at this point, but I would just say perhaps we just take Ms. Gallo's language from her letter for the first two changes that she's requesting and council make whatever its determination is going to be on the third request.

>> Mayor Reed: All right. I think --

>> Councilmember Pyle: I'm fine with Joan Gallo's --

>> Mayor Reed: We'll hear from Joan Gallo in a minute. She's got a card in here for public testimony so we'll come back to that in a minute. See if any other councilmembers have anything to say before Joan Gallo has her statement. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. Joe Horwedel, you're in the audience. A question for you. We're developing or have a plan to develop a lot of houses in the northern portion of San José and if I remember correctly those housing developers have been asked to spend a lot of money on infrastructure, am I correct there?

>> Joe Horwedel: That's correct, the development in North San José will pay about half billion dollars with a B for transportation and other improvements to support about 20 million square feet of industrial office space and 32,000 housing units. The Rincon specific plan does overlap Rincon South Specific Plan overlaps a piece of that and it's one I think fits into this and it's one I'm thinking probably will meet the exemption request and we have built projects in Rincon South. I think it is in this time frame in '93 and certainly has substantial public investment.

>> Councilmember Oliverio: Okay, thank you.

>> The one comment on that though, would be if most of that area was in the redevelopment agency, and if it is, redevelopment has its own independent inclusionary requirements now that are being carried over and in fact lessened by this ordinance from 20% to 15%. So I don't know if they want to comment on that. But that is an issue here, is that most of what you're talking about in north San José is also in the redevelopment area that has independent affordable housing requirements.

>> Mayor Reed: All right, let's take some public testimony starting with Joan Gallo and David Wall and Pat Saucedo.

>> Thank you very much, Joan Gallo with Hopkins and Coral Leaf for the property owners, MTA Properties. I'm urging you to support Nancy Pyle's recommendation or my recommendations, the staff has agreed on the first two items, so what is at issue really is this 40-month. And I want to point out that Communications Hill, it took ten years before the first building in Tuscan Hills. It takes a long time. The first two specific plan phases are done. That cost \$126 million in infrastructure. The remaining phases will take over another \$200 million in infrastructure. And I can tell you that unless there is certainty, that won't happen. Because no one is going to start the infrastructure with the notion that, if it's not completed in time, that the exemption goes away. No one is going to get funding unless there's absolute certainty, when they start construction, that there will be no loss of that exemption. Can something be tied up for a long time? I want to remind those of you who were familiar with it, that when Calpine started Metcalf, it was tied up for years and years with very frivolous litigation. Not to speak if there's some defect in the EIR, and it gets tied up and has to be redone. These things can take years. When you're doing this kind of project, Communications Hill will add 25 -- 2500 housing units to the City of San José. It's going to add a school and a park and a retail center which the residents of the hill are very anxious to have. There is no one more anxious to see it happen than MTA Properties. Nobody is going to delay this project for the sake of delay. We'd like to get it done. At the moment, there is no developer. The specific plan is unusually specific. We've got to then get development plans around that specific plan. It's going to take time. It's going to be hard. It's going to be complicated.

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

>> Thank you.

>> Mayor Reed: David Wall and Pat Saucedo.

>> David Wall: She can have a minute of your time.

>> Mayor Reed: She already took a minute of your time.

>> David Wall: Can I speak like this since I'm diminished? Exceptions are what they are. Exceptions. I support no building whatsoever on Communications Hill or anywhere else. But let us look at the slum skyline of San José. If you're on 87 in any direction you look at Communications Hill and you're wondering, thank God I didn't buy there. One earthquake away and all those houses are down in the valley. Why you would build any more there, I don't know. There is no water. Nobody talks about water but me. I'm the only one that gets thirsty? I don't know. One thing is not talked about, this inclusionary business. We all get warm and fuzzy about oh, a painter and somebody in the trades and isn't it great to have them as a neighbor. Which is true, Councilmember Kalra, your neck of the woods, public defenders. How about a child rapist. All they have to do is meet the criteria, and they're in inclusionary housing. But for the inclusionary housing policy by your contemporary in the prosecutor's office. So it raises the issue about this disclaimer business. Third parties, hey, established home owner that you've worked hard for. You've just got yourself a new RDA project or new housing project that falls under this cursed housing department's inclusionary housing crap. Guess what, your neighborhood is going to get trashed, your property values are going to go down for what, so politicians get warm and fuzzy about an entitlement program, like you can't afford to live here, but no, come to San José, you can. There's another group of people: Convicted felons, other felons, illegal aliens and their families. Boy, the illegal alien thing we don't talk about do we but as long as they meet the criteria, they can move in. This inclusionary housing business do not invest in the City of San José. It can be overturned, hopefully.

>> Mayor Reed: Pat Saucedo is our last speaker.

>> Pat Saucedo. San José Silicon Valley chamber of commerce. Basically at this stage I would say ditto to what Joan Gallo has said, I've had the experience as well with Silver Creek. It takes a decade. And I do recommend Councilmember Pyle's modification today. Thank you.

>> Mayor Reed: Thank you, that concludes the public testimony on this topic. I believe we have a motion on the floor from Councilmember Pyle. I don't know who got the second. Clerk did we get both, motion and second? Okay, Councilmember Pyle. I'm sorry, we're not picking it up.

>> Councilmember Pyle: Sorry, I move to approve there memo.

>> Councilmember Constant: I'll second it with -- as long as there's direction for staff to analyze who did we miss by setting this date of 1993. With analysis of the impacts and the investments, with direction to come back to the city council so there are other significant projects, we.

>> Councilmember Kalra: Can modify this policy.

>> And if I may clarify the motion, your memo speaks to --

>> Councilmember Pyle: Remove.

>> The 40-month period from operative date. We still need council to approve the changes also to the other sections in this exception, which is the, prior to 1993, and has been completed, language in Ms. Gallo's letter to the council. Can that be made part of the motion as well?

>> Councilmember Pyle: That's fine.

>> Great.

>> Mayor Reed: Okay so the motion is to approve the two changes recommended by staff and the one additional deletion of language which is confined in the memorandum with instruction to staff to look at the other specific plans and let us know about that, is that correct, Councilmember Pyle?

>> Councilmember Pyle: Uh-huh.

>> Mayor Reed: Okay, Councilmember Constant has the second. Discussion on the motion, Councilmember Constant.

>> Councilmember Constant: Well, no, that was just for the clarification.

>> Mayor Reed: Okay, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. There's a question regarding the memo put forth by Councilmember Pyle And Joe was talking earlier, I guess there was mention of one specific project and maybe a couple others around that same time frame. Do we know how many projects are prior or no later than 1993 that would be affected by the exemption? Because I know Joe spoke to, I don't know if anyone else has some sense.

>> Leslye Krutko: I think having folks talk around me, we did look at that issue. And that Communications Hill really is the one that meets this definition. There were a couple of smaller projects but they were already in RDA areas, so already --

>> I believe one may have been in Japantown and I forget where the other one was but they're both restricted under redevelopment conditions.

>> Councilmember Kalra: Okay, they already have superseding restrictions. I just asked as was mentioned earlier, with this, with the adoption of this memo it basically just completely exempts the anything that falls under the categories here which we know Communications Hill does we're not sure if anything else does but nothing there is no big glaring project that comes to mind but there may be some small ones here?

>> Leslye Krutko: That's correct.

>> Councilmember Kalra: I'm supportive of the motion put forth as well as the memo. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. If it's such a great policy then why are we making an exception? I can't support it out of principle so no support today on this one.

>> Mayor Reed: I think that concludes if discussion on the motion on the floor. All in favor, opposed, none opposed, that's approved, I'm sorry, one opposed, Councilmember Oliverio. As long as the clerk gets it. Councilmember Oliverio opposed, and Councilmember Nguyen abstaining and absent out of the room, but she's going to come back pretty soon, I think, when we take up item 4.4, the catalyst program. That item is approved and we will now turn to item 4.4, catalyst program. We need to move some staff around for that. Paul Krutko is already here, he's ready to go.

>> Paul Krutko: Mayor, we're prepared to answer any questions that the council may have on that. Jeff Ruster is here with me on it.

>> Mayor Reed: We're prepared to answerfully questions if council has any. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. And I wanted to ask Paul a question. And that is, do you know if PCM is about to make any investments before the February 9th city council meeting?

>> Paul Krutko: Good afternoon, council and mayor, Paul Krutko again, chief development officer. We are not at the current time processing any current investments with them. They don't have anything pending. They are out as per their contract looking for opportunities for us but we're not -- we don't have anything in front of us and one point just to be clear, we have the clear decision process on making an investment, so they couldn't make an investment without us agreeing to it.

>> Councilmember Herrera: Thank you, Paul, I'm just trying to clarify that because I want to direct everybody's attention to the blue memo I sent out today. And hearing that information from Paul I would like to move my memo on point 2. I think point 1 can be answered at the -- during the budget discussion, and I would like to move point 2, and really is asking -- answer some of my questions.

>> Councilmember Liccardo: Second.

>> Mayor Reed: All right, we have a motion, which asks for information back to the council before the mid year budget discussion, so half a dozen questions by Councilmember Herrera regarding this program. Further discussion on there?

>> Councilmember Herrera: And I'd like to speak on the motion if I might. So first of all I really want to thank Paul and Mr. Ruster there for coming and giving me a good briefing on this program. I heard about it also in economic development committee where I had concerns about it and I raised those then. My questions about this fund are not about whether -- what happened in the past, whether those decisions to move forward in the past were right or wrong. I wasn't there. And I wasn't part of that debate. But instead I'd like -- I'm asking to take a step back and ask should the city continue to make equity investments in companies? I look at my own -- you know I share -- my personal perspective is that venture capital is a very risky business and, from my experience from the private sector, where it's well-known that we have many venture capital firms in our Bay Area, and fortunately in Silicon Valley and they make a lot of those investments and they have a lot of very specialized staff to review that and make those decision and they know very well that most of the time they're not going to come out winners in those investments? They're going to in fact lose. And it's the rare occasion that those investments pay off, and they reap the rewards of an eBay or some other success but many other times, they end up with a situation like a web-van or other companies that didn't make it. And so my opposition to this primarily is, from a principled point of view here that I just don't think that venture capital investments are responsible use of taxpayer dollars. Kind of an example as an individual, I think many of us who have worked in the high tech field at one time or another have thought we understood things well enough to invest our money in a high tech

company and many some of that time we take our own investment money and invest it in a single company thinking that we know something about that and perhaps can reap benefits from that. Most investment professionals that I've spoken with over the years have always suggested that unless you have the time and the expertise to pay attention to those single company investments that you're probably better off putting your money in an index fund or in some other managed fund where you have professionals watching over that money. And I'm just using that as a comparison because I see some similarities in look at investing in some of those kinds of things for the city. I don't think that the city has the kind of expertise and can look at being part of even a venture fund where it's leveraged, I don't think that's the appropriate place for our taxpayer dollars. As I've outlined in my memo I have a series of questions and I would just hope that these questions in the memo can be answered because at this point we have over a million dollars, I think \$1.5 million, remaining that has not been invested yet. And especially at this time when we are scrutinizing allow we're spending every dollar we need to make you sure that this \$1.5 million yet is utilized and leveraged to create the most economic impact that we can possibly achieve. So I hope my colleagues will support me in asking these questions and getting some answers in time to make some budget decisions and I appreciate your consideration.

>> Mayor Reed: All right, Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to take a little bit of time to talk about our history and what we have done as a city to help businesses. One of the things that I have some experience with is the revolving loan fund. It's -- was designed to help smaller businesses to give them a loan, we had a committee set up, we went through each one of the prospective clients for that loan, and you know, I served on that for a year, maybe two years. Under that the loans were approved simply based on the ability of the borrower to pay back did loan. In spite of the close scrutiny given to the -- regarding the lope, the pay back, the loans were often reworked, they went into collection or they were written off. And the quality of the jobs created and the potential growth of the company were not as important as the perceived ability of the borrower to pay the money back. So in 2005, the catalyst fund was born, which was approved but not implemented until 2007. The whole purpose of that was to look at businesses through a wider lens and to look at what kind of businesses can we use, can we incentivize so that they will provide more jobs for the City of San José. We needed to look at the potential for company expansion, quality job creation, potential return on investment, along with the leveraged finances. All of that was considered when selecting companies to invest in. We've only invested in two companies. And as you can see, since it started in 2007, we've had a little over two years, very little over two years for that to work. It is a multiyear program, or at least it was designed that way, to I think it was at least five years, Paul, is that correct? So I think that we need to give the program the full-time allotment which is what you're saying, you're not saying suspended it, before we can make a decision to eliminate any program. I went through all that because I wanted to just point out the fact that OED has almost no tools for incentives in their packet. Other cities do. How they manage to do it, I don't know. But this is a tool, only one. And we've only used it in two cases, to try to help businesses who are going to create jobs, to come and stay in San José. So I appreciate your indulgence and we'll go from there. I support your questions.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Yes. I know that this is one of the incentive tools that could well be one of the few incentive tools that are available to the Office of Economic Development. So what I would ask the maker of the motion is if we could add one more item, for them to bring back to council under the questions, and that would be, what economic tools do you have in your tool box to offer as incentives? I know RDA has had funds that they've been able to access in your RDA areas. But that's only one-third of the city. The other two-thirds can't access RDA dollars. And so when you have companies that might be locating in nonRDA areas, we have very few resources that we can use to attract them and retain them. So my question, can we add that to your list of questions, is to bring back just what you have, and how what we have is used so that we can better understand the limited resources that are available? Would that be okay --

>> Councilmember Herrera: I absolutely would support that additional question.

