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>> Conrad Taylor: Good morning everyone. I'd like to call to order the Police and Fire retirement board. What I'd like to do first is I'm going to go through and do a roll call and after the roll call we're going to have the City Clerk and our ninth trustee, they're going to swear the ninth trustee in. Chairman Bacigalupi was going to be on telephone but we have received an e-mail that he is out with the flu. Myself Taylor is going to be acting as vice chairman, presiding over the board. Trustee Sean Bill is present. Michael Flaherman is present, Sean Kaldor is present. Damon Krytzer is present. Vincent Sunzeri is present and Richard Santos is present. Now if I could have the City Clerk come forward and swear in our ninth trustee.

>> I, state your name.

>> Drew Lanza.

>> Do solemnly swear.

>> [repeating]

>> To support and defend.

>> [repeating]

>> The constitution of the United States.

>> [repeating]

>> And the constitution of the State of California.

>> [repeating]

>> Against all enemies.

>> [repeating]

>> Foreign and domestic.

>> [repeating]

>> That I will bear true faith and allegiance.

>> [repeating]

>> To the constitution of the United States.

>> [repeating]

>> And the constitution of the State of California.

>> [repeating]

>> That I take this obligation obligation freely.

>> [repeating]

>> Without any mental reservation.

>> [repeating]

>> Or purpose of evasion.

>> [repeating]

>> And I will well and faithfully discharge.

>> [repeating]

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

>> [repeating]

>> Conrad Taylor: Drew, welcome to the board. item 6.6 A, the memo is dated April 19th, 2011. It should be April 27th, 2011.

>> Mr. Vice chair.

>> Conrad Taylor: Yes.

>> I'd like to request, since we do tend to shift items on the agenda, if we could advance the new business item 3.1 further up ahead of reviewing the disabilities. I had an opportunity to attend the Federated retirement plan meeting and found it to be a very critical piece that would be valuable for the board members particularly our new board member, to review before we have a chance to go through the service disability.

>> Conrad Taylor: Well I recognize the report but the concern that we have is we have certain guidelines that we need to follow now. And so I don't want to confuse the board members to have, if they think there needs to be changes or that changes have to be made. So we have a -- and we're following the guidelines that we currently have that we have to go through.

>> It's not a suggestion that we're going to change the guidelines in any way but the information is pretty relevant, particularly for bringing Mr. Lanza up to speed on what's taking place here. And I don't know if any of the board members have any thoughts on it.

>> Richard Santos: Mr. Chair, I don't know that I agree with the auditor's report. Doesn't mean there's going to be action. Until we take a look at it we may take some actions, we may make some recommendation. So I don't know if that should influence our thinking now. So I don't know if we should take action now.

>> Do you think that would be relevant to our review of these people here today?

>> It's not intended to change our view of what we are going to see but it is rather eye-opening in terms of the information. And I think it would be valuable for us to address it early on. We have a pretty significant agenda. We're committing a tremendous amount of time and I think just moving that one particular item up early-on would be valuable for us.

>> Conrad Taylor: Well, we can make a motion. If you want to mifeft up. But again I'd like to say that we have the current guidelines that we are currently following and there's nothing in this that has doing anything that is incorrect. So we could -- if I have a motion on the floor to move that up, I'll be --

>> Well, I think the value in it is in some of the definitions, for Drew and for I think Vince, you missed the first presentation as well, right?

>> Uh-huh.

>> Stability. So I mean I'd support that .

>> Conrad Taylor: So you're making a motion?

>> Yeah, item 3. Whatever it was, 3.1 to before the disability hearings.

>> I'll second it.

>> Conrad Taylor: We have a motion. Any discussion?

>> Again my thinking is if it's not going to affect these people here individually I'd rather keep it in order, hear their cases and go on with the rest. If there was something here that was specific to them I'd be totally willing to make sure we take into account the changes for these guys.

>> Yes, Michael.

>> Conrad Taylor: Mike.

>> Michael Flaherman: I'm a little bit reluctant to do it since I think it would be somewhat prejudicial to the cases before us. As a general matter I can see the rationale for it because it might be -- because of the argument that it might be educational. But the problem I think is that the report clearly represents a point of view. It has a set of policy goals that it is driving at. And I -- I think it would be wrong to let the disability cases that are before us be evaluated in the context of policy recommendations which are not in force. I think just as kind of a judicial, we are functioning in a kind of a quasijirnl way here. In that sense I don't think it's right to do this with really that intent, with the intent of having people's opinions about the disability cases colored by a is the of policy recommendations which are not in force. There are some things in the report -- the report I thought was interesting. I thought it had some interesting observations. But there were some things that were I think a bit inflammatory. Like the comparison made early on in the report between the disability rate for the Police and Fire system and the Federated system. I mean I just thought that was pure inflammatory content. You know it's like saying, what the disability rate of coal miners versus hedge fund traders, or something. So I would argue against changing it for those reasons.

>> Richard Santos: Yes, Mr. Chair, I concur with what he just said, when I read that it was smaller departments, you know we should be waiting to take that report and discuss it thoroughly there, we're doing it now. It may influence, I understand Vince's position, it may educate. But that's something we didn't as a group take a hearing on. And as one example, like Michael said, when you start parroting one of the departments. I worked at one station that had more calls than the entire department had for one year. That disability or whatever they may be doing. Then we'll get to that 3.1 when we get to it. Let's have a good thorough discussion and then we can make our objections or we can stay some action steps or whatever. Because I think out of that is going to come some good discussion what I heard already. I'd rather hold off and not influence anybody at this time.

>> Conrad Taylor: Damon.

>> Damon Krytzer: To some extent, we are all reading it. But on the other hand on Vick and Michael's comments, in discussing that we would all be in the same place right? I don't know if it is going to bias us in a positive or negative way. But having the discussion, hearing your opinions as well are really helpful for me. I don't work in a firehouse, right? So I've been waiting for this discussion since I joined the board. And, you know, not to say that we're going to read this and it's going to bias things any other direction but I think the discussion you know, I'm fine either way but the discussion I think would be valuable.

>> Richard Santos: And one other thing if you don't mind. Let's just say some of the officers or retirees would ooms I would love to hear it just in its entirety. Right now I think it's premature. I know what Vince is doing, I had a chance to chat with him on other areas. He shows real concern, so am I but let's just wait for that process.

>> Conrad Taylor: Sean, did you have anything? Sckd.

>> Sean Kaldor: I was wondering if they brought up if process of disability, the process and how our process works in terms of educating the new board member and all board members about how we're supposed to define things. That seems to be more on that point.

>> I would amend my motion, to forward that one instead.

>> That makes sense.

>> Conrad Taylor: The definitions or fan.1?

>> Yes. If that is amenable to the trustees.

>> Conrad Taylor: So we have that change, amended motion. Okay. All those in favor? Aye, all those opposed? Motion passes. 4.1. Okay, before we start discussing any of the -- whoa -- let me go back to this motion. Do you want to go through the -- we should have clarified these. We'll go through the service retirements and get those finished. And then before we start the disability retirements we'll go ahead and move 4.1 ahead of 1.3. Under 1, under retirements under 1.one service retirements, 1.1A, Melanie Bertelsen, police sergeant, particularly, effective June 11, 2011 with 26.89 years of service.

>> Motion to proven.

>> Second.

>> Conrad Taylor: All those in favor, aye, motion passes, I don't see Melody out in the audience. 1.1 B, Luis F. Chacon, fire inspector, fire department, effective June 25, 2011, 25.50 years of service.

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor. Is motion passes. Dennis M. Faz. Police officer, police department, effective June 23, 2011, 20.57 years of service.

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor? Motion passes.

>> Richard Santos: Mr. Chair, anyone in the audience please stand.

>> Conrad Taylor: I haven't recognized any of them. 1D, pallG Harmon, police sergeant, police department, effective June 25, 2011, 25.85 years of service, with reciprocity.

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor all those in favor, motion passes. 1.1E, David Huseman, fire captain it will fire department, effective June 25, 2011, 27.niej years of service.

>> Motion.

>> Second.

>> Conrad Taylor: I have a motion and second. All those in favor motion passes. F. David J Johnson, police officer, police department.

>>> Motion passes. Gilbert A Lee, police officer, police department with a service connected disability. I have a motion?

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor, motion passes. 1.1H Russell Pfirman. Fire captain, effective June 25, 2011, 25.51 years of service with reciprocity. Do I have a motion?

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor, motion passes.

>> Quick comment. He's leaving a job very much. I appreciate him making me the firefigt I am today. Rth breaking in young firefighters.

>> Full circle.

>> Richard Santos: As all of them are excellent.

>> Conrad Taylor: 1.1I John Skeen junior, fire captain, fire department, effective May 28, 2011, 27.96 years of service with service connected disability pending. Do I have a motion?

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor, motion passes. 1.1J. Jeff Smith, police captain, police department, effective June 25, 2011, 27.88 years of service. Do I have a motion?

>> Motion.

>> Second.

>> Conrad Taylor: Offers, motion passes. I saw Jeff was out there congratulations it was a pleasure working with you. FTC 1.1K. James T. Werkema, police lieutenant, police department, effective June 11, 2011, 25.03 years of service with a service connected disability. Do I have a motion?

>> Motion.

>> Second.

>> Conrad Taylor: All those in favor?

>> Richard Santos: Madam Chair, these people put their lives on the line for over 25 years probably on average . That's something to say. I really appreciate all that time. They're not a group of people leaving with a little bit of time. Most important they served the City of San José very well. I appreciate the board members with support and thank you all for doing what you do.

>> Conrad Taylor: I agree with you Richard. Under 1.1 or 1.2, early service retirement. 1.2A. Paul A. Schuller. Battalion chief fire department effective June 11, 2011 with 22.87 years of service with reciprocity and a service connected disability. Motion on the floor? For approval? I have a motion.

>> Second.

>> Conrad Taylor: Second. All those in favor, aye, motion passes. 1.2B, Christina L. Thomas, police officer, police department, effective June 25, 2011 with 20.71 years of service with reciprocity. Do I have a motion on the floor for approval?

>> Richard Santos: So moved.

>> Second.

>> Conrad Taylor: Offers, motion passes. We'll move up 4.1, consider and discuss additional information regarding disability determination process. Staff memo dated January 25, 2011 regarding disability process deferred from the April 7, 2011 meeting. Donna this was your memo.

>> Donna Busse: All right this was just a request that was made back, I guess to the end of last year, regarding the disability process, what other plans do, and kind of outlining the process for our system. What you might want to discuss was the disability definitions.

>> Conrad Taylor: Mollie if you may if you would provide the definitions that would --

>> Mollie Dent: Sure. Well, the memo does have the definitions of disability on page 1 at the bottom. That's the general definition of disability that currently applies to this system. The code section cited has two additional sections that describe what constitutes a service-connected disability versus a nonservice-connected disability. But basically, the board looks for disability first and then they look to see whether the disability is service-connected or non-service-connected. And briefly, service-connected would be a disability arising out of the course and scope of employment and nonservice connected would be something other than that. So it is true that you can get both types of disability retirements although most of the time the board sees service connected disability retirements. The rest of the memo dealing with process, is information that the board has been looking

at over a long course of time. And there are certain -- certain changes that the board could make under the current municipal code structure and certain changes that would require council action. So that particular piece of it changing your current process does have some cross-over with the audit report. But there are some things that the board could do under the current structure. I think the memo points out that the Federated board does have a disability subcommittee, and you could certainly have one if you wanted to. The disability subcommittee for Federated is a staff committee but you could also have a board subcommittee. But currently under the Municipal Code the board would be ultimately required to hear disability retirements if the member wanted to ask for that. So that's a bit of a summary on the process side, and I think the definition is very helpful for you to have as you go through any disability retirement applications.

>> Mollie, can a board, not necessarily grant a service retirement or service disability, but grant a nonservice is 71 comes and applies for a service disability but you don't think there's a causation linked to the job but rather hereditary definition or whatever, can you say --

>> Mollie Dent: Yes, the board can do that although you have to be aware that in some cases, a nonservice connected disability retirement wouldn't be any better for some of the individuals than a simple service retirement. So generally speaking, the board has not done that because the applicant can come back and ask for that anyway. But you can.

>> Okay, so there's no real benefit to the applicant by having a regular standard retirement versus a nonservice disability?

>> Mollie Dent: No, there is under some circumstances because of the age criteria.

>> Okay.

>> Mollie Dent: But if someone meets the age and years of service criteria for a service retirement then there's not, for a nonservice connected.

>> Okay.

>> Conrad Taylor: Mike.

>> Michael Flaherman: Just off the question for clarification. Under this retirement regime, is there any distinction in benefit, if the service disability occurs in an ordinary way versus an exceptionally hazardous way?

>> Mollie Dent: No.

>> Michael Flaherman: Okay. In the state concept actually, there is an exceptionally hazardous category which has a big consequence in terms of the benefit.

>> Mollie Dent: No, the formula doesn't change.

>> Conrad Taylor: Any other clarifications?

>> I'll always been a proponent of going through our process and finding ways to bring clarity to it make it much more straightforward have the applicant outline things more clearly. I think that's why I requested 3.2, I requested this last month within the current rules more streamlined and direct and logical for all of us to review and as those rules change, implement those rules and whatever seems fit.

>> Conrad Taylor: Yeah, I concur with that. I thought we were going to have a subcommittee to work with this, and now we could implement the new report that came out and all the party work together. Drew.

>> Can I ask a question about basic English? What we're doing is understand the difference between incapable and unable. Going through the etymology of those words I didn't come up with anything.

>> This is something I struggled with as well.

>> After we interviewed we had a lecture.

>> Can anybody give a 30-second short version.

>> Conrad Taylor: Dr. Das can you give us a 30-second short form?

>> What's the difference between incapable and inable?