>> Councilmember Chirco: Thank you very much.

>> Mayor Reed: So we have a motion amended to add another question. I don't know who had the second, I've forgotten anyway. Who had the second? Councilmember Liccardo. We're amended. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Paul, I appreciate that being creative in City Hall is challenging because there are so many rules and we are so confined in so many ways from being able to do things that are creative and innovative and I appreciate the fact that this is one instance in which clearly you guys, one of many instances in which you guys are clearly trying to do that. I know I've expressed my reservations before about this program, I'm not going to repeat those. I've asked this be cross referenced by committee. My concern was we had a couple of investments one seemed to be doing pretty well, one that was struggling. And I thought it might be inappropriate if it was an inflection point, it was a decision point for the council to decide whether or not do we want to continue to invest in struggling investment. And I've had a conversation since with Jeff Ruster, Jeff explained to me that obviously we're dealing with a market that's not terribly liquid, and pulling money out may be very challenging. So I understand that really response to the whole point of my trying to bring this to the council's attention. I think it would be helpful, as we go through with the investments that we have, to be able to alert us as to whether or not there are opportunities for us to be able to take a fork in the road, one way or another. Because from my very limited understanding of venture capital, basically everybody is waiting for either an IPO which really hasn't happened in the last couple of years or for a buyout before anybody gets their cash out. And you know a merger buyout could take a long, long time. So I guess part of my interest in all this is really trying to understand what the end-game is, at what time does the city recover the money and be able to use it for other economic development objectives. If you want to -- development objectives. If you want to respond in any way to that very long winded statement --

>> Paul Krutko: I can a bit. We wept through and I'll let Jeff amplify. We went through a very lengthy process that took us a very long period of time working in close concert with the city attorney's office to -- within the rules that we have to be able to create a program that could leverage substantive investment in San José from venture capital. And the reality of the first two investments is, we've leveraged substantive dollars from our partner, into two companies that are now employing people in San José. The second investment that you mentioned was Suviaanda, we've invested in the company and they have a very successful store and they have one store that is having difficulties. So on balance, if we look at our investments, both of them are performing as we expected them to do when we entered into that. Yes, the store next door has issues, but the store that is, you know, in the story area, is doing quite well. The point I would want to share with the council is, we'd be more than happy to bring back what incentive tools we have, I should let the council know that I think you've seen on your -- on your calendars, that we are coming back with the update of the economic development strategy, in a study session in the near term. We intend as a part of that to as well as explore some -- what are some new things we might be able to do. When I say that to you, and if the council would just indulge me for one second, our competition is pretty fierce. I asked today just to share with me what they could find out very quickly. You know, our major competitor right now is Texas, and is Austin. At this moment, the state of Texas is offering a \$295 million deal-closing fund to their localities. That's on top of a \$275 million emerging technology fund in which they, the state of Texas, is investing in commercialization. We're not alone in the notion of venture investing. North Carolina who is another key competitor of ours at research triangle, is doing 12-year grants of \$15 million. Job maintenance and capital fund grants of \$5 million for equipment. So we are faced with delegation coming here from those two states and looking to move our companies. So the point I guess I would be very happy to bring back our incentive tools to respond to that but I want to be mindful that the council understands that what others are now putting on the table is by orders of magnitude, dwarfs anything we're able to do.

>> Councilmember Liccardo: Paul, let me try to just focus a little more on where I'm trying to go. I know it was a long winded statement, but it was really at the end of my statement that I was really concerned, which was the end game. I understand there's a triple bottom line here we're trying to accomplish, we're creating jobs and doing other things. But the question really I think for a lot of taxpayers is when does the money come back? And again, we know the IPO market may take a while to heat up. We're waiting for mergers and acquisitions, generally I would assume, like most venture capitalists. Do we have any sense about when the money ever comes back?

>> Jeff Ruster, deputy director, Office of Economic Development. The agreement we have with Pacific Community Management, which is a wholly owned subsidiary of Pacific Community Ventures, is for ten years and was anticipated that really will be over the first four to six years that they will invest the City's money and bringing them leveraged resources with that. Just to quickly amplify Paul's point in the two investments we've done they've inquired to have a minimum leveraging of 5.7 to 1, the first one they were about 6.5 to 1, in the Suviaanda, they were 11 to 1. So they have far exceeded that requirements for

bringing in a lot of private capital from variety of investors. As each individual investment gets nurtured and moves along and they accelerate the growth of the company you've highlighted it councilmember in terms of what the possible options are. To be honest IPOs are kind of the exception of this type of market. It would really be through a sale do a strategic investor, through the management team through some type leveraged buyout, larger company where these two companies currently are today.

>> Mayor Reed: I still have quite a few councilmembers who want to speak on this. Let me suggest we not try to make a substantive decision today, we have questions that Councilmember Herrera that go to few hours ahead of us to get through the rest of the agenda and it's already 4:30. I'll let you have however much time you night to take but Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. I'll be as brief as possible. Long story short, there's risk in anything we do. I mean inevitably. We look at Opti solar, raised \$200 million and they went out of business. Any investments we made whether it's RDA, could fail. It's a risk we take. I look forward to the study session, I guess from your experience you know do companies want us to procure a piece of equipment that cements them here, do they want us to buy them a nice fancy sign that they can get noticed on North First Street or 237. Paul, you'll come and tell us what is the difference, how does this 11 mean better to get this -- leverage mean better to get this company to settle here. I don't know if I said it but nine out of ten startups fail so there's going to be risk on either side of the fence so I'll wait until the study session, thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you mayor. I think I would agree with you councilmember, anything we do leer is a risk. We've made several decisions through the redevelopment and wondering whether we're able to get a higher return on our investment. Most of my questions were answered, Jeff, and Paul, you answered them. I wanted to know what was our investment and what was the return and what was the leverage and you did answer all those questions. So I look forward to the opportunity to be able to have a further discussion on this. So I will leave it at that, and I'll support the motion. And I'm supporting the motion, I'd supported this since the beginning. I think this is something that is innovative, I think it's a tool that our economic development department needs. I think that if there are other creative tools that you need to bring forward, I think you should let us know in the spirit of as a bringing forward what tools you have. I think it would be helpful to get ahead of the curve, and to know from your perspective what are other tools we need to, to create more jobs, incentives for people to locate here, and to stay in San José. We see that other companies are moving out, and other cities surround us, and we need to start thinking a little bit more innovative, so that we can encourage people to locate here, to stay here, so that we can be competitive with those other cities that you just outlined. Thank you.

>> Mayor Reed: I think that concludes the council questions. I have one request from the public to speak on this matter, Mr. Wall.

>> David Wall: To all the citizens, especially those behind me, this is the beauty of going to this council committee meetings such as the Community and Economic Development, which I was there when this teary eyed presentation was put forth. But let us first put into nature, venture capital investments by the citizens is nothing new. We do this every time we elect you folks, and boy, what a return on our money we get for that. But this program here, we heard of the Midas touch, right? You turn something and it turns to gold. This is the manure touch. Where you touch something and it becomes manure associated with the rear end of a bull. This project has nothing but downward indicators, will not succeed. Mr. Liccardo, eyes front. Let us talk about your association with grocery stores in district 3. The Danotto deal, not in association with the Safeway deal. Legality us turn eastward to the store across the street, Suvianda, my personal opinion, use gloves when you use their shopping carts. I have no mercy for this Office of Economic Development. As a matter of fact, an arena of a budget reduction scenario, it is my considered opinion in print and in speech, to eliminate this entity in its entirety. They don't have any tools, they've been told, what tools can you come and give us so you can make money? What about the market, but there is one tool, tomorrow, that Councilmember Campos will bring forward, but Councilmember Herrera, Councilmember Liccardo, Councilmember Pyle, and our good buddy at the other end, Councilmember Kalra, it's called sustainable agriculture and you have all --

>> Mayor Reed: Sorry, your time is up. That concludes the public testimony on this item. We have a motion to refer some questions to staff. Made by Councilmember Herrera. Any further discussion on that? All in favor? Opposed, none opposed, that's approved. That leads us to item 4.7, actions related to disestablishing the Willow Glen BID, business improvement district.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: We have a motion to approve the disestablishment. I have some requests from the public to speak on this item, I'll take that testimony now.

>> Councilmember Oliverio: Thank you, Mr. Mayor. I believe there may be testimony on this item, so I'd rather take public comments.

>> Mayor Reed: Actually, there is, we'll do that now. Norma Ruiz, Kevin Swanson, Stacy Scott, please come on down.

>> Yes, I'm Norma Ruiz, the executive director of the Willow Glen business association, mayor, councilmembers, thank you. We're here actually, the disestablishment of the Willow Glen bid as part of a larger strategic plan that the business association has implemented that probably started a couple of years ago. We established a new funding model that's through the community benefit improvement district which got passed by council a little bit over a year ago. And we're actually in the process of establishing it. As part of that strategy, we did commit to the membership at that time that we would disestablish the business improvement district in order not to collect, you know, what was perceived as double fees, since we were collect being it from the property owners, the feeling was that it was going to be passed on to the businesses and they did not want at that point the feedback that we got to continue with the fees with the businesses. So it's just here to support the disestablishment of the business improvement district, and in light of the bigger strategic plan. Thank you.

>> Mayor Reed: Kevin Swanson, Stacy Scott, Dan Scott.

>> Good evening. My name is Kevin Swanson and I'm the president of the Willow Glen business association. I've had over the last five years while I've been on the board for the business association, the opportunity to serve in many roles, including treasurer and vice president. Currently president. But during that time I also had the opportunity to meet with a lot of the members as an ambassador. During the five years that we have been progressing through the development of the CBID and with the culmination of the dissolution of the bid we've had a lot of input from that. And I personally have had the opportunity to meet with a lot of the members and there has been a significant desire not to have a bid and a Cbid. And one of the reasons that the Cbid was passed was with the understanding that the bid would be dissolved. So I am in support of the dissolution of the bid. Thank you.

>> Mayor Reed: Stacy Scott, Dan Scott and then Karen Stevens.

>> Hello. Thank you for letting me speak today. My name is Stacy Scott. I'm the creator and general manager of tree house in the glen, we're a certified green toy store in San José, in Willow Glen. I oppose the disestablishment, not because I don't think it should not be going on at the same time. I do believe that neither the bid should be going on, and the Cbid should be going on at the same time. However, my opposition is more the way the Cbid was passed. Our association is a membership association, and the people who got to vote on whether or not we had a Cbid in our business district were not the members. Only 17% of the members were actually asked to vote on this, and that would be the property owners. The property owners are 17%, I'm a retailer, I'm 15% of the membership and obviously, there are many more service companies and other companies. I ask the council to just look at whether or not our association, which is a 501 (c) 6 is actually in compliance with being a 501 (c) 6 in having a small portion of the membership voting in a Cbid and whether or not that actually is appropriate to not ask the rest of the membership to vote for this. As a retailer, as the others percentage, I feel like my vote was not asked, and I would have liked to have discussed what happened. I only came to this realization, what we all need to have a profitable and financially successful --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Dan Scott, Karen Stevens.

>> Mayor Reed, Vice Mayor Chirco, councilman Oliverio and the rest of the council, first I want to thank you for having this type of forum, this mechanism in place so if there are issues like this they can be brought to your attention. Because I think if you were aware that the members of the current bid were not voting for this, your opinions on this subject might be quite different. I'm here to reiterate what Stacy just said, that the Cbid has been adopted without the informed consent of the current bid members, and it was voted for by the proposed members of the yet to be implemented Cbid. Insofar as they're property owners and good to have officer positions within the WGBA, obviously there's an appearance of impropriety that perhaps should be looked at. But there is actually a bigger issue and that's what Stacy alluded to, with the 501 (c) 6 status, because those members are only property owners and therefore, those are the only form of dues that are paid therefore excludes all the other members of the district. That's not in compliance with the code as I see it and I would of course defer to the attorney's office to pass judgment on that. So

I've got some action items that I think would help with this. First to suspend the adoption of the Cbid immediately, pending a vote of all of the current bid members and that of course is going to take a legal review and determination about whether or not what is being voted for is going to be legally viable under the provision of 501 (c) 6, and then a further request, it would really expedite these kinds of things in the future, is to ask the city provide access to specialized legal counsel on some of these issues. It would certainly get passed a lot of fog that get brought up in board meetings and at the local level about what is allowable and what isn't. There's a lot of gray areas and opinions and it would be nice to have learned legal counsel on such things. Thank you very much for your time.

>> Mayor Reed: Karen Stevens our last speaker.