>> Dr. Das: It is something I struggle with as well, incapable would reflect a physical inability, versus unable, means qualifications, being unable to do the job. There's more there's a distinction between there may be a position for this person available but they don't have the requisite education so this means they should either should be in -- that's how I interpreted it from this -- hearing what the attorneys had to say.

>> So God help me for asking this question but how does weight factor into this?

>> Dr. Das: Weight?

>> So obviously if something is, incapable is, I've hurt my back. Where does weight factor into this because to some extent we have control over our own weight, to some extent.

>> Dr. Das: You Mean weight as to somebody's weight?

>> For instance, I'm obese, is that incapable or inable?

>> Dr. Das: In that context I think they're both the same. I mean you want to see in terms -- obviously from looking at it from a disability context you'd like to see that there's a injury or a reason why someone cannot do

something, as opposed to, if it's 450 pounds, I'm unable to lift it. If I was able to lift 450 pounds before, is there a reason why I can't now? And if I have a broken back, that's a good reason. If I'm 70 years old, that may not be considered a disability. Does that help?

>> That helps, thank you for the short form.

>> So Dr. Das, one of the analysis I always use for myself to help me clarify this is that if one of the requirements of your job is that you have to run the 40-yard dash in five seconds okay and you come in at 6, you're unable to run the 40 yard dash. Might not be a physical limitation per se, just not fast enough.

>> Dr. Das: I agree, yes.

>> Now if you are missing a leg and you just can't run then you are incapacitated is that correct?

>> Dr. Das: Yes unless you had a prosthesis and you followed --

>> That's true. But in general framework would that be an acceptable idea of concept utilizing it?

>> Dr. Das: That's correct.

>> To compress the expectations from a legal perspective and a process perspective around the evidence that we are able to recognize. In other words, I think it would be helpful to comment on you know are members of our board supposed to be going on webmd and looking things up or are they only allowed to know or consider information that's briefed before them? If you could give some commentary, I think it would be very helpful.

>> Mollie Dent: Yeah, when we did the disability retirement training, yes, you're limited to the evidence that's in the record. Now, not necessarily the evidence that's in the packet. Because the applicant can come and present evidence that is not in the packet and you're required to listen to it. This is a quasijudiciary process. If a applicant

wants to bring a doctor or an applicant wants to bring someone other than themselves to speak about their application they can do that and you're required to hear that testimony.

>> On the spot?

>> Mollie Dent: Yep.

>> And there's no --

>> Mollie Dent: But you're not to be going out and individually gathering information.

>> Right but there's no hearing officer who's refereeing that presentation of evidence?

>> Mollie Dent: No, you under the municipal code is the hearing officer. The board is the hearing officer .

>> Russell Richeda: And just a few follow-up comments. If a 100 page submitted to you at the hearing, you can continue the hearing just like any hearing officer could. Or if you find after the medical evidence or reports have been submitted to you there is some glaring partial or incomplete report or there's some other information in the record that is -- that you think is germane to your decision-making you can again request the parties to provide it but you can't go out and get it on your own. But you can request they provide it and continue the hearing accordingly.

>> Mollie Dent: The way I kind of explain it is, you are the judge and the jury. So if you need more time, you can, as Mr. Richeda said, continue the hearing.

>> But if somebody takes us to court, isn't the fact that nobody -- none of us have any training as hearing officers, give somebody an opening around procedure?

>> Mollie Dent: No, not all.

>> Russell Richeda: It really the doctrines are to the contrary. The assumption of correctness under the California Supreme Court case, Kuda decision, there are other cases giving you presumption a great weight on these kinds of matters.

>> I was only talking about the process, the sort of irregular later --

>> Mollie Dent: No we have kind of defended the process in court. This process has been upheld as satisfying due process.

>> In my prior experience we always had a hearing officer who was just there to referee procedure, to avoid exposure around issues of the irregularity and due process.

>> Mollie Dent: That has not been required by the court .

>> Conrad Taylor: Sean.

>> Sean Bill: Just so we understand, the responsibility is on them, to lay out the case and make all their claims. We don't have to -- we're not expected to fill in the holes or go out, they should present their complete case and if it meets all the questions, all the requirements we approve. If it doesn't we don't approve.

>> Mollie Dent: Correct. The burden of proof is on the applicant.

>> Sean Bill: Could people refute the could other people speak and say no, I don't believe this is correct?

>> Mollie Dent: They could if they wanted to.

>> Conrad Taylor: Vincent.

>> Vincent Sunzeri: I see it odd that we were brought sorely lacking on this board. And yet we're being asked to address something that we lack in expertise, which is, I have no medical training, I'm not a professional, we do have Dr. Das to lean on. Yet this process is causing us to make decisions about medical items. Is there another process that is more efficient that would handle this in a manner that would bring in that type of expertise?

>> Russell Crosby: Could I just suggest that item 3.2 is your way to address that.

>> Vincent Sunzeri: Well my concern about item 3.2 is us forming a subcommittee but still we are -- who's going to on this board be part of that subcommittee? I'm not sure your suggestion is to --

>> Mollie Dent: I don't think item 3.2 is limited to that. I think item 3.2 as I read it is to form a subcommittee to review the process.

>> Vincent Sunzeri: Okay.

>> Look at this process and say what should we be doing here and whether it's medical.

>> Vincent Sunzeri: Got it.

>> Russell Crosby: If you need to modify the Municipal Code, then to modify the Municipal Code.

>> Mollie Dent: That's why you might want to take 3.2 up in conjunction with the auditors report. They do have some cross-over between them.

>> Russell Crosby: That's why I put them together on the agenda. So that --

>> Conrad Taylor: The subcommittee to look at this process and work with the subcommittee and this board to work in conjunction to see what our -- look at what our peers are doing also. Damon.

>> Damon Krytzer: On inability, what's been the big take away from the many, many discussions we've had is preclusionary versus prophylactic. I think in a lot of ways, we have to read through that -- through medical reports as well. But I mean that's how I justify that personally . I guess I have a question/comment.

>> Mr. Chairman, as a point of order can you identify what agenda item we are on now?

>> Conrad Taylor: 3.1. Oh, 4.1.

>> A.

>> Conrad Taylor: I apologize. I was worried that we were talking around individual disability cases and wanted to make sure we're not doing that.

>> Conrad Taylor: Definitions now, including prophylactic.

>> There's also a difference getting back to a point that was brought up before, versus the initial cause or injury, trauma or whatever it was. And the response as well, which is documented over years, and sometimes, decades. The response being, you know, whether or not the person seeking disability did, in fact, follow the advice of -- the advice of doctors. And --

>> Mr. Chairman at the point of order, I am worried we are talking over --

>> Conrad Taylor: Expanding definitions. Unless we have any other questions we'll just move forward with the service connected disabilities. Okay under 1.3, service connected disabilities. We have 1.3B, Lawrence D. gullo,

police officer, police department, request for a service connected disability, effective May 5, 2011, 10.76 years of service. Donna, I see Mr. Gullo is here represented by his attorney. Donna.