>> Good afternoon, I'm Karen Stevens. I'm owner of Diridon Costume, a member of the Willow Glen business association, I am here to say I am against the disestablishment of the Willow Glen bid. I believe the board of directors of the Willow Glen business association acted negligently and not on behalf of the business association's members in approving the business association's management of the Cbid and the disestablishment of the bid. The board of directors of the Willow Glen business association did not, as Scott said, put to a vote to the association members, the disestablishment of the bid. Preventing the members from paying dues and thus meeting a requirement to maintain the association's IRS 501 (c) 6 status. That does put us in jeopardy. In addition, the Cbid benefits as was said, less than 20% of the members of the business association, benefiting this minority, rather than a majority, also jeopardizes the business association 501(c)3 nonprofit status because it is benefiting individuals rather than the greater membership of that association. So it's my recommendation that the city council not condone the negligent behavior of the Willow Glen Business Association board of directors by disestablishing the Willow Glen bid at this time. Thank you.

>> Mayor Reed: That concludes the public testimony. Bring this back for council discussion. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Lincoln Avenue is not in a redevelopment area. It doesn't benefit from the redevelopment agency dollars that have funded so many of the business districts in San José. So many years ago, a bid was formed, a business improvement district which was based on businesses paying a fee for the mutual cooperation in creating a marketing plan you know, improvements a sense of place, that type of thing. Much like our downtown had. And then what's happened over time is because businesses aren't, you know, it's the market economy, businesses ebb and flow and success, stores are vacant, businesses are vacant. So we've moved on to property based business districts, like we've done with the downtown, the bid and the Cbid. The person that has the right is the actual property owner because you're taxing them. Much like a parcel tax for any of our individual homes to pay for a school bond or a library parcel tax, that's the process. And when the bid was formed on Lincoln years back, it wasn't necessarily a popular thing and there weren't people that were looking forward to that. So I think it's just a sense that over time things change and when there is change there's a sense of anxiety but the Cbid is a much better format to fund a business district because it's property based. The property doesn't move. It's there and we have that election by the property owners where the property owners decided to tax themselves. This council approved that and I know that it was a multiyear process. And we were working with Public Works and now at this time City Attorney, I would say from what my understanding being that the fact that we worked with staff the entire time, through the process, I assume everything was done in a legal manner. So I'll wait for the City Attorney to have a moment there. Did you want me to rephrase the question, City Attorney?

>> City Attorney Doyle: Yes, if I would please.

>> Councilmember Oliverio: No problems. City Attorney, we had been working with the Cbid for multiple years, we had worked with public works staff and all the departments of the city. I'm assuming that everything was done in accordance with all the legalities, the appropriate law.

>> City Attorney Doyle: Excuse me. This is -- the Cbid and then the establishment, everything was done appropriately. You may remember, I think it was last year that we had the vote. The ballots came in, and it was a very narrow victory, but it was approved. So everything has been done as far as I know according to -- in compliance with the law. The question on whether or not there is a 501 (c) 6 if there's been compliance or lack of compliance with respect to this existing bid, I don't know the answer to that. We can look into it, we can report back to council but clearly, the Cbid has been handled appropriately, and seems to continue to be.

>> Councilmember Oliverio: Well, that's the important thing is that the bid was handled appropriately. And we cannot -- it would be unfair to do both fees at the same time, on the store owner and the property owner. So I will make a motion to disestablish the bid district.

>> Mayor Reed: We have a motion and second to disestablish the district to approve the staff recommendation in this matter. Do we have further discussion on this? All in favor? Opposed, none opposed, that's approved. We'll now move to item 4.8, historic landmark nomination for the Ken Ying low restaurant. We have a motion to approve. All in favor opposed, none opposed, that's approved. Item 4.9, actions related to the 2009-10 weed abatement report. We have a motion to approve. I have one request to from the public to speak on this item, we'll take that now, Michael Ibara. Mr. Ibara, last call Mr. Ibara, we have no public testimony on this item. We have a motion to approve, all in favor, opposed, none opposed, that's approved. 5.1, report neighborhood services and education committee, Councilmember Campos chairs that committee.

>> Councilmember Campos: Thank you, player. The minutes are in your packet. Before I ask for the motion I think there's one item that needs to be corrected from what I understand and I recall, Councilmember Chu was in attendance at the meeting. So I think we have to make that correction. And then with that I would ask that my colleagues move for approval.

>> Mayor Reed: All right, we have a motion to approve with the one correction noted about Councilmember Chu's attendance. We have a request from the public to speak. Mr. Wall.

>> David Wall: Another benefit from attending council committee meetings, however I didn't attend this one. This particular issue 5.1 section 2, dealing with animal care and services semi annual report deals with testimony that I gave to Rules in relation to revenue generation, revenue generation idea. To back for animal services, on the bask garbage bills, Mr. Mayor, as you well recall, I did put forth the proposition that you should put an overage section on the back of these garbage bills, so we can start creating a fund in other words a restricted use fund but different in the sort of restricted use funds normally created. This one you shouldn't be able to borrow from, fund for our animal care operations. And for this program to be able to expand to take care of our little furry friends. As we've heard today the economy is bad and animals suffer really bad as a function of that. Now, since I put forth this proposition to raise revenue, in a very innocuous way which people volunteer to give their money and it hasn't been done, maybe the venture capital risk program shows another failure. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve with the amendment. All in favor? Opposed, none opposed, that's approved. Item 5.2 Antigraffiti antilitter campaign updates. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. We had a lengthy discussion, regarding this item, too. And first of all I want to thank Albert Balagso for putting in a supplemental memo regarding some of the things that we discussed. I would like to include in the motion that the supplemental memo, in the back on page 2, there are various steps that actually ask city staff to go back and seek an agreement with the utility companies to allow for the city to abate the graffiti, so that there is no additional delay to that work. And so I would just need my colleagues to support that, so that -- thank you -- so that we could stay ahead of the graffiti removal versus having to leave it up longer. Thank you for the second.

>> Mayor Reed: Okay, we have a motion to approve the matter with the addition of a supplemental memo and the direction in the back about working with the utility companies. Any other discussion on this? All in favor opposed, none opposed, that's approved. 6.1, report of the transportation and environment committee for December 7th. Councilmember Liccardo chairs that committee.

>> Councilmember Liccardo: The minutes are in the packet. I move to approve.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that's approved. Our next item is a joint item, city council redevelopment agency, item 9.1, regarding deferred payment of park land in lieu fees for multifamily high rise residential projects in the downtown core. We have a motion to approve. I have one request to speak. Mr. Wall.

>> David Wall: Here. I do not support in any way, shape or fashion, deferring any of these park land development fees. This is conferring an unrich -- let me take that back. This is conferring a benefit of unjust enrichment on developers. It is very foreseeable these high density living projects are going to collapse. They're going to collapse for a variety of reasons. Why? Well, we've talked about some of them today and I'd be out of order to bring up those issues. But who would want to buy into an RDA high density living projects when you could buy an established single family home? Therefore, the people that went into these projects that owe the money should pay up. And the answer ladies and gentlemen isn't down, looking down at your computers and whatnot. The answer is, collecting the money while you can,

Mr. Liccardo, because if these people go belly up even with the surety bond that you talk about, the litigation nightmare can go on for decades to collect. In other words, if you're going to develop something in this town, get your money up-front first and in the bank. And then if it collapses, tell them to come see you with a tin cup. Thank you.

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

>> Councilmember Liccardo: Mayor, I wanted to clarify my motion. I misspoke, I wanted to move both staff recommendation as well as the additional recommendation contained in my memorandum of January the 11th, as part of the motion, if I could clarify. I also wanted to thank Ed Shikada and his whole team under very hard work on this. I know this is a challenging endeavor and I appreciate that the city is got a surety on the hook, so that if there is any financial problem down the road, 13 months from now, we certainly have recourse to reliable source of security to move this park project forward. Thank you.

>> Mayor Reed: I think we have a motion put forward as stated by Councilmember Liccardo. All in favor opposed, none opposed, that's approved. That takes us to the last item on the agenda, which is 4.3, our sign code update. Which when we scheduled that matter for this meeting, there wasn't much else on the agenda. And there's quite a bit of work to do here. This is, in part, study session, and in part, decision making. And it is now almost 5:00. So I suggest that we plow into this, see how far along we can get, and we may not get through the entire thing. But before we get started, I had a question about the timing of how long it might take us to get through this, and if we go to another meeting, if there are time-sensitive issues around this ordinance itself. And the one I can think of is the Target store at first, on North First Street. I know they are well into the way of trying to make that transaction work, and some of these sign issues are really important to Target. And so I don't know if we've got a week, two weeks, or two months in order to get to a decision. And if staff knows of any other time sensitive decisions in here that we ought to make, we can take those up early, make decisions, and if we don't do it all the way through the question and answer period, at least we will make some progress on some things that are time sensitive.

>> Joe Horwedel: Thank you, mayor. The freeway oriented provision that we are speaking of we do think has some amount of timeliness to it, as you mentioned the at first project, they just filed their building permits right before the break and we are committed to getting them a building permit before February so they can have concrete in the ground March 1st. So that one I think there is some urgency, though, they do recognize with the schedule we were on, it would still allow them to have that sign up in time for their opening this fall. I think whether we make that decision today or in two weeks, you know, it still would work with that schedule. I think the most important issue today is to work through, to have the discussion on billboards and then I think everything starts flowing pretty easily from that. And so from staff standpoint, we would ask to kind of chunk through that and whatever we don't finish today, we would ask the council to go and consider at subsequent meetings, whether it's one issue at a meeting, then we could prioritize timeliness from that.

>> Mayor Reed: Okay, well I think it would be helpful if we could at least get through a couple of these items today to conclude the freeway signs section, so the folks at Target at least know where we're headed with it, whatever the decision might be, so they can make whatever decision they need to make, even though they're not putting it up for months, that would be helpful. Why don't we start, take up the billboards items first and anything else the staff wants to start with and we'll work our way through the list. Although the one other question about what to talk about and when, the offsite commercial signs on city property, I know there was a case that was pending that's now been perhaps decided, I don't know if that's over over over, an whether or not we can postpone that decision for later, because we do need to do some additional work.

>> Joe Horwedel: That is one we would ask the council not to have a discussion on. We had heard literally on Friday, the Supreme Court had refused to hear that appeal, and this morning we confirmed that. There are some subtleties that would affect how the sign code would play itself out and Rick if you want to add anything to that.

>> City Attorney Doyle: Yes, I would just mention, the case is a federal court case, the ninth Circuit Court of appeals has held that the city does not violate the First Amendment by prohibiting most offsite commercial signs, advertising, but allowing it on public property. And there are a lot of ramifications as Joe indicates, and I think it's something that may be best that we -- if you're going to want us to come back with something, maybe that's one we can kick and come back with.

>> Mayor Reed: Why don't we drop that one to the bottom of this list, we clearly won't get to it today and clearly give you some time to think about it. We'll start with billboards then do the freeway signs and then electronic signs and then on down through the list.

>> Joe Horwedel: I think that would work very well.

>> Mayor Reed: All right.

>> Joe Horwedel: Thank you, Mr. Mayor, council. The structure we have today for the sign discussion is there are a series of questions that we're going to go through, do a staff presentation on each those issues Pose questions for the council and have council deliberations, discussions around that question, and the goal is before we move on to the next item is the council would essentially vote on a preferred direction on that issue so that we can go prepare the ordinances, do the public outreach on that issue and it's kind of work our way through tonight. So we do always want to remind that the reason we do signs, we recognize that they're an important asset to the community they add to our vibrancy. And that has been our goal in creating this update to our sign program or the sign ordinance. That as a part of the work that has gone on that Carol Hamilton from planning and Renee Gurza from the city attorney's office have spent months working through the community, with the business community, the neighborhoods doing research of across the nation on case law and ordinances that other cities have done, to deal with the fundamental provisions of how do we go through and create great signage and not encourage kind of what you see here, that signage done poorly is actually a blight to the community. Fortunately, most sign owners focus on the blight part, we've tried to focus on the vibrancy part. As part of the sign code we want to focus on technology has changed substantially since the sign code. Technology didn't exist at the time we we our sign code in 1992. Other than the particular time temperature. The advent of technology of LCD, the ability to do essentially full television screens on signs. And so how do we allow that in the community? We think it's appropriate but where to do it so it is actually additive to the community and not a negative. So today these are the questions, and we hope to get through with the council, and so skipping the second one you see advertising the city property, we will come back on that issue. So as it relates to billboards. The operative question is, should the city continue to allow or retain the ban on billboards, that was a major issue years ago for the city. When we outlawed billboards. And so currently new billboards are not allowed. We do have provisions that allow new location of existing billboards, we do take advantage of this. Occasionally, more recently we have been able to use this to allow billboards on sites that were trying to be redeveloped with some city facilities to be upgraded in other parts of the community. What is really an important consideration, and it's something that when staff was working on the sign code, we were actually looking at some ideas of maybe allowing billboards in downtown. And what this map is showing is that state regulations have prohibitions on creating new billboards on landscaped freeways. And those are actually defined by the mile post of what freeways can and cannot have billboards. Literally if you have landscaping you don't have billboards. If you have billboards CalTrans will not install landscaping. In San José the dark lines you see on the freeways show the registered landscapes freeway section. What you'll notice is most of highway 87, between 280 and 87 is not considered a landscaped freeway at this point but through downtown majority of highway 87 is considered a landscaped freeway in fact CalTrans is doing a landscaping project right now. So those are some of the constraints, not just how the city wants to look at billboards but how the state of California looks at billboards. It also recognizes that the state law has a tremendous amount of either direct legislation or case law related to relocation and removal of billboards from public agencies, move forward on projects and we've seen this with the construction of libraries and community centers that have billboards many of the billboard companies put poison pill provisions in their lease west tenants that if a government agency is to acquire the property it goes from a month to month lease to an indeterminate lease which forces the city to go out and buy out that billboard at very expensive rates. So it's something that there has been some real concerns about the implication of billboards on future development in this city. When we did the public outreach process for the billboards what we found is that there was a wide variety of opinion on billboards, that the community had some recognition that it does have a potential of them supporting economic development for some parts of the community. There was an acceptance that in downtown billboards should be treated differently than in the rest of the city. But there was a real desire about on premise advertising. Meaning that the sign is advertising what is going on in that property as opposed to advertising businesses that are located outside of the city such as other towns advertising products that are not available at that location, those types of issues, as well as concern about just the overall light and glare about digital billboards that you've been seeing in the paper that as those have occurred in other communities, some of the challenges that they do to other properties. The question comes up how do other cities deal with billboards, major cities as well as smaller cities? Obviously cities like New York have long allowed billboards in their community. Minneapolis is another major city that actually allow them in their downtown by right. What's surprising is that a number of communities are