>> Donna Busse: Lawrence D. Gullo. Orthopedic injuries started to his lower back. Medical reports are listed in your packet. His work restrictions are that he should not operate a firearm or carry a concealed weapon he should avoid pursuit in apprehension of suspects, he should stand at will. His work status he's currently on medical leave and at the time of application was on disability leave. There's no permanent modified duty available.

>> Conrad Taylor: Mr. Boyle.

>> Thank you, Mr. Chairman. In your packet pages 86 to 111, it lists officer Gullo's injuries, March 20th, 2000 right knee injury, January 25th, 2001 low back injury. A June 30th, 2001 left knee injury. A March 4th, 2002 shoulder-neck injury. An August 3rd, 2002 bilateral knee injury. May 8th, 2003, left chest and rib injury. March 19th, 2004, left foot and ankle injury. June 4th, 2005 left shoulder injury. May 6th, 2007, back and neck injury. December 30th, 2008, low back injury. And one that's not in your material, a March 30th, 2009, neck, back and left shoulder injury, with an on-duty automobile accident. I refer you to page 28 of your material, in the packet it discusses officer Gullo's fusion operation of his back on March 19th, 2009 which was a partial corpectomy of L-4-5 and S-1 with decompression of the spinal canal, an anterior lumbar inter-body fusion at L-4-5 and L-5 S-1 an anterior spinal instrumentation at L-4-5 and L-5 S-1 using buttress screws and washer technique, an anterior spinal reconstruction using two femoral ring allografts for structural reconstruction of the lumbar spine, a posterior spinal laminectomy decompression at L-4-5 and L-5 S-1. Bilateral transverse and existing nerve roots at each level with laminectomy and foramen instrumentation bilateral pedicle screws and by lateral rods. On page 11 to 12 of your material, there is his treating physician's restrictions, he is currently on disability, Dr. Das's report on pages -- on page seven lists his restrictions which were read by the clerk but which I'm going to read to you again. That he should not operate a firearm or carry a concealed weapon while prescribed medications that affect the central nervous system. He should avoid pursuit and apprehension of suspects. He should have the opportunity to sit and stand at will. On page 10, lieutenant Mark Bastillos has said there are no positions available for officer Gullo. On that grant officer Gullo's application for a service-connected disability retirement.

>> Conrad Taylor: Thank you, Mr. Boyle. Dr. Das do you have anything to add?

>> Dr. Das: No, I don't.

>> Conrad Taylor: Open for discussion. Mike.

>> Michael Flaherman: I would say of the ones that are before us today this one to me is more of the clear cut ones in the sense that it seems pretty clear to me that this gentleman is really hurting. He's suffered multiple injuries, and most significantly, to me, he needs to take a narcotic six times a day, which, you know, is not something somebody does for the fun of it. And he can't -- he can't function as a police officer because of that. That's very clear in the record. And the police department says they have no -- no continuing place for him in a different role, so I think -- I think this gentleman, Mr. Gullo is disabled.

>> I would second that. That's the way I read that case as well.

>> Conrad Taylor: So I take that you have a motion for approval.

>> Michael Flaherman: I make the motion for disability retirement.

>> Conrad Taylor: You want to add anything? I just saw you move your mic. I have a motion and second for approval. All those in favor? I will abstain on this one. Okay, most motion passes. Larry good luck. Hopefully, you get better. 1.3D, Cynthia A. Teper-Johnson. Police officer, police department. Request for a service connected disability retirement effective May 5, 2011 with 21.57 years of service. Ms. Teper is present with her attorney I'll wait until you sit down.

>> Donna Busse: 52 year old with 21.57 years of service. Medical reports are listed in your packet. Would be restrictions are she should not operate a firearm drive a city vehicle while prescribed medications that affect the

central nervous system, she should avoid prolonged signature without bending at the trunk. She's currently on modified duty, and at the time of application was on modified duty, there is no permanent modified duty available.

>> Conrad Taylor: Thank you, Donna. Mr. Swift.

>> Thank you. My client has had service of 21.57 years, I believe it is, as a police officer. She was basically doing okay until a major motor vehicle accident in September of 2005. And essentially was never able to return to normal duty thereafter. She had low back injury in March of 26. And by May of 2007, she was provided with permanent work restrictions. The police department then accommodated her and those work restrictions by putting her in an article 39 position, which is a permanent modified duty position. During the course of that, although she's continued to do that job, her condition has deteriorated and she is now being considered for a spinal fusion. Dr. Das agrees that she has limitations which would prevent her from being a normal police officer. She would be happy to continue in the department. But for reasons which may have to do with budgets, or whatever, the police department has now said they have no more permanent modified duty for her. She would like to continue. But lieutenant Busillos in his memo says, we don't have work for you anymore. So on that basis we would ask that the application be granted.

>> Conrad Taylor: Thank you, Mr. Swift. Dr. Das would you like to add anything for the record?

>> Dr. Das: No I don't.

>> Conrad Taylor: Open for discussion. Mike.

>> Michael Flaherman: This one seems very similar to the previous case we just heard for Mr. Gullo. And I think presents largely the same facts in terms of -- in terms of repeated injuries. And an inability to operate a firearm due to medications and so I would move for the granting of the disability retirement. And I would also see there is a threat here of the city's budgetary problems shifting the burden onto the retirement system of folks who could work in some form and that's really unfortunate.

>> Conrad Taylor: Any other discussion? Mike you making a motion for approval?

>> Michael Flaherman: Yes, I would make a motion to accept the disability retirement.

>> Conrad Taylor: I'll second the motion. Comments?

>> I'm not really sure about the modified, so what is the status with that right now? Then she -- you are in modified, a modified role right now?

>> Yes, I am but I'm actually working less time anyways because it's been so much of a problem. I've been undergoing treatment for my back so I've been working only partial days.

>> And is that role, is that role jeopardized because of the treatment or is it jeopardized because of layoffs in the police department?

>> No, it's jeopardized because of the treatment. I'm having so much treatment taking so much time off, I'm not able to get my work completed in a timely fashion as well.

>> And I know it's through here as well but the hip injury, your hip, what was the cause of that? Good well they've been debating back and forth whether it's related to the back as well and they just did an epidural on my back about three weeks ago, and it seems to have made it and immediate effect. Half the dock torsion are saying it is my back and my surgeon, still, he knows my back is an issue but they also realize I have a hip issue as well.

>> What was the cause of your hip issue?

>> Dr. Cayo who did the procedure says he honestly couldn't say that it was not -- he couldn't say that it wasn't because of the accident, because he wasn't able to treat me immediately after the accident. So there is a

possibility it could have been because of it but because it was so lock after that he actually treated it, he couldn't say.

>> There's been no identification by any doctor that she has a nonindustrial hip condition. It's hard when you have a pinched nerve in the back that goes down the but to be down the leg to separate hip pain from back pain. They did in fact low back surgery. The treating doctor Dr. Minor has proposed the hip fusion. It does appear that the hip injury remains an ancillary side issue.

>> Did you it's been since the accident, right?

>> Yes.

>> This is a terrible forming to can be all these questions but how soon after the accident did that start to --

>> You know, I don't honestly recall. And the problem is, that's why I kept saying I don't think it is the hip. It's not as he mentioned one pain shooting down my leg. It's both legs, and it's inconsistent. It's shooting all over. And so that's why it's hard to say whether -- and I couldn't tell you exactly when but I think it was probably quite a while after as far as -- I couldn't differentiate. And it's been difficult and that's why they've been doing different tests. They tried to do a different test to see if it was my help and there was absolutely no difference. They did an arthroscopic test, absolutely no difference. And the surgery focused on my back, major difference. They honestly think it's both but they're treating, the back seems to be the primary instigator of all of it.

>> I hope the surgery if you get it helps.

>> So do I.

>> Conrad Taylor: Sean.

>> I have a question on page 11 there's a report here that talks about a subsequent accident that took place relating to you pushing a shopping cart, the shopping cart got away from you, you fell to the ground because of that. Can you explain that incident and when that took place?

>> Oh, easily because I felt totally stupid. It was down in San Luis Obispo, and because it has gotten progressively worse, so painful --

>> It's been in your back --

>> My back yes, I'm sorry, my back and I have literally, it's affected my leg. I have literally every time I get out of the car I look for the closest shopping cart, and I use that for support. I put my purse in it because it's got all my crap and I pretty much use that to bear my weight. Coming back to the stores, coming back to my car, leaning on it because the pain has been so bad, that the cart don't ask me how, the front of it came up, I think I had too much weight on it, it came up at me, I fell to the ground, some lady next to me said oh my God, some man came, I felt like a 90-year-old lady, was so intearsed. I ripped my pants and it did swell that was all because I was hanging onto the cart because I was in pain.

>> Conrad Taylor: Sean, did you have a question?

>> Sean Kaldor: Going through it, I see you have filed for back and neck, you have not filed for hip, is that correct? Going through that I see a MRIs that there has in fact been an injury. The disability is confirmed by the doctors and you're modified duty currently and if that modified duty was still available to you, you'd still work in that modified duty although it looks like it's getting harder and harder to do that and there's no modified duty available. So from all of the basics required for us to approve the decisions that we're given now to make I would support this unless someone finds other issues I'm missing in this application.

>> Just a question. For point of clarification. Is there no more modified duty has that position been eliminated for you?

>> Lieutenant Bucillos statement is on page 10, based on the above restrictions we do not have a position for Ms. Teper Johnson.

>> Sounds like you're currently working partial days or something?

>> Trying.

>> So you still have that -- I'm just trying to figure out what your current responsibilities in your modified duty position --

>> Conrad Taylor: Lieutenant Bas-illos is here and he could explain her current duty and her modified position.

>> Is there a need for her to carry a firearm in her new role?

>> Conrad Taylor: Lieutenant Basillos if you could explain. You're familiar to many.

>> Couple of things. I oversee the exementd officer program which she participates in. The first answer to your last question is yes, you still need to carry a badge and a firearm. She is currently assigned to the city attorney's office. I oversee the program but I also oversee the city attorney's program management in which she works and it's been-we don't have part time positions available where she can come in and only work part time. And that's a continuing problem working for the City Attorney. The memo that I address to the board is that we can't accommodate the restrictions as provided by Dr. Das.

>> Can or cannot?

>> Cannot.

>> Conrad Taylor: Any further questions? For lieutenant Basillos? I think we had a motion and second, bring it to a vote. All those in favor, aye. Any nays? No, Cynthia good luck. We've worked together and I wish you the best of luck. Item 1.3E, Robin Tokiwa. Police officer, request for service connected disability effective May 5, 2011, with 24.54 years of service. Robin is present with her attorney, Mr. Boyle. Donna go ahead and read the report for the record.

>> Donna Busse: 49 years old with 24.54 years of service. Medical reports are listed in your packet. Her work restrictions are she should avoid heavy lifting, she should avoid prolonged sustained sitting. She's currently on disability leave and at the time of application was on disability leave, no permanent modified duty available.

>> Conrad Taylor: Mr. Boyle.

>> Thank you, Mr. Chairman. In your packet of materials, the first four low back injuries for officer Tokiwa are not list may 4th, 1987, October 23rd, 1988. Then on pages 99 through 109, list the rest of her injuries. On November 25th, 1990, low back injury. On April 17th, 1994, low back injury. A November 25th, 2004, head, neck, shoulder, left arm both knees and headache injury when she was hit in her patrol car. A December 28th, 2008 injury, involving both shoulders, her neck and her back. When she swerved to avoid an accident while driving her patrol car. And then on page 6, Dr. Das mentions, because it doesn't seem to be anywhere else in your material, a February 3rd, 2009 automobile accident when she was rammed by another car driving her police vehicle. On page 40, is listed the operation on her cervical spine which took place on June 19, 2009. I want to read you what they did. They did a partial vertebrectomy of C four C five C six and C 7 O&M they did an anterior cervical C five six and C six seven. They did implant reconstruction at C four five, C five six and C five seven. And they did multi-level anterior spinal instrumentation at C four C fives C six and C seven. On page 11, Dr. Leddus, her operating surge and primary treating physician has given her restrictions on bending stooping lifting greater than five pounds, pushing pulling climbing and no prolonged sitting. Dr. Das on page 8 of your materials, has indicated she needed to avoid heavy lifting and she should avoid prolonged and sustained sitting. On page 10, lieutenant Bastillos has said with the above restrictions there is not a position available for officer be Tokiwa. disability retirement.

>> Conrad Taylor: Thank you, Mr. Boyle. Dr. Das anything to add?

>> Dr. Das: No.

>> Conrad Taylor: Open for discussion.

>> Richard Santos: I move (inaudible).

>> I just have one question for Dr. Das, if I could, before you --

>> Conrad Taylor: Go ahead.

>> Are niece, when I read the last section on the issue, should avoid heavy lifting and avoid prolonged standing or sitting, are those prophylactic or restricting?

>> Dr. Das: Those are prophylactic.

>> Conrad Taylor: Any further discussion? Good I have a question then. That brings up a question for me. Mr. Chair.

>> Conrad Taylor: Go ahead.

>> I'd like to ask Dr. Das. With this cervical instrumentation in her spine, can she go out and fight a suspect, is she in danger of causing some serious injury to herself if she does something like that?

>> Dr. Das: I think she would be in the same position, I think she would be in the same --

>> Conrad Taylor: Switch to the other mic please. Be.

>> Dr. Das: You know, I can only go by what I've seen in the past. And when people have had instrumentation in place, there would be have not necessarily placed them on restrictions or precluded them from duty absolutely. So I believe it's more of an individual basis. So based on the examination I have and medical record, I really don't know, unless Dr. Leddus feels something exceptional about this case or different than other ones in terms of whether he feels that there's an additional risk of injury because of the instrumentation. And that -- I would need clarification on because I've seen people that have instrumentation come back to full duty in the past. So I -- I can't say on an absolute basis.

>> A one-level fusion or a three-level fusion?