actually have been moving to ban billboards in their community. San Francisco is actually a citizens' initiative that went through to eliminate new billboards from occurring. Denver and Seattle have also prohibiting new billboards from occurring. Los Angeles which most people think is billboard capital, a reaction from the community, what they saw happened in the community, unchecked control, having serious quality of life impacts, so it swung the other way pretty dramatically. As a result of looking at the city's past history on billboards and the community process and where the challenges that we face from a legal standpoint with billboards, staff is recommending that we continue to go enforce the ban on new billboards in the city. We think that the challenges that we face in implementing the vision of the city of redeveloping latter swaths of old, tired commercial properties that we don't need the additional challenges of trying to go through and have new billboards to work through, and relocate or remove. We think the challenges with CalTrans statutes on freeway requirements or limitations on billboards doesn't really make -- it makes it very difficult to put new billboards in diseven if we wanted to do it. This was actually one of the locations we tested with neighborhoods putting billboards in the location of the arena. And we think it reinforces local businesses through our current provisions with signage, it does have some challenges, the issue we're going to talk about at a later date of advertising in the public right-of-way though with the case law, you can see we didn't get a chance to update this coming out of L.A. we think it will not be mutually exclusive, that's what we want to deal with, the ability to deal with news racks or trash can advertising, so as you can see it does -- by not allowing new billboards it does not create more billboard space in the community which for some folks businesses would not be a good thing. We do want to acknowledge that. And you know, eat at Joe's there we go. Always eat at my restaurant. We do think that as it relates to billboards in the private property that if we eliminated that ban and allowed billboards around the city, you know it certainly does allow advertising opportunities for off site message that you know is potential upside. But we think out of everything considered we think retaining the billboard ban is still the appropriate thing do. So the question for the council is, should we retain the ban on billboards? Understanding that it is a major policy situation of foundation of sign regulations, or should we go through and look at a different approach with that?

>> Mayor Reed: Okay, let me get out front and say I think we should keep our ban on billboards. I was on San José Planning Commission back in the '80s when we first adopted the billboard ban and I can see a big difference. It's taken over 20 years in many cases for these things to sort of atrophy but there are lots of neighborhoods that have been vastly improved by the removal of the billboards and the fact that we're not getting a new one so I think the existing policy is a good one and we ought to keep it in place. And just so I can be clear about the public testimony, we do have cards, people that wish to speak. We will take public testimony before we vote on anything and you can speak about this or anything else or you can come back later, it's kind of up to you but we will take testimony before we vote. We're going to take testimony before we vote. And then we're going to figure out what we do after that. We will vote on a whole bunch of these thing. So -- but before we take the first vote we'll take public testimony so people don't have to get nervous about that. Councilmember Constant.

>> Councilmember Constant: Thanks. On the billboards I think a lot of the animosity towards billion boards is one of perception. Many of these billboards that were shown were in my district. And I had a meeting with a bunch of the people in my neighborhoods who are opposed to signage. And this was at least a year ago. And I asked them what they would think if Winchester boulevard had seven to ten billboards on it and they said they would be outraged. And then I informed them the number of billboards we actually had on Winchester billboards, people didn't even realize that we had them there. Because a lot of the billboards are attractive. One of the things that we didn't see in this presentation are some of the really attractive billboards in the city, namely like the one at the corner of Winchester and Stevens Creek, right across from Santana Row, that has high-end advertising on it all the time, is very clean, very well maintained. One of the problems we have when we have a billboard ban is, there is no incentive for the billboard companies to upgrade and modify and maintain their signs. And I think when you have a ban and you have a restriction on any modifications to them you start to get billboards that look blighted. We had -- you also have, when buildings are approved where they face a billboard, we had kind of a notorious one on Saratoga avenue, the building could be built and appropriate setbacks so the billboard could be used, and that wasn't done. The person decided to build right up to the billboard. The person that owned the billboard that had it for a long time, because we had regulations, couldn't modify his billboard to face the billboard on the opposite side of the post which would have allowed ethical keep his property interest in that billboard that he had had for quite a long time. I think that's something that we should be looking at, in finding ways where whether it's changing how we want to make the ratio of

replacements or alteration or reconstruction, I think we should be encouraging the people that own the billboards at modernizing them to the new technology. I think you -- many cities who jumped on the LED technology right away, didn't have the benefit of learning how you can adjust the intensity so it doesn't affect traffic, didn't have regulations for how long the image had to stay static so that you didn't have flashing completely changing moving pictures during the billboard, that distract people. I think those are all things where we can learn from the mistakes of others and get to a point where we can have our billboards that are in place, renovated and modernized, and it will do a significant amount in eliminating or reducing blight. There's also the public safety issue with this. As you know, many of the electronic billboard companies have agreements with local law enforcement agencies where they'll suspended advertising and broadcast amber alerts or other public safety information. They sometimes work with the FBI to put most wanted pictures up. There are things that can be done to give other uses to those billboards. So I think we should really be looking at that, quite honestly. I'm really concerned with a lot of the other areas of this policy today, and I want to concentrate most of my efforts and discussion on there but I don't think we should put blinders on and say we don't want to do anything to our billboard policy.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: As with so many other issues, I will respectfully disagree with my fellow councilperson, Councilmember Constant. I want to see the ban on the billboards remain. I think they've been inappropriately placed in our community, and when they stopped allowing additional ones, I think that was a big improvement, and as the mayor has said, 20 years, and they are still in our residential neighborhoods. They don't provide information to the community in which they're located. They are strictly an advertising mechanism such as you would see on TV or in your magazines. It's not -- I don't know that I've seen a billboard that really provides information regarding the community in which they're located. I respect the advertising industry and the job it does but I don't want to see billboards springing up like ugly oak trees that stay longer than our oak trees do. I would really like to support a ban to continuing the ban on billboards. I think it would make San José a more attractive place. There are other signages that I think are less objectionable, but I think this one is right up there at my top. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Joe, if I recall, we are unable to regulate the content or color of a billboard once it's established, you don't have any editing rights to what goes up there?

>> Joe Horwedel: That's correct. We only regulate the structure itself. We can do basic things like lighting but what goes on the structure we are very limited what we can do. We have a little bit authority of onsite versus offsite, but to the extent it's truly a billboard then it's commercial message and it's pretty protected.

>> Councilmember Oliverio: Okay, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Joe, under the current ban, if a billboard owner decided that they wanted to move their billboard, is it the case that they couldn't do it?

>> Joe Horwedel: We have a relocation provision in our zoning code, it is quite admittedly structured to discourage relocation. That the general plan really looks at billboards going away as sites redevelop. But there are provisions that allow an other than to go through and move it to other portion of the site, or to other parts of the city. But it subjects them to more -- that the city gets to assert control about that, and that most owners are not willing to give that up. So it's pretty rarely used.

>> Councilmember Liccardo: I guess I'd like to see, and this is obviously only one vote out of 11. But I'd like to see some way that we could create incentives for folks who have billboards in residential areas, to actually want to move them to commercial areas that are more appropriate, key shopping centers, whatever else, you know, freeways, whatever else that makes more sense, from a commercial standpoint for them and from a livability standpoint for our neighborhoods. I appreciate what you just said about the fact there's an existing provision but it sounds as though it may not be so easy to use and I wonder if there were a trigger that that really would always start with and only focus on billboards that are in residential areas. If that might be something that the community would be more likely to embrace.

>> Joe Horwedel: Well, I think through the outreach process that went on is that the community was very concerned about billboards that were in residential areas, though I think from that standpoint, downtown was a place for billboards were much more appropriate for that to happen. So it's a place that we could move them from as a part of the provision in the policies that are related to the relocation, that's part of the guiding principles, that if we are going to relocate billboards that they should come from residential areas as opposed to coming from commercial areas.

>> Councilmember Liccardo: That's right. And I guess when we say downtown, I guess I get a lot of worried because we have a lot of downtown neighborhoods that would love to see their billboards gone. I appreciate what you're saying is the downtown core.

>> Joe Horwedel: Yep, the core.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I don't remember all the details but I know we did this once. Unless we could come up with something creative that would eliminate billboards in neighborhoods I'm supportive of keeping the ban as it stands today. I know that it must have been nine years ago or eight years ago Joe, if you worked on that particular project. We were able to work through the city attorney's office to relocate a company who had three billboards in my neighborhood. And they relocated one of their billboards, and we were able to legally negotiate so they lost two. It may have come under this provision, it was a lengthy process that we went through with them but they were very adamant that they wanted to reap the benefits of moving it closer to the freeway. So we were able to eliminate two billboards that were extremely inappropriate in our neighborhoods. So unless we come up with something that is going to benefit the community, I would encourage us to currently just stay with what we have. I have worked more than ten years on this issue. I worked -- have worked almost 16 years on this issue, in removing physical blight that tends to have advertisement of liquor and alcohol and cigarettes and other advertisements that are not appropriate in neighborhoods. So I would encourage my colleagues, once again, to support, keeping it where it is, unless we can come up with something where the community is benefiting.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I don't disagree with our desire to eliminate billboards, because they bring blight in areas that we don't really want to see any more blight. For example, in residential areas, I was reading through the memos, it is an eye opening to see that a lot of the billboards in district 7, the content of it has a lot to do with encouraging individuals to consume alcohol. Obviously as a representative in that council district I would like to see that kind of message circulating in a district that I represent. But at the same time, though, I take to heart what Councilmember Constant is saying in regards to look at the billboards and how they can shape businesses and help these businesses in commercial areas. So you know, some of the outreach that were done has to express that people are generally accepting to billboards being constructed in commercialized areas. So I would like to have staff explore that option and I don't want us to sort of put the lid on the can and say this is something that we're not going to support. So moving forward I would like to see staff bring something back. Perhaps, I don't know if you're going to do more outreach or not to the different businesses in the city but that's an area that I'd like to see further communication and dialogue with the small businesses. And then in regards to the downtown core, I completely respect what Councilmember Liccardo is saying. But I wouldn't mind seeing, you know, our San Pedro square turn into the next Union Square. I don't know how long it's going to be but if we don't have that kind of vision we're not going to get there. So whatever it takes for us to get to that level that's the kind of discussion that I like for us to be engaged in.

>> Joe Horwedel: Actually we are thinking around that. As the part of the testing of ideas we did look at doing more kind of commercial message that was building attached versus I'm stuck on poles, and very much what we're thinking about is as we go forward with the Diridon plan area where we're going to go forward and build a world class train station, we've got the arena, the ballpark coming in, is to create a vibrant entertainment zone, is that is one of those places that I think that sort of vision is really, would be an appropriate place to do that, not necessarily that you go through and stick a bunch of spindly sticks up with signs on it. But you actually integrate it into the architecture of the building so it is truly part of that experience and that is something that staff has been thinking about as we're thinking about Diridon. And we have tested a number of these different concepts and as we go through some of the other issues where we talk about building mounted signs and some of the banners and temporary signs, you can see what some of that would look like and then depending on how you structure it whether it's something that a company like clear channel does or something that the individual tenant does as a short term versus long term, those are some of the policy questions we'll get to a little bit later.

>> Councilmember Nguyen: And then Joe I have one short brief question. When we allow, let's say when we shut down one billboard in one particular area and allow another to be constructed we don't regulate the content of that either, correct?

>> Joe Horwedel: That is correct. And that's one of the things we tried to show in the staff report kind of what the content, we took two census tracts, we looked at every billboard in there just do see what's going on and part of our concern is that almost 30% of what was on those was alcohol. It has absolutely - the majority of it had limb to do with San José. You couldn't tell where you were.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. In regards to the expansion of the supply we have now I wouldn't be supportive of that. However, some of the points raised by Councilmember Constant, including the idea that property interest being able to be maintained, including if there are ways in which -- but without allowing for a net gain but I like the suggestion both Councilmember Nguyen and Councilmember Liccardo, Councilmember Liccardo started to discuss finding ways to become more flexible particularly if we can get some of the built boards, some of the billboards are very curious positions in some of the residential areas particularly in the downtown core I think just because they're stuck where they are and that's where they are and there actually may be a desire to move somewhere more commercial or has better visibility if they're allowed to. I do like the opportunity of exploring that opportunity, which would allow ultimately a win-win situation where the neighborhood wouldn't have that situation where they consider an eyesore and ultimately the property owner of those that had the property interest in the billboard can become more profitable and get more visibility and so on. The reality is that we have already discussed, you know, the preponderance of these billboards are going to be alcohol or fast food, and we have because of First Amendment rights, we don't have control over what will be on them, and so we do have to be very cautious when we consider any expansion of this type of policy, is there -- a question I have in regards to the maintenance of them currently, because there's certainly a wide range, as Councilmember Constant alluded to, there are some that do look nice and are in an appropriate place and are attractive and probably get a pretty good rent for their placement. But there are others that are and certainly in more disrepair and aren't as attractive or get hit with graffiti and remain in that state for periods of time. What, if any, control do we have over the regulation of the maintenance of the current billboards in existence?

>> Joe Horwedel: The sign code does have some maintenance provisions build into it. We generally have not used those because it's a general code enforcement activity. So in the scheme of how we prioritize, it's been a pretty low priority of sign enforcement overall. That is one of the things that came up through the comments through the public outreach process, community expressed a lot of concern about the quality of maintenance. When we did that survey we found it was a significant percentage of the billboards in those two census tracts that had either graffiti on them, that they would have a message that was falling off. So I think it is a challenge with that form of signage.

>> Councilmember Kalra: Yeah, if there's a way that you know we can work maybe with some of the companies to find incentives, we've mentioned incentives potentially of moving them into a more attractive place for them and for the city and the residents.

You but also, I don't believe that having a ban by itself creates or lifting a ban by -- will cause folks to want to keep their signs in repair, if anything a limited supply should encourage them to keep the signs they do have in good repair. But if there's any thoughts or any ways that we can find incentives to make sure that the signs are kept in good repair, so if graffiti is an issue, you know, finding ways to mitigate, mitigate it and find ways to prevent some of the folks from getting onto the signs and there might be some simple measures maybe the city can put in place that will give more incentive for the owners of the billboards to keep it in good shape, knowing it won't be hit with tags, just as an example, if there are ways maybe the rather than the enforcement angle, the incentive angle, even the signs in good condition can cause issues because of the lighting and so on but the ones that are in disrepair if I lived near one I certainly won't be happy about it. So if there are ways we can find to work with the companies that own them to make sure they're kept in good shape rather than going the enforcement angle, but if we have to certainly go that route, as well, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor I want to put a motion on floor if that's appropriate which would be that we would maintain the cap or ban on the number of billboards in the city, but allow staff to explore how billboards might be moved from locations with high visibility to residents. If I could speak to that for a moment, if there's a second.

>> Second.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: We have a motion and second with a second.

>> Councilmember Liccardo: And what I suggest maybe is that even if it's not the same owner of the billboard that would be moving it but in fact we could set up something of a cap in trade. That is, we have a cap on the number of billboards now, and if somebody wants to put one in another location, they can certainly pay for the right to do that. And in that way, perhaps create a way to encourage the billboards to leave our residential areas.

>> Joe Horwedel: Yes and as the council was talking I was thinking about our favorite issue of taxi and medallions, that is what is traded between properties. We keep hearing why locations don't happen is the billboard property owner, the property other than where that billboard is situated today has to agree for it to leave so they're not willing to sign off on losing that revenue stream. If they were in fact the other than of that medallion they could trade it among themselves, that is something we could take a look at.

>> Mayor Reed: You're not asking us to answer that question today, the motion is we maintain the ban and have staff explore this, there were several questions that came up that I think become what we do forward. But the policy decision to maintain the ban is the subject of the motion.

>> Councilmember Liccardo: That's correct.

>> Mayor Reed: Before we vote on it we will take public testimony. We have a couple of councilmembers who wanted to speak. Councilmember Pyle.

>> Councilmember Pyle: I'm ready to -- I don't need to ask.

>> Mayor Reed: Okay, Councilmember Constant.

>> Councilmember Constant: Thanks. I wanted to -- I was going to expand on what Sam said because I think you're right. What I think we need to do is encourage the movement from the inappropriate places to the appropriate places. I didn't want anybody to think I was putting more up in neighborhoods but whether you have neighborhoods like Stevens Creek boulevard, Winchester Boulevard, industrial areas, the downtown, the real core, not the surrounding neighborhoods, those are the appropriate places. And when we get the blighted signs and we get the less desirable messages that's because they're in poor location and they're the cheap signs. If we can allow people to upgrade their signs and that's something I want to make sure that is part of the motion, what can we do to allow people to improve their signs. Because my understanding from talking to the billboard companies is, it's almost impossible to improve the signage. And I think that would be something that's really good so we can encourage, incentivize, good signs in good places, that will allow people to market them at good prices that would encourage good messages. It kind of all goes hand in hand. And perhaps looking at creating zones like we have in all of our other sign code areas, where we can have a more, as you say hands-on approach to managing it, but allowing them the commercial flexibility to get out there and get the business and get good messages.

>> Councilmember Liccardo: I'll include that in the motion.

>> Councilmember Constant: Oh and one last thing before I give up the mic. In district 1 we have the only tourist attraction in the City of San José, which is the Winchester mystery house, they have billboards bringing people into the City of San José. Even though I wasn't supportive of the expenditure and complained about it here, we did as a city spend tens of thousands of dollars to advertise our parks policy, our local crime stoppers program uses billboards to promote people turning in tips and things like that. So there are lot of community benefits that we see from our own billboards in our city.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I realize that the motion is to maintain the ban which I support but I just wanted to bring to Joe's attention something we've talked about in my district and Sam made mention ever it. Sometimes streets that are considered major thoroughfares are really residential. So that needs to be part of the analysis. When you -- what is the neighborhood around what we might call major thoroughfares. Because I know Camden is considered a major thoroughfare and it's residential with strip malls all up and down it. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Councilmember Liccardo, I was wondering that, you didn't put a time line on when staff needs to come back. So I know that it's not time-sensitive, this particular item. Would it make more sense for them to take it to a committee after they come up with some ideas? Because I think Vice Mayor Chirco brought up some good ideas that they'll bring a policy back but maybe they're not looking at the policy from the eyes of a councilmember or a resident and you can flush it out a little bit more before it comes back to the full council.

>> Councilmember Liccardo: That's fine and I don't have any preference about committees, whatever the appropriate path might be.

>> Councilmember Campos: I'll let you determine that Joe, what committee you should bring that back to.

>> Joe Horwedel: We'll bring that back do Rules and probably the CED or neighborhood services committee.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you. I would be supporting the motion. I like the idea that we are possibly, we're just asking questions now but maybe creating a way for some of the signs that are not -- should not be in neighborhoods moving to a more appropriate area, I think that would be really good outcome. I was wondering if we could include if idea of maintenance. I think Councilmember Kalra brought up the idea of maintaining the signs, I don't know if that's included in the questioning or not.

>> Councilmember Liccardo: It was included subsequently.

>> Councilmember Herrera: Okay, great, thank you.

>> Mayor Reed: I would like to take some public testimony at this time, I have quite a few people to speak. Even though the motion on the floor is just about the billboards you're welcome to talk about everything in here just in case you can't come back the next time that we take it up or you can speak just about billboards and come back and speak on other topics as we work our way through them. I anticipate that we'll finish the billboards and then go into the section on the freeway signs for shopping centers shopping center signs category. But if you're here you're welcome to speak on any of these, for the sum of two minutes. Please come down when I call your name, Joe Slayton, Paul Keve and Pat Saucedo.

>> Good afternoon, Mr. Mayor, and council. My name is Joel Slayton. I'm the executive director of ZeroOne. ZeroOne strongly supports appropriate modification of the current sign ordinance. ZeroOne shares the ambition with the city and with many of our cultural arts partners including the San José public art program, to create a dynamic and vital aesthetic and cultural experience in Downtown San Jose. Changes are specifically needed to enable the commissioning and presentation of world class artworks that utilize projection and other display technologies in their delivery and experience for the public. We highly recommend, although we understand that artworks are not exactly the same thing that is under discussion now which is advertising and primarily marketing, they do fall under the sign ordinance and are subject to those regulation. Over the next few years, we'll be seeing the availability of many new display and interactive technologies designed specifically for public interaction. We believe San José should be positioned to be unique platform for their presentation and the inclusion of world class artworks that utilize those technologies that reflect the character of Silicon Valley. Thank you.

>> Mayor Reed: Thank you. Bob Keve and Pat Saucedo followed by Scott soaper.

>> Well I tell you Mr. Mayor, I prepared something that I could read in one minute. And I realize now you're allowing two minutes. So I'm going to expand just a little bit. First of all, I want to say, both in the written comments and those that aren't, that the experience that I went through in the preparation for this with Carol Hamilton, I think was extraordinary. They did a wonderful job of vetting, of getting people to express their opinions and I'm very grateful for that, and I certainly want -- would like to see this council prove of almost everything in their recommendations. You won't be surprised to hear that I do not want you at this time to cut off billboards. Some of the great comments that have been made here in the last few minutes suggest that there's an awful lot of thinking that can still be done on this issue. And I ask you all to do one thing. Next time you're in San Francisco would you be good enough, please, to go to Union Square and take a look around Union Square and then tell me that all billboards are bad? The billboards that ring that wonderful part of that wonderful city add so much to the city, that I cannot understand a movement that would cut out all billboards and simply assume that they all represent blight, and that they all talk about liquor and cigarettes. That is not true. I realize that you can't determine what is going to be on those billboards. But I'm heartened to hear that there are ways of seeing to it that they are kept in good shape. And please, take a look at those billboards that surround Union Square, and then decide whether it makes any sense at all for us now, without further discussion, simply to decide that there will be no more billboards built in our city. Thank you.

>> Mayor Reed: Pat Saucedo, Scott soaper, Scott valley.

>> Pat Saucedo, San José Silicon Valley chamber of commerce. In regards to freeway signage, we do believe that allowing freeway signage is appropriate and the right step to take. We would like to comment that we do need to write code that allows the visibility of freeway signage at the height and elevations of the freeway off ramps. The chamber supports the continued addition of digital signage marketing in the downtown. We look at Safeway and Flames. Those have been great additions and we think that needs to

be continued. We also believe that digital signage for large buildings seriously needs to be looked at and code written to come back to council. Stevens Creek and capitol auto mall, let us use the latest technology to market in San José. Because all the other cities are going to let them do it in their city. Supergraphics, we do believe there is a place in San José for supergraphics. We do think this needs to come back to council. We don't believe that penalizing our local businesses for accessing new state-of-the-art marketing mediums is the way to go forward. It just handicaps them. Finally San José does need to retool their sign ordinance. We very much appreciate staff effort to date and council effort in doing this and I would just like to close by saying we do need the business community to market themselves much as the city markets itself, with digital signage, inflatable roof tom, supergraphic object messaging and other state-of-the-art technologies. The business community is struggling give them the opportunity to be successful. Thank you.

>> Mayor Reed: Scott soaper, Scott valley, Gary Grummond.

>> While he's doing it, I just want to say that the transfer development rights concept sounds like a good one from the point of view someone has some billboards close to their development we'd like to be relocated. The picture that's just been put up is two blocks from where I live, it is on the Alameda. And the Alameda had, during Tom McEnery's era had a historic designation placed on it I believe through the PD process that regulated signs. However it is my understanding from attending some of the meetings and talking with staff that those sign requirements which were in place have since been made unenforceable by changes in the law. And I don't know if any of the discussions about changes in the law that has happened in just the last few day has any bearing on this. But the reason I'm here is these many billboards are not being addressed through the current process and what I'm hoping do is raise awareness so can you give direction to staff to tell them that it's an issue that comes forward. Once signs get forward they're very difficult to get out. These scaled property rights which are really transfer of rights that you are creating are worth a lot of money which you ought to be thinking about in terms of being able to eliminate some of the other signs. We're starting to see these originally intentioned temporary signs which were for the benefit of businesses in San José proliferate, made into a mini billboard who knows what. I think that's something you need to be looking very carefully at and that's why I'm here, thanks.

>> Mayor Reed: Scott valley, Gary Grummond, Steve crumb.

>> My name is Scott valley, I represent valley fair and Oakridge. I'd like to correct Councilmember Constant, outside of San José so I think we are the biggest tourist attraction in the city. We support the amendments to the sign code. We believe that sign codes need to evolve and adapt with businesses, the economy and technology. We particularly support the freeway part of the sign code ordinance amendments. Effective on-site signage is proven to increase sales, increase sales means increased sales tax. We also would support more enforcement of the sign code because I think a lot of people object to the signs are often illegal signs to begin with and then in closing I would like to thank staff which was excellent at being both open and very inclusive in bringing the business and residential people together to talk about this over the last couple of months. Thank you.

>> Mayor Reed: Gary Grummon, Steve Crong, Erica Justice.