>> Dr. Das: You know, I see multilevel fusions in the past, that's why I believe it would probably be on a case-by-case basis and have to ask the person that did the surgery whether they felt that this was a stable procedure, unstable, or whether the person was placed at additional harm or risk because of the instrumentation.

>> Conrad Taylor: Any further questions?

>> So the physician who filled out the work restrictions, would that be the physician that would know whether her restrictions would let her return to work or Knopf not? Or --

>> Dr. Das: What I'm answering specifically Mr. Boyle's question as to whether the instrumentation places her at additional risk. As far as osms prophylactic and preclusionary and so in terms of trying to sort out which ones he feels are to protect her and which ones he feels that she absolutely cannot do, that's difficult to decipher from the -

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>> Okay. Because in here you always take all these reports and you give your summation or your interpretation. And you are saying you have to hear from that doctor to really be sure about her case specifically. And then I have a report, I want to clarify, is that the same doctor or is that different --

>> Dr. Das: No the same physician.

>> He says she's able do those things based on that spinal procedure, and his restrictions were more specific about lifting bending stooping, bending, pulling, as well as no sitting for more than 15 minutes.

>> Dr. Das: He didn't mention the instrumentation if you look at the form he refers to the imaging study, the preoperative imaging study. So that is where the confusion lies, is that he refers back to the imaging study preoperatively, which had some findings. Presumably postoperatively things changed. The question is whether the instrumentation place hers atd additional Rick. He didn't mention that in the medical record. That would be the form, that would be the clarification I would need because I can't answer say definitively yes or no because I think it would be a case-by-case basis.

>> If I'm -- if I may on page 11 he says, the patient has an inability to perform these activities based on spinal cord and nerve compression per the MRI and multilevel cervical some big word I can't read.

>> Air throw des is so he is saying do the instrumentation, she has those limitations.

>> Dr. Das: Can you interpret it that way. I don't -- you can interpret it that way. I don't interpret it that way .

>> Ask does doctor also look inability, in.

>> Dr. Das: When he checks off all three boxes he is looking at it from an incapacitating or inability standpoint. That's why I try make the distinction oso the physician has that option. So he's indicated that there is an inability or incapacity. And the issue in terms of what the spinal cord, nerve compression is based

on. Referring back to an MRI preoperatively, there is mention of instrumentation, it is not clear why instrumentation precludes because this same surge has returned policemen and firefighters back to full duty, I.

>> If I could make my opinion of it he is saying there are two reasons for this inability he's described. One of them is the MRI and the other one is the instrumentation, how I read it. As I understand it, it is not may not apply to everybody it seems if reading this form they filled out this is what I'm going on some that he's saying it in this case. So.

>> Conrad Taylor: Go ahead mike.

>> Michael Flaherman: I just wanted to clarify one thing, which is there was a question asked about whether the restrictions, the two restrictions were prophylactic or reflected an incapacity and the answer given was that they were prophylactic but then it later -- there was a later acknowledgment that the examining physician actually identified them as both prophylactic and preclusionary. Is that --

>> Dr. Das: Yes. I mean that there is a difference of opinion between myself and the physician that completed the form.

>> Michael Flaherman: Okay I just want to make sure that that's clear, that according to the examining physician he saw them as preclusionary as well.

>> So Dr. Das you're saying from your interpretation, experience they're prophylactic but that the surgeon was saying they were preclusionary, is that what you're saying in d.

>> Dr. Das: There are ooms five pound restriction because of lifting is that because she is unable to lift five pounds and unable based on a neurologic deficit or a structural deficit? It doesn't strike me that that's the case because the imaging study there's no neurologic deficit that would support that. So then the issue is in terms of, you know, can you not bend stoop or lift or push or pull because of the instrumentation, can you not sit on a

prolonged basis as we are now because of the instrumentation? And that's why I tried to relate what the objective information is, back to the restriction. And that's why there is a difference of opinion between myself and the treating physician. Because if you referred to an imaging study that was post operative that showed spinal chord expression or a nerve root compression that resulted in a weakness which resulted in hers tripping while trying to apprehend a suspect some I would absolutely agree, that is incontrovertible. That's why we have the hearing and the reports to look at. .

>> Conrad Taylor: Sean.

>> Sean Kaldor: So just -- I'll be supporting the motion on the grounds that even whether instrumentation is or is not, that her treating doctor was giving even more restrictive requirements, they're giving less restrictive but even though less restrictive ones, the police department are saying they aren't able to accommodate those either. And I do make all the ties between work cause which resulted in disability and that disability cannot be accommodated so I would be supporting the motion.

>> Is that a second --

>> Mollie Dent: There was a second already.

>> Russell Richeda: No there wasn't.

>> Mollie Dent: Oh I'm sorry.

>> Sean Kaldor: I'll second the motion.

>> Conrad Taylor: Any more discussion? We have a motion on the floor and a second, to approve the disability. All those in favor? Aye. All those opposed?

>> Nay.

>> Conrad Taylor: The motion passes. Robin, good luck. I know you wanted to come back but your injury precluded you so good luck. 1.4 A would be a change in status. Steven D. Barnes, police department, request of a change of status, from a service retirement to a service connected disability, effective January 24th, 2009, 25.96 years of service and this was deferred from April 7, 2011. Mr. Barnes is present with his attorney, Mr. Jeffers. Donna, could you read the report please into the record.

>> Donna Busse: 25.96 years of service medical reports are in your packet. His work restriction is that he should avoid crouching or crossing his right leg. He is service off on disability and there's no permanent modified duty available.

>> Conrad Taylor: Thank you, Donna. Mr. Jeffers.

>> Thank you. Steve Barnes was a dedicated, hardworking police officer. He got along with everyone, he had a long career. Most of his career was in specialized units. His last ten years were as a motorcycle officer and sergeant. He had multiple injuries over his career, he did the best he could to stay in physical shape. His career was cut short, though, on September 22, 2008, when he fell from his motorcycle, injuring his back and his right hip. His right hip has been bothering him for some time before that, for a few months. But until he fell off the motorcycle in September 22, 2008, he'd never seen a doctor for his hip. Following that fall, eventually, Steve was able to get his hip replaced and has had a hip replacement and that surgery was completed performed by Dr. Della Magiore. Throughout his career Steve had had five corrective surgeries, seven epidural injections, over 20 cortisone injections all to allow him to keep working. The -- I would ask that the board consider all the medical reports in the file, particularly the reports from Dr. Lucy Lynn who was his treating physician for many years for his back and right shoulder. Particularly, pages 13 and 15 of your package, also consider the report on page 17 from Dr. Della Magiore, the physician for the hip and the person who knows this position best. Last month we were here and I asked the matter be continued because I didn't think the record was complete. There were some medical reports that have been submitted and in use by Dr. Das. In particular I thought the package that was

presented to the board in April was incomplete as to the issue on causation. And with the new medical records and I would request that the board pay particularly attention to Dr. Lynn's report of April 14, 2010, which is designated 11M.

>> Do you have a page number?