>> Mayor, councilmembers, thank you very much for this time. With respect to billboards, I have -- there are a number of items here that have been presented by staff that I will need to address as time goes on because a piece of property I'm involved with covers a number of those things. With respect to billboards, the only concern I have about the billboard part of it is if you try to incentivize billboard companies to leave other locations taking revenue away from property owners, that could present a potential problem for you in the future. These billboards are leased on the property they are not owned by the property owners. So something that is leased and then you incentivize the billboard companies to come out here and say hey, I want to cancel reply lease, I want to get out of this, that may be a sticky problem for those people who are collecting revenue on those billboards. With regard to outreach, public outreach I was not involved with that. I have a billboard, I have a freeway site and I have a major retailer there. I never got notice of this until a third party called me in July saying did you know this was going on about the billboards and signage in San José? I said I had no idea. I called staff, staff said to me we posted it on our Website. I said, what about mailers, when I go through an amendment or change on my property or have to do it in a variance, I have to send out a postage stamp to my neighbors. I never received anything, didn't see anything in the paper. In fact the first time I saw something in the paper was just on Sunday. I hadn't seen anything before. I live just north of here. Maybe it was in the paper early before, but I never saw it because I get the northern edition and there's a southern edition also. So in the future, I would like to be able to say you know need to get a little more public outreach out there because I would have gone

to the meetings but with respect to that just be careful with the leased billboards and I'll be back to talk about some of the other things, thank you.

>> Mayor Reed: Steve Krong, acra justice, Steve, acra, okay, anybody, Erica.

>> Thank you, mayor, councilmembers, I'm here as the director of creative place for 1stAct Silicon Valley. And as such I want to thank the staff for the work that they've done. I think you will remember our vision for downtown as Silicon Valley's city center and the framework of the big deals and small wonders. And several of the small wonders interact with the sign ordinance, and we are limited by them. So we want to support these changes I believe that many of them will open up, possibilities for the small wonders and increasing the vibrancy in downtown. There's a couple of specific things I want to point out. I know that we possibly deferring the discussion about the offsite advertising on public property but the news racks are something that are on the small wonders work plan. And that was very -- plays a significant role in the possibilities of what we can do with those and 1stAct would be happy to participate in the community discussion about that. And we have previously and will continue to do so. And then I want to echo Joel Slayton's possibilities of art specifically in the downtown, preparing for the future possibilities for things like large scale projections and art on screens and ways that we can really represent the nature of Silicon Valley and not limit our cells at this point with the ordinance. But to think big. Thank you.

>> Mayor Reed: David wall is the last card I have.

>> David Wall: I would have been pleased to let this issue go by but for a couple of comments made by Vice Mayor Chirco. I can give sworn testimony as I stand here before you today. Billboards do confer a benefit in residential neighborhoods. Believe it or not, this is truthful, different times of the year, owls, spare row hawks, and peregrine falcons nest in these billboard signs. So by eliminating these, Mr. Mayor, Mr. Green Vision there, mayor, you stab the poor peregrine falcons in the heart. Now, let's go to Nora's neck of the woods, excuse me, Councilmember Campos. This is not her fault. Let me -- what I want to say is not her fault. One of these affordable housing slums was built on a freeway, San Antonio court that blocked an existing billboard sign and there's a lawsuit. That's something to consider. Thirdly, there is many billboard signs on city property, as I stand before you today. Southbound Market Street in between Guadalupe frontage road and the street that escapes my mind, but it's -- anyway, you can find it. There's at least three of them on city property that's excess city property, that wants to be sold. I don't know if you're gaining revenue on it or not but this is on excess city property. Forget about it, talk jumbotrons, these things are going to be converted to jumbotrons, 24 hours a day you have unlimited advertising but then again you have advertisers subletting these things for other advertisers, which means they could invoke a new form of business licensure, had our PBCE director been so inclined to think that way. Thank you.

>> Mayor Reed: That concludes public testimony. We have a motion on the floor dealing with only one of the eight or so we're trying get to, further discussion on the motion dealing with the billboard ban? Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor, just specifically to the billboard issue. I know that there was comments made regarding the fact that we're still continuing to think about the billboard policy, I think we should, comments were made, and I know Mr. Key made comments about Union Square and Times Square, I have certainly seen both of those situations where it works well. But if policy is not crafted well you also can end up like L.A. or other places where they're just certainly a blight. And so I know there are some comment in the staff report and I know Joe you made reference tubing about the Diridon and the future of Diridon. And I really think about looking at specific zones like that, looking at a specific area which creates a policy and creates a magnificent place, when you talk about Diridon and having a stadium there, that's the kind of vision I came up was the vision of Union Square and Times Square type vision. And so going forward as we think about some of these more flexible policies to have the owners of the billboards to move to more profitable location while relieving the residences I think we should also start thinking more specifically about what it is that we want to create in some of these places specifically when it comes to signage what comes to billboards and so on. And to the gentleman that was here I certainly regret the fact that he wasn't given information on this. I do want to say that I think staff has done tremendous outreach on those that did get word and the meetings and the general proposition and I may speak more specifically on some of the other issues but in a general proposition, I think staff has done a very good job at outreach. I was able to attend one of the meetings and thank chamber of commerce for hosting one of the meetings where a lot of the information was put forth, I just wanted to put that out there as a preface to some of the other issues. Thank you.

>> Mayor Reed: I think that concludes our discussion on this topic. We have a motion on the floor made by Councilmember Liccardo, and some modifications which we all know what they are. All in favor, opposed, none opposed, that's approved. That was topic A on my list. Looking at the hour, I think we can get through the freeway signs probably by 6:30, and then we'll have to consider taking this up at a future meeting which is probably February 2nd if we go forward with the freeway signs.

>> Joe Horwedel: We'll get that one pulled up here. I'll start talking when that one is coming up. One of the issues that the council did specifically ask staff to look at was the issue of freeway oriented signs for large retail centers. Staff has looked at a number of different options, but to the fundamental question, should we allow it for large centers and then takes, what is a large center such that currently it is not allowed. Not only can major retail centers not build a tall sign near the freeway, our sign code actually prohibits building oriented signs facing a freeway unless their front door or other access point is facing the street. So that is a pretty conservative set of sign regulations that exist in the city. It is really focused around city streets. What we showed as we did the public outreach, testing a number of ideas with the community, were signs such as this that we think is a well done sign, this one's in Santa Clara, you can see this one is about a little under 800 square feet but it's 85 feet tall up to the stars. So we wanted to go through and find what was the right balance of how long our retailers that were adjacent to freeways that had that adjacency to tell the world they're there. Be able to talk about the tenants that are going on. And the other important thing is that with these types of major retail establishments most of the tenants were inside of the building so unlike a typical retail center at your grocery store where every tenant gets a sign on the outside facing the street, when you're at a major retail center, whether it's valley fair, Santana Row, Eastridge, that signage is really on the inside of the building, and only the major tenants have the ability to express their identity. So as staff was testing this concept, that's one of the things we were looking at, is how we might be able to help the smaller tenant. What we looked at were what retail centers were adjacent to freeways. One of the things that is pretty unique in San José is that we actually do not have a large amount of retail centers on our freeways. We have built housing around our freeways. And so it is looking at for centers that were 25 acres we had four of them in the City of San José that were even within 200 feet of a freeway. That we looked at that concept, we also -- and so how we might do that, staff has put forward some recommendations about what we think are appropriate heights. Just so there's a frame of reference I think everybody's familiar with the sign that's in Campbell at Hamilton avenue for Kohl's and bed, bath and beyond, that that's a 50 foot sign under 400 square feet. The Ikea sign in East Palo Alto along 101 is 69 feet, and see just under 500 feet. We think it is appropriate to have this type of signage. We think it's appropriate to introduce programmable display signage into that. We don't think we should do 100% programmable sign, what you see large, Ikea. We are recommending a 50% percentage. This is a sign that I think a lot of people are familiar with in Fremont, on 880, by the Nummi plant. That one is 150 feet tall. So clearly in different communities they are doing different things with it. What we found, though, as we started looking at this issue in other cities, the smaller the city seem to be how the height was inversed. That larger cities, where they allowed this type of sign, were smaller. So here's a comparison of cities here in the county, and how we fit with kind of our small brethren of Campbell, you saw the sign we showed Daly City, Fremont allows up to 150 feet, consequently they built 150 foot sign. Union City we have some examples, we'll show you there allow 100 feet. Other major cities here in the State of California what they allow, Oakland doesn't allow at all, San Francisco, Sacramento 40 and San Diego 50, we're proposing 60. So we would have the tallest signs allowed in the State of California for a major city for this type signage. So our recommendations we think it is appropriate to do this type of sign, we think it adds to the way-finding for people trying to find our major retail, we think that digital signs are appropriate to that. We have proposed 60 feet we think based on the height of where the city is and where those signs are visible, we think that actually is an appropriate height. I know that that is something that obviously we can do taller, you've seen some other options. But staff, we think that 60 feet really is an appropriate height for that. We do recognize that the digital signs is something new and as a part of putting that on especially busy congested interchanges, such as Stevens Creek, is something that we need to be very mindful of. It is something that the State of California and the Federal Highway Administration are looking at that issue of this type signage near freeways, it is something that we think we need to be thoughtful about, it is not something that we think we should be scared of. So it is something that staff is recommending that we build that into the provisions but it is something that we should do with moderation and thoughtfulness. We did look at some options about if you went and said shopping centers of 15 acres in size, of what other centers then open up. And as you see here, that does allow a couple of more centers to open up that are immediately adjacent to the freeway that would have

the ability to apply. Staff is concerned that as you start going down the scale of what would qualify for those, that you then start getting into the scale of every grocery store chord shopping center in the city that would start qualifying and if our goal is you know about how do we go through and capture those sales taxes from passers by that are look to shop, as the smaller centers that we're looking at are not places that are having a best buy or you know the other types of retail uses that we're trying to track, it's more of a grocery store where we don't have taxable sales. So that's partly our thought process about where to put this at. And then the other is, taller signs such as the Union City sign that is 100 feet tall and it is noticed that Lowes is in both of these, they do like tall signs, part of the community or businesses. This is more of a reader board type of sign. They do not allow the programmable technology in this. Part of the rationale that staff has about using programmable, we actually think it's better exposure out to the freeway without trying you know having to justify the cost to build this expensive type signage. So we think height is not necessarily good. We think that really focusing with the -- what you put on that sign, where you put it really focus on the quality of the design, is a much powerful -- more powerful statement with the quality of the city, the quality of the retail and actually helping the retailers themselves. Lastly, this is something that -- I don't even know where this is from, obviously not in San José but it is predominantly projection, technology that's used, in this case the stat store needed that as a part of selling, they needed cell phones to people on the freeway. It is one of the things of looking at who our audience is for the type of sign. What we're really trying to capture with that. And in this case we think from staff's standpoint this is excessive, with the problems of that if we go down to that granular of a level. And then the last piece of it and this is one for Rick maybe you to jump in here is that with this new technology we're moving into new territory. The case law has allowed, because the signage is First Amendment speech, cities have a lot of restrictions on what we can and can't do. We talked about billboards and that we can't regulate a number of the things that go on. That whether it's alcohol or selling potato chips, that really is up to the -- who is buying that space. That with this new technology, it's much easier for that whole decision or message of onsite message or offsite message to be blurred. And that is, one of the things that is partly why staff has looked at this with a bit of moderation, that we think it is something that what other cities are doing where their sign codes did not deal with that issue, they are now regretting. And Councilmember Constant noted, there are things we should learn from how other cities have dealt with this, that we clearly could go through and say we are not going to regulate anything at all, that if they want to go through and built off premise advertising on it then they could do that. We do lose the ability under state law that CalTrans will allow a business to advertise adjacent to the freeway, on premise advertising. So if Lowe's is next to the freeway they can say, we're here. They have a clear message to gain from that, as opposed to Symantec advertising on the Great America sign, there is absolutely no connection with what's going on with antivirus software at this location advertising an amusement park. And CalTrans under the new regulation we could not permit assign that operated this way and so there's I'm sure going to be a lot more case law that plays out through that, it is a very gray area of how we would regulate that but it is one that, in pushing this envelope forward, for allowing this technology to be used, it's one that you know we want to go through and be very mindful of some of the pitfalls that are out there and challenges.

>> City Attorney Doyle: Joe, if I could, and I'll ask Reneé if she wants to chime in, as well. The concern I would have is, I mean, I don't see it a lot different than a nondigital sign in terms of allowing a different message, an offsite message on that signage but when you get into noncommercial speech if the digital sign has noncommercial message then that's an area that really gets problematical if you try to regulate it. I don't know, Reneé, if you have any thoughts on that.

>> Just that these digital signs can be perceived as so valuable that the changeable message copy is so easily accomplished that even if you say, as we are allowed to do, that the sign needs to pertain to onsite activities, you might have AT&T, then, provide a phone line or you might have clearchannel go ahead and rent an office space so then they can say we're clearchannel we're here we're an office therefore it opens up anything that's affiliated with our office. The changeable message and the facility with which that can occur I think opens that up to the type of pitfalls that Joe was alluding to, you know, how much do you need to touch the site? How much does your activity really need to be affiliated with the site in order to constitute onsite advertising?

>> Joe Horwedel: The concerns from staff standpoint is I really don't want to be in the business of having to go through and send code enforcement out to stair to is it onpremise or offpremise? Where CalTrans permits are that would be a real challenge. The other piece of the discussion we're having where to relocate billboards to. The billboards industry was really clear when we met with them. They

have no desire to be in the number of areas that we would like them to potentially be at. They want to be on the freeway. They don't want to be on the first and Santa Clara street. The eye balls on 87 were much more valuable to them. That is part of the that dichotomy, we allow those in areas to create that vibrant active energy in there and signage is a way to do that. Those companies willing to make the investments for the major signs in the technology, are looking at other places to do it that really don't add to that urban energy concept. So that is something of the things as we come back to we want to talk through. But I think that is going to be one of our bigger challenges as we deal with this issue. So let me go the questions for the council as we put forward our recommendation to allow the signs, maximum of 400 square feet 60 feet to allow the digital content but that it is related to onsite messaging or noncommercial, so you could do both of those on those signs. With.

>> Mayor Reed: All right, some council discussion on this, Councilmember Constant.

>> Councilmember Constant: Thank you. This is one of my two favorites of the memo. So at least we're getting to one tonight. So that I think it's really important that we allow these type of signs. We saw the chart of our local surrounding cities, and it was clear, everybody allows it but us and that's no surprise because if you drive down the freeways you're pointed all these places you can go spend money until you get to the City of San José and then you're not beckoned to spend your money. I think it's really important for our largest shopping attraction, as Scott pointed out, is out on the west side of town and I think it's really important that people see that it's there and they can get off and do that. I know when I travel like this Sunday when I drove to Los Angeles and back in one day, there was oftentimes when we were looking for places where we could get off the freeway to take a break, and those signs provide a great benefit to people who are driving on our freeways, I think that it's really importantly that we move this forward. I think that these signs can be very attractive. We've seen some great examples here and I've seen a lot of others in other cities further away from San José. And we have to think about it as our sales tax generator. We need people to stop in San José and spend their money. I think it's important that the signs of visibility for the freeway. Here's where I have a little bit of difference because of the height. I know 60 feet seems really high but not if you have an elevated shopping center that goes right past the shopping center like you have in the case of Oakridge and Almaden shopping plaza. We should be talking about height and twofold factor, 60 feet or 40 feet higher than the freeway grade or something like that. But if you have a 50 feet elevated freeway and a 60 foot sign, it is like having a mile marker on the freeway as you drive by. We have to be conscious of that so people can see it. Also with Westfield, we have to be conscious that that interchange is going to be completely redesigned, and there's going to be elevated ramps and things like that, so where does the scale of this sign correspond to the environmental things that surround it? I also think, I know the onsite yo site there's -- we saw the example of Symantec and great America, but to encourage collaboration, this isn't something I've talked to Scott about but we look at valley fair and it's a huge revenue source for our city, great place for people to go. Right across the street you have Santana Row, another great revenue generator for our city, and they both straddle Stevens Creek auto row, which is another huge sales tax generator for our city. So I think we should look for ways to encourage collaboration. I don't know how you do it but I would love to see our code that would encourage three separate attractions that are at the same exit to collaborate. So say, well, if you are going to do this and somehow the two shopping centers and the Stevens Creek auto socks, were to come up with a cooperative. Collaborative sign, that says you have arrived, pull out your wallet and spend your money. It really comes down that. We need our most successful places even more successful and we need to make sure that people who aren't from the area drive off at valley fair and go Velco, and Velco has a sign that is 150 foot tall, bigger than the redwood trees. That's what I think on this, I'd like to try on, I'm not sure exactly where I am on this but I'd like to try and make a motion and that would be to move ostaff option 1 but I'd really like to see some work on how we deal with the elevation of the freeway, I don't know if that's an and-or, something you talk about how it relates to each other, and I would also like a little attention to the 50-% sign option, 50% means cut your sign in half and make it half digital, half regular. You would get a attractive design rather than two little recognize tang manies close to each other.

>> Councilmember Campos: Second.

>> Mayor Reed: That's a motion we have a second.

>> Councilmember Constant: And also the part about seeing if we can find a way to create some sort of synergy for businesses that are large that are in the same area. So maybe if you have two shopping areas that are over X number of acres then they can do together or something like that to be able to get that synergy and cooperation.

>> Mayor Reed: Okay, we have a motion. On the motion, Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I appreciate a lot of what Councilmember Constant has said. I also wanted to thank Carol Hamilton, the whole planning staff, as well as Reneé Gurza from the city attorney's office, I know there's been a monumental effort putting all of this together, so thank you for your outreach and putting this all together. Joe, with your slides you started with AMC theater over at Santa Clara, I think it's off of 101, yeah, there it is. When I look at this and I look at the next slide where you've got a couple more signs, I actually think these are pretty acceptable. And helpful. And the problem is, we wouldn't allow them under the proposed guidelines, at least we wouldn't allow the one on the left here, the Ikea and we wouldn't allow the Santa Clara, the one that was shown a couple slides ago. What I'm concerned about with all of this is that this is so context-specific, our endeavor, and I understand we've got a big city and it's very difficult to draw clear lines, with this set of signs as well as a couple of the others involving supergraphics and other than downtown, I'd like to explore a slightly different approach and be interested in if the maker of the motion is interested in exploring this as well that we would allow applicants to have a safe harbor, you can get a permit and that percentage of programmable display and everything else but if you want to go larger you can do so, and the planning director will be given -- will develop a set of criteria and those criteria will reflect many of the concerns that I think you're well aware of from the community for instance, the exposure to residential communities, et cetera, et cetera. Many of the time place manner kinds of concerns that are generally considered legitimate when we're talking about regulation signs, if the applicant wants to pay for an additional fee to have the community meeting and go through this sort of discretionary process they can do so, or they can take the quick route, to get the sign that they know they're entitled to. Was that kind of approach considered as an alternative?

>> Joe Horwedel: That actually is a really interesting concept and it's one of the things that we talked about and that's why we put this picture in this presentation. Typically, signage regulation are very much area, height, setback based. And we have introduced some things in our sign code to create a big box. But constrained area, so the goal is to allow people to put more three dimension to it. And that's one of the things we talked about, as we worked through, was how do we actually encourage some creative signage like this without saying well you can build to 85 feet and then what we get is you know essentially the Union City sign that is solid signage for the entire distance. So I'm intrigued with that concept. I'm a bit hesitant to have all of that totally thrust upon my shoulders as the sole arbiter of that. And so that is one of the things that we've been talking about is, what types of signage as -- especially as we're talking about programmable signs, should there be some sort of more formal review process around that. Because signage today, love it or hate it, is essentially processed in the permit center, and as you notice, we're extremely busy there. We go through and process signs on a very production line basis. If you meet the code you get a sign. We've recognized for this type of signage we should probably go through and not do it that way. That we should be a little bit deliberate, our goal is not immediate. That is something to come back, actually about design guidelines and design process. So I'm not opposed to what you're talking about, I think it actually might get more creative signage and especially that would be the goal for this type of signage.

>> Councilmember Liccardo: I wonder, sorry to be thinking out loud, does it make sense to go to the Planning Commission or this body when someone's trying to get --

>> Joe Horwedel: No. Let us come back to maybe some ideas around that.

>> Councilmember Liccardo: Fair enough, thank you.

>> Mayor Reed: Let me give you an idea. If it's like a giant statute of the mayor holding a sign, it could always be approved. Or a councilmember or maybe the director of Planning, Building, and Code Enforcement. Okay, back to Councilmember Constant on the motion.

>> Councilmember Constant: I wanted to just incorporate Sam's sentiments in part of the motion. And Joe, if you are not comfortable being the decision-maker you can delegate it to Bob Keeve. And that would be totally fine with me. I don't know if he's still here but --

>> Joe Horwedel: Bob and I usually agree on most things, that's the scary thing. So it is something that I think from staff's standpoint versus holding a true public hearing we think we can work through it, but we might do something that's similar to the architecture review committee, that we go and have some people that we could refer to on a consultant basis to help with that part of it.

>> Councilmember Constant: And my final thing is, I just want to make sure that as we go forward, we are really going with that can do, what can we do to make this happen? We know that we have these

unique areas of our city. We're only talking about a handful of areas, make sure we can maximize within those areas because we know that will keep them out of neighborhoods as well.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor I'm really really excited about this change and agree with much of what's been said by Councilmember Constant and Liccardo. I think we can all relate to driving on the freeway and stopping specifically because we see some of these signs that are attractive but the goal behind this particular -- this particular regulation we're proposing is to attract people to our regional shopping centers and I think we need to do whatever we can to bring more -- bring in millions, let's bring in a few million more and if by having these signs, appropriately put in the right places, I just think it's absolutely the right thing to do. I agree with some of the flexibility that is being discussed here, first of all I really oppose the proposed regulations. I think they're well thought out they make sense they sound really good and I think that if I had the vote strictly on the proposed regulation I would be comfortable doing that. I think that some of the thoughts that Councilmember Constant and Liccardo have brought forth and have added to the motion can be helpful in making sure we provide the options to some of these large retail centers to create the most creative signs, create the signs that we know can bring people into them. As far as offsite messages I would just caution about that because of our lack of being able to regulate. They may sound great, you know we have the auto mall, Santana Row, and the reality is, that once you go down that road it's very hard to come back from it. And so you know, I think there's plenty -- the reason Valley fair is an example, it is a fantastic mall, one of the best you can ever find. There are plenty of retailers in that mall that I'm sure would be more than happy to fill that digital display with some onsite messaging. But I don't think it means we shouldn't explore it. But I just think I would certainly caution against it. And I also agree with the sense during the presentation the design of these signs is absolutely critical. And I don't think we do necessarily need a larger area of sign, especially if we allow for the digital programming whether that's 50% or 60% or where we fall on that. I think the proposed regulation of 50 is appropriate, but we can certainly continue the discussion as far as there may be a ways for exceptions or for at least a way for some of the shopping centers to appeal for a larger area of space if they can show that it makes sense with their particular site. And I appreciate Scott valley being here and giving his thoughts and agreeing particularly with Oakridge and I think it would be the case with valley fair as well as we make some these improvements in the coming years with the restriction the height guidelines could pose challenges for those specific sites so I think the motion would certainly allow us for that discussion to continue in terms of the planning director finding ways to account for that. And so I certainly want to make sure that we continue to draw folks to valley fair, to Oakridge and some of the other shopping centers, and hopefully others that will come online in the future to make them competitive. But I think it's absolutely the right thing to do and it's something that is a long time coming, and I'm really confident that it's going to improve the quality of the shopping centers and the quality of the shopping experience and hopefully, ultimately the bottom line in getting more people into the malls. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm going to support the motion and I think it is very exciting that we're going to have these changes and I want to echo the comments of my colleagues, thank you for the work, thank you for the staff Joe your staff for putting this together. I guess I had a question. I know this is looking at shopping centers located within 200 feet of a freeway. How would there relate to Eastridge and are there other options for Eastridge?

>> Joe Horwedel: Shopping centers such as Eastridge and the plant that do not have adjacency to the freeway, off-premise advertising so it is a billboard. The ability under the billboard relocation program of being able to essentially move signs around, and to the extent they're not landscaped freeways, that that would be the ability, that's how we would deal with that. There have been some provisions in law that we were looking at for downtown, that related to a district being able to advertise, and the law is really murky on that. So that's why we really didn't pursue that further but we were looking at how we might be able to do some identification along 87 for what was going on in downtown of kind of a rotating exhibit board. But we haven't found a clean exhibit or process to do, that would allow us to put up a sign at Tully road on capitol expressway that advertised Eastridge mall that fits within the different statutes. I think one of the things we've been trying to figure out is Milpitas did these signs in 87 -- or 880 and 680 for their mall thing. That from what we can tell is on public land, and so we haven't figured out how that worked through the CalTrans process, so those were done about 15 years ago. So as part of trying to kind of roll back and figure out whether that's something that they got a special waiver, or was it something that was allowed at the time, is it because it's on public land that that was allowed to happen? So that is one of the

questions in our mind, and we've never been able to find a real answer about how that is. Because that is essentially what it would take, doing something like that.

>> Councilmember Herrera: Is it Eastridge and the plant, are those the two that would be in that category, 25 acres or larger and not close enough to the freeway to require this?

>> Joe Horwedel: Those are the two that jump to mind. There are probably some others 25 acres that start coming in, and thinking some of the centers along capitol expressway, at Aborn and King, where OSH and Safeway is at, that that center is my guess pretty close to 25 acres. So we do have centers like that around the city elsewhere that, you know, the Westgate El Paseo area, start to be up at 25 acres, especially depending on how you draw boundaries, that would also fall into those categories. And so it's partly we haven't pursued that because we really couldn't find a basis to get there. We know that kind of interest is out there. We just haven't found a way to get there.

>> Councilmember Herrera: It sounds like there's a possibility with the billboard changes we're trying to be making. I certainly don't want to add that to the freeway discussion right now, but I want to keep in mind, especially Eastridge is the largest center in East San José, and certainly we would like to have more visibility for that center to draw more business and to let folks know that it's there and to come and shop there.

>> Joe Horwedel: Like I said earlier, that is one of the things that San José is very different than most communities across the nation, is that those types of retail businesses were not built at the freeway. And so that is why you see those across the country. But even in Sacramento there's a large number of those that are built kind of off the freeway system so they don't get that kinds of signage. Just of the limitations of of René's time and Carol's time that we've only gone so far with that and our goal is to try to get the vast majority of the code change done so that's why we took it as far as we did.