>> It's called 11M. 11M on page 2, on the section entitled causation, establishes the connection between the September 22, 2008, motorcycle crash and the need for the hip surgery. Mr. Barnes, as a credit to himself, maybe what's most remarkable about this case is he was able to last as long in his career as he did. Mr. Barnes, supervisor for the last three years was captain Jeff Smith. I've asked captain Smith to be here to testify today about his work ethic and his ability to do the job as he saw it when he was his supervisor .

>> I was Steve's supervisor for approximately three years before he retired. And without a doubt he was an extremely hardworking dedicated supervisor, but was always dealing with what seemed to me constant pain. And the last year, specifically, the summer of 2008, I started noticing that he was limping quite a bit, seemed to be in constant pain. I was pretty sensitive to it because I was pending a multilevel spine fusion myself and I was concerned that he may be having some of the same issues. I was concerned about him continuing to ride and continuing to work. But despite my constant prompting to go see a doctor or to possibly stay in the office, and do a modified assignment, you know, Steve wanted to continue to be out riding. And towards the end it seemed like he was having difficulty even getting on the bike, putting his right leg over the bike. I was concerned because he was exhibiting a lot of weakness in his right leg. And but ig to be blunt, despite all that he continued to work full duty and up -- literally up until the time he basically was broken and couldn't do it any longer.

>> Thank you. Since that fall on the motorcycle on September 22, 2008, Steve hasn't worked in any capacity. He retired in January 2009, and he's here today and would like to make a few comments about why he retired when he did.

>> Thank you for your comments, captain.

>> This is an motion time for Steve. He is a guy who is probably borch to be a policeman. He did everything he could to unable to do it any further. We would request that his application for disability retirement be granted.

>> Conrad Taylor: Thank you, Mr. Jeffers. Dr. Das do you have anything to add?

>> Dr. Das: No, I don't.

>> Conrad Taylor: Okay. Any discussion before we --

>> I have a question. Was there any reports filed for the September 2008 fall?

>> It is in your package, just an accident report.

>> Okay.

>> He was treating with Dr. Lynn at that time, and afterwards, he was referred to Dr. Dellamagiore.

>> For me, the big question is the motorcycle accident versus the doctor's comments about severe osteo-hip arthritis. The osteoarthritis, is that generally a hereditary problem or caused through the job function? Maybe?

>> Conrad Taylor: Is that directed to Dr. Das?

>> Yes.

>> Conrad Taylor: Dr. Das.

>> Dr. Das: As far as specifically related to riding a motorcycle?

>> I guess my question would be, if Steve had osteoarthritis in his hip, would he be having this pain regardless of the job function, whatever he was doing in life, would he have this limp in walking?

>> Dr. Das: Yes, I believe as to the osteoarthritis if you have that you would, absent any type exposure, yes you would have severe pain. The issue is whether there's contribution from the work activities to the hip arthritis.

>> Could you speak to that part of it? That's where I'm struggling with this part of the case. Is this osteoarthritis or connected to the job specifically?

>> Dr. Das: I tried to do a quick search to see if there was any relationship between motorcycle riding and hip osteoarthritis. I have to admit I didn't do huge literature search, I just googled to see if there was anything obvious I could see. One of the nice controls is to look at it and see in terms of what the difference in exposure is to hip compressive forces if there is difference between the two then that might explain why there's arthritis on one side versus the other side or purely -- if it's purely from operating, riding a motorcycle, then you'd expect there to be more symmetrical degeneration. If there's an accident and it's post-traumatic, you know if there was a fracture or something like that and then you have post-traumatic degenerative arthritis, that is certainly very plausible.

>> Would this injury be an injury you would consider a hip replacement for to try to continue a career or is that even relevant?

>> Dr. Das: I personally prefer individuals with hip replacement did not pursue a career of police officers or firefighters in general. It can be done but I'd prefer not to.

>> That's helpful, thanks.

>> Conrad Taylor: Mr. Jeffers.

>> I just wanted to address the work contribution issue.

>> Conrad Taylor: Would you move the mic over.

>> As a police officer, Steve was trained to mount his bike from the right side, the high side. He exits and departs from his -- and mounts his motorcycle at least a dozen times a day. He's been doing that for ten years. This is not the first crash he had on a motorcycle. There's just too many of them to count. And I think all of those may have led to his disease process. Steve would like to be able to -- I think he's a little better composed now and would like to say a few words about why he stopped working when he did.

>> Yes, I apologize for the emotion. But I'm really surprised that I'm even here right now. I fully expected to fulfill my 30-year commitment as a police officer, as opposed to having to leave early. It's the only job I've ever done and the only job I ever wanted to do. I always kept myself in physical shape, because of the job, that it was demanding physically and I've worked units that were more physically demanding than most. And there was risk of injury. And yes, I was injured numerous times. Struck by a car, directing traffic, going through windshield of the motorcycle into another car, crashing into a wall. Along with my falls in the training unit because I was in charge of our motorcycle training unit and was out on the tarmac, and I invite anybody to go over to -- and take a look at what these motorcycle officers do and how many sometimes they hit the ground while they're out there during the training exercises. And I'd be surprised that they still get up. But we do get up. And I personally -- it's hard for me to say I can't do something. And to say I can't be a cop anymore, was really hard. Really hard. Like I said, especially in that, I always try to make sure that physically I could handle just about any situation. And always wanted to be in those type of situation where it was necessary to take care of things physically. So I know my supervisor, Captain Smith, mentioned that I was in pain. Yes, I was. I usually take anywhere between 1800 and 2,000 milligrams a day for Motrin, which is not great for the stomach, not great for the liver but it's the only thing that really works halfway decent. The other treatment that I have had, e-was just enough to keep me going because I'm telling you, you know, the more times you go down on the ground, it really is hard to get back up. Really is. Thank you.

>> Conrad Taylor: Thank you, Steve.

>> Richard Santos: Mr. Chair, my motion is to change that service retirement to a service connected disability. Based on 93, lower and shoulder back injuries over a motorcycle accident. Then I see like five surgeries later and seven epidurals. Many of us know what that is, I hear here you continue with those epidurals because you want to get better but you don't. Then because of all those surgeries and so on you aren't born with it one day and keep working. It is clear reading this stuff that it didn't happen overnight. He kept working. I appreciate the effort.

>> Conrad Taylor: .

>> Mollie if you could define what happens with service connected disabilities? I mean obviously as far as I'm concerned --

>> Mollie Dent: So what actually happens with these, if you look at the application, I believe he filed for the disability retirement at the same time he filed for the service retirement. So to call them a change in status, it is because he wanted to retire. He is service retired now but his application for disability was simultaneous with his service retirement application so there's not a different standard for you to use on this than on a regular disability. You use the regular service connected disability for this is that the question?

>> Russell Richeda: even though there might be several years elapsed between that date and today.

>> Mollie Dent: Right, the question was whether he was disabled at the time he left service.

>> Conrad Taylor: Mike.