>> Councilmember Herrera: Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you mayor, actually to follow up with Councilmember Herrera's question. Where do you get that 200 feet, is that CalTrans stipulation, or why can't we expand it to the mall, if it's 25 acres within a mile from the freeway?

>> Joe Horwedel: Because the sign is actually still on their property. So to the extent we allow somebody to build a 100 foot sign a mile away you aren't going to see it on the freeway. In the case of 200 feet we felt that allows Oakridge to qualify because they're predominantly on the other side of the street that has some other businesses there. But it's within 200 feet that a sign you would see even though it was on their property and the park lot you would still see it from the freeway.

>> Councilmember Chu: Okay, I'd like to make a friendly amendment to reduce the size of the shopping center from 25, maybe to 15, because we go through this trouble of getting the new sign ordinance, I would like to see more shopping center, benefit from this sign, so it was the America of the motion, would you accept something less than 25 acres?

>> Councilmember Constant: I don't have a problem with big signs anywhere so I wouldn't have a problem with that.

>> Mayor Reed: Who has the second, I think Councilmember Campos, is that okay with Councilmember Campos? So that's a modification by friendly amendment. Vice Mayor Chirco.

>> Councilmember Chirco: Since this is a new sign, that might be something I would prefer to see studied, reducing it to a 15-acre, see how the larger parcels. I have a concern with Almaden fashion plaza and it has to do with their traffic which is hideous in the extreme. And the sign from the freeway, I know in the report there's a part on traffic safety and the finding of the digital signs, the placement of the signs, what's on the signage, and that is already such a mess, there's like five lanes that go into two lanes, and then they have to split whether they go north or south or straight or right or left. And so I'm -- I like the idea, but I notice you mention traffic safety, develop parameters to address driver distraction, and that is number 1 and the other is line of sight from residences nearby. Almaden fashion plaza has residences behind it. And I know that was a comment in the article I read, was to place the signs so that they don't intrude into our neighborhoods. And it seems like Oakridge and valley fair are better located, traffic-wise, but I just really want to emphasize the -- to address driver distraction. Because we have CalTrans with the freeway, we have the county with the expressway. It's an especially challenging intersection.

>> Joe Horwedel: Staff is very mindful of that, that is part of how we have thought about this. We wanted to make sure we weren't going to do something that wasn't going to cause fender benders, or rear end accidents to happen because somebody was looking at the sign. And so we do think it's important to come back with some criteria about timing a message so you don't have TV running but every 30

seconds you have a different ad coming up or different business coming up. That operates just like you're driving by and the sign's there without that changeable message you wouldn't notice the difference other than you would drive by every day you would flow there was a different message up there. That's how we're looking at it.

>> Councilmember Chirco: I think location is going to be very different at Almaden fashion plaza just because of their traffic patterns. On the seven shopping centers, there's three more that have the 15 plus acres. I would be interested in knowing what types of business are in them, and are they grocery stores, and drugstores, or they retail stores that would contribute to the revenue base that San José gets?

>> Joe Horwedel: So the center at Lawrence expressway and 280, that's formerly where the Macy's clearance and the futurama bowl that has a historic sign that we went through and rebuilt that Safeway is up on it and a couple of other uses that you can see from the freeway. It is not behind the buildings doesn't have programmable displays out on Stevens Creek, but it is clearly readable and visible. The other one that pops on is 880 at Brokaw where Lowe's has just moved in, that that site is big enough to qualify this, it is pretty much a single-tenant business or locations, but they would qualify to do that. And then the other one looks to be McKee and 680 where you have the large retail centers, Mervyn's used to be in that center, I don't know if anybody's with moved back into that, it used to have some other mid size retailers and a lot of small retailers across the street but would be outside the 200 foot range where Target's at, that same corner. So I think those are the ones that, the three new that would be allowed. Want to go back --

>> Councilmember Chirco: It wouldn't be the Target store.

>> Joe Horwedel: Correct.

>> Councilmember Chirco: You know I would like to bifurcate those two parts, because I can support the freeway signage for the 25-plus but I'm a little less confident on the 15 acres, so if we could -- I'm just asking. I don't know what the procedure would be.

>> Mayor Reed: Let's ask the maker of the motion.

>> Councilmember Constant: So I guess what you're asking is we make a motion and then a second motion to change just the ache rang? I don't have a problem with that.

>> Councilmember Chirco: Yes.

>> Councilmember Constant: We can do that, I don't have a problem with that. My only comment is most those nonregional centers quite frankly would not have invested in a sign of there cost.

>> Councilmember Chirco: I had that thought too but rather than --

>> Councilmember Constant: That's fine I'm good with that.

>> Councilmember Chirco: Okay, thank you.

>> Mayor Reed: I think we have just about finished the council discussion. I think there are some people who had some discussion. If you want to talk us out of whatever we're to do here, just come on down. Anybody else want to speak on this? Just come on done to the front, please? So ecan do it.

>> Joe Horwedel: Can we have did slide that showed the options?

>> Gary Gromman once again. This is very exciting. I do have to say I wish we were back in 1985 when I was doing my project but now we are here in 2009 and maybe we can do something, finally. I find this very exciting. The one friendly amendment that I would suggest is, you did come up with the acreage of 25 or 15 . There are some tenants and users that are single tenant users of property, that generate significant sales tax, like Home Depot, a Lowe's a fry's a target. There are definitely those types of users that are stand-alone that I think should be included in being able to have a freeway standing sign. So my suggestion would be for staff to look at swells councilmembers to consider, to have those type of retailers that don't necessarily have to be in a shopping center but generate sales taxes to the city and generally want to promote getting more people to their site. So that would be my really only change. With respect to the size much say a digital format whether it's 50-50, 60-40, 70-30, I think that's something that you get into a design and that 50-50 can make it look like very boxy, because I'm involved in many different communities and see these signs as you guys have, that you are going to have some type of size sign of the retailer that's there and then have the digital part that could be advertising what they're selling in the store. So you could have a -- whether it's a hammer or inside a Home Depot or an HP printer inside a electronic company. So I would encourage that as a potential change. One other comment, if for some reason I don't get back here at your next meeting was the electronic and the digital signs that you have along Stevens Creek and capital.

>> Mayor Reed: Sorry your time is up, if you want to submit it in writing we will of course get it before the next meeting when we come back.

>> Thank you.

>> Scott valley again for Westgate. I'd like to thank the council for having the height of the freeway and the sign, we wouldn't have thought about that we obviously do support the freeway signs, particularly digital. At valley fair we have three tenants. As Councilmember Kalra said, we have a line of tenants who would love to be on there. We turn over 20 to 50 tenants in some years, how long will it take people to know this unless they come in. It's through the good signage. We definitely support this, thank you.

>> Mayor Reed: I had a question. I'm assuming that the motion includes more than what was on the slide because in the staff recommendations you've got the option 1 stuff but you also have the developed parameters addressing traffic safety and compatibility with sensitive uses and then citywide allow attached signs for building signs next to a freeway and allow restrictions allow on side or noncommercial messages only.

>> Joe Horwedel: Thank you. If fry's adjacent to freeway, would allow them to have building mounted signs that kind of essentially do what the free standing sign would do.

>> Mayor Reed: Okay so that's to be included in the motion?

>> Councilmember Constant: Yeah, that was my motion.

>> Mayor Reed: Further discussion on this one? All in favor? Opposed? I think the motion was for the 25 acres, so you're in favor of that so we have that one passes. Now another motion on 15 acres.

>> Councilmember Constant: Now the motion is for 15-acre change.

>> Mayor Reed: One of the other options, option-d option 2. So now, that first option's been approved. Talking about option 2 which is the 15 acres, that's the motion. Further discussion on that? All in favor? Opposed, one opposed, Vice Mayor Chirco is opposed, on that one so that one passes as well, the 15 acres. I think we've done about as much as we can do on signs tonight given the limit of time. What I suggest is we bring this back on the February 6th agenda, I think that's our first meeting in February because the 26th of January agenda is very crowded since we don't have a meeting next week.

>> Joe Horwedel: That's correct. And we would focus on the electronic digital sign issues, there were three that were tied into that package and we'll do the research on the public sign and we can research how fast we can get that back.

>> Mayor Reed: We have one matter left, that's open forum. We'll take the testimony now, please come on down when I call your name, Shane Patrick Connelly, Forrest Williams, David wall, Kathy Brandhorst.

>> My notes said good afternoon, but actually good evening, Mr. Mayor, Mr. Mayor and councilmembers. I'm Shane Patrick Connelly, while I believe much good grew out of progressive reforms that allow people to bring matters to the blood, I admit that we voters occasionally make a mistake and with good intention, our November 24th, revision of our city charter section 1111. It took negotiating power away from our accountable elected representatives, yourselves, and put it in the hands of unelected unaccountable arbitrator and then that compounded with other mistakes, got us to the tens of millions of dollars in exorbitant pension cost that we face now, and in the years to come. So I just wanted to come back to this issue and keep it in front of the council. Good news is that short of initiating a referendum to revise or repeal that section of the city charter, the city council could take a couple steps to improve the situation which is to restructure the membership of the police and fire pension board that was a proposal that was floated but didn't get action and unfortunately, the board made bad decisions after that, to use unrealistic contribution rates. So they weren't -- it needs to change. Secondly, you can reconsider the decision to keep the light of public scrutiny from shining on contract negotiations. That was a proposal here that was rejected. Please reconsider that. The taxpayers certainly should have a right to observe the negotiating process. And thirdly, negotiate and I know some are working on this, negotiate new sustainable pension payout plan with the perhaps a more reasonable percent of salary or reasonable retirement age or 401(k) plan for employer mooch with future retirees, obviously we need to keep the commitment to existing retirees. That's it you all have a good night. Thank you.

>> Mayor Reed: Forrest Williams, Tina Morrow, David wall.

>> Thank you, mayor and council, I'm Forrest Williams, resident of the City of San José, I'm also on the board of the Santa Clara County science and engineering foundation I have some prepared minutes, words that I'd like to leave with you, regarding the synopsis Silicon Valley engineering and technology fair scheduled for March 17th from 4:30 p.m. to 6:00 p.m. As you know we have challenges that we must face. We will not be able to solve those challenges, we have created the situations and we will need intellectual capacity, innovation to solve many of the problems in the future. So the science and technology fair is one reason, one basis to encourage our youth to pursue these opportunities, these challenges. Their imagination is unlimited. They will forge ahead. They have solutions, we've seen that

demonstrated in the science fair. In the competition. They look at biology, they look at computer science, they look at engineers, they look at all aspects of our economy and our lives in terms of offering solutions for us. I'm here today to ask you to support them. Come to the fair. Be there, represent them. Encourage them. Because they are going to solve the issues that we have today. And we know that we need them for the future. We also have a Website. It is www.science-fair.org. And I encourage your participation and support. Thank you very much.

>> Mayor Reed: Tina Morrow.

>> Hello. My name is Tina Morrow and I stand before you as the chair of the friends of Ryland pool group and -- boy, this has been a long meeting. So because a picture is worth a thousand words, I've got some pictures I want to show you of Ryland pool. Back in 2005, this is what Ryland pool looked like. And as you can see, it wasn't maintained, it wasn't used, it was a community asset, but it was closed. It was a shame. And we found out that there are some unique tiles that are on the pool, they were created by Ernest Bachelder. And unfortunately in updating the pool they were covered by the stuff I call blue goo. Thanks to you guys, that's why I'm standing here today, because of the city council, our pool underwent construction, it went into two phases. So phase 1 was all about getting the pool up and running which was great. And in June of 2008, we had our grand reopening, and as can you see, we had you know, community out, Chuck, you were there with your big scissors, you're going to be there for your budget.

>> Mayor Reed: Sam is going to be wearing his flippers.

>> We had friends of the Ryland pool, kids playing, happy families, all these wonderful things going on and phase 2 it was all about restoring the pool tile and the wall of the pool and also creating a plaque which told the pool's story and also the sign.

In partnership of rotary of San José and I and Sam thank you so much and I know Nora you also came out we had our September celebration, the two phases of the pool are now complete and now we are just work on the fundraising so we can keep this pool open, get scholarships for the kids. We believe pools are community asset, build social capital.

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

>> They do a lot of things, thank you.

>> Mayor Reed: David Wall is our last speaker.

>> David Wall: Now, as we -- excuse me. As we start this new year, let us not forget, if interference of the San José Mercury News, in reference to formulating public policy which directly interferes and mischaracterizes the efforts of the honorable San José police department. Personally, I am sick and tired how the Mercury News can affix a ring around your nose or other orifices, and drag you through whatever hurdle they want to put you, to belittle the San José police. In reference to the downtown business association and all those worthless clubs that primarily are a cash basis, you don't really know how much money you make from them, but you know how much it costs you in deployment of our police. And then over this year I hear talk on the street that our police officers have to ask permission of a supervisor to arrest a vomiting drunk. Who am I to blame for this? Who am I to hold accountable? It is certainly not my fault. So I want you all to be aware of this and to watch the San José Mercury News and how it chronically misrepresents and mischaracterizes the efforts of the San José police. Thank you.

>> Mayor Reed: That concludes our open forum and that concludes our meeting, we are adjourned.