>> Michael Flaherman: I really appreciate that clarification. I didn't understand that you applied for service connected disability retirement at the same time you applied for service retirement. It would be good to the fact

that I could have picked up more, you know, my friends down at the station told me that I was a fool for not having put in a disability retirement application, and then somehow I am. That's -- so that's very helpful. I'd actually be interested in a custom of pieces of information. Why has it dragged on for so long, in your opinion? And then I'd also just be as a matter of education, interested in understanding leaving aside the tax considerations, what does it mean in terms of the gross benefit in dollars for this to be a disability retirement benefit versus a service retirement benefit?

>> Is this for me?

>> Michael Flaherman: Yes.

>> The first question was why did it take so long. This injury occurred almost two years ago and here we are just now hearing it. The surgery and disability benefits, while he was unable to work, were all paid for by the city. There was a little delay, more than a little delay in terms of getting this surgery authorized. They tried all -- Dr. Lynn referred Steve to Dr. Della Maggiori sometime in early 2009. And it took -- after it appeared that surgery was the only viable option it took about five or six months to get that authorized. The surgery itself was performed in January 2010. He's not a candidate to come before your board until his condition becomes permanent and stationary and or until he reaches eligible to become here, and then I guess that's where he is, it just takes a little while. The second question was about what --

>> The value of the benefits.

>> The dollar amount that the city pays to a disabled firefighter, police officer is the same. The tax consequences as to him are different.

>> The point of that being that if anybody disagrees with this, the impact on the plan, is really unchanged. It's really, it's actually a burden borne by the IRS.

>> Mollie Dent: I think I'd like to ask staff, it looks -- because it depends on the age, at retirement.

>> Michael Flaherman: Right, I'm asking,.

>> Donna Busse: Change in status there's generally not a benefit increase. 1.3 section, it depends on years of service and age. There is a difference whether there would be the benefit now could be different. Generally for a change in status the amount of money is not different.

>> Michael Flaherman: He could qualify for service, that's why he has 25 years, 24 years.

>> Russell Richeda: I'd just like to add. I'm sure any board member is think of this but because there's any less care in deciding it you can't grant one that doesn't meet in your mind the qualifications merely because there's no financial impact, negative financial impact on the system. I'm sure that wasn't the implication. L.

>> Michael Flaherman: I didn't mean that.

>> Russell Richeda: I'm sure you weren't either. Mr. He Jeffers.

>> Mollie Dent: With regard to the specific application, it shouldn't be taken into account, but it was a reasonable question to ask and I think the question was asked in a general manner.

>> Conrad Taylor: Thank you Mollie. Sean.

>> Sean Kaldor: One question for maybe for Dr. Das or two questions for Dr. Das. We have a report from a physician on page 14 and 15 about the shoulder. Saying it's reached maximum medical improvement and there should be no right shoulder activity. Page 11J we have a different physician who I guess is not the treating physician but is an agreed medical exercise. Duties as ascribed to him which one of those is more accurate?

>> Dr. Das: Could you refer to the one on the shoulder?

>> Pages 14 and 15 are dated July 2010.

>> Dr. Das: The second report?

>> Sean Kaldor: Page 11J which comes after, keep going until you hit 11J, top of the page under rehabilitation, just the shoulder.

>> Dr. Das: I based it upon the physical findings for the most recent exam.

>> Mr. Barnes grace if all he had was a shoulder problem, he would be working today, he wouldn't be before you.

>> Sean Kaldor: So the shoulder wouldn't be the grounds.

>> Part of his overall disability packet.

>> Sean Kaldor: I understand, putting them in buckets. The second one regarding the hip, 11A, from his treating physician's progress report. And he says I do not think he is permanent and stationary yet. Is that because he is looking at major hip surgery as an alternative?

>> Dr. Das: I think that the request is for a CT guided cortisone injection and I think he thinks that there's a Solis muscle that is responsible for hip reflection that overlies the hip. And so with the procedure that he's had there's a possibility perhaps that the Iliosolis may be affected by that and the injerks would help with the residual symptoms that he he has. That's why least not MMI is because the injections may help.

>> Sean Kaldor: These things that wouldn't be significant because of the disability --

>> Dr. Das: For me it wouldn't because he has a replacement. That barn dorn is already open. So yeah, maybe his symptoms were -- it works both ways. I disregard the symptoms when it comes to that, as well. Even if he's feeling better, and 100%, and he's able to walk around on uneven surfaces and the whole nine yards I would still have the same restrictions because I am concerned about the hip replacement. So yeah, it works both ways as far as the symptoms go.

>> Sean Kaldor: Thank you. Those are the questions I needed to tie it together. So I would be supporting the motion for service connected disability.

>> Conrad Taylor: Vincent.

>> Vincent Sunzeri: I really appreciate your service to our community, as well as all the wear and tear on your body. The question I have, it looks like you're in terrific shape. Do you continue to exercise today, with the challenges that you have and since retirement have you continued to ride a motorcycle?

>> Yes, I do -- I do exercise, I have upper body, I try to do, I got little dumbbells that I have. Not like I used to be able to work out but small dumbbells, I do work out. And I am able to, because I can't run, I can't jog, and I can't walk very far, because the hip, well, doctor knows about why I can't stretch out, in a normal stride. But I am still allowed to work on the elliptical machine that I have because it's little short steps on there the machine so I do that. To try and keep -- because I worry about my heart, too, still. So I do try and stay in some shape.

>> Vincent Sunzeri: Do you own a motorcycle and continue to ride a motorcycle since you've retired as well?

>> Yes, I've had a motorcycle quite a long time. But as far as my riding amount of time is that I've been able to ride, I'm really disappointed because that is one of the joys that I had, what I was going to retire, that's being limited because I can only ride for a short period of time. So it's not -- it's not a lot of fun anymore.

>> Vincent Sunzeri: Thank you.

>> Conrad Taylor: Any further questions, Sean.

>> Sean Kaldor: You mentioned you can't really run now with the hip replacement?

>> No, I haven't been able to.

>> Sean Kaldor: Wouldn't that be a further work restriction, then, if he were to have to leave the motorcycle and apprehend the suspect, I don't know --

>> Dr. Das: Knies a lot of pain standard hip replacement precautions. So these are precautions that you would have for a hip replacement period. His is an individual situation. Where he's symptomatic post-operatively. And it may not be directly related to the pathology. It may be some post-operative. So that's different and I think that's maybe with some appropriate analgesic control either an injection or medication that might actually get better. So -- but the hip replacement's not going to change. That's uncertain duration.

>> Sean Kaldor: Okay, thank you.

>> Conrad Taylor: Sean.

>> Sean Bill: I have one further question. master plan medical improvement. Is that the case or has it reached maximum medical improvement?

>> Dr. Das: You know, his doctor said that he was maximally medically improved earlier and now he says he isn't. In workers compensation terms, in this particular case he's not as good as he is going to get because there's obviously, if there is -- if the source of his pain is identified and they treat it appropriately he should get better from a pain standpoint. But as far as his hip replacement, that's not changing. That's always going to be there. So I

think for our purposes, he is at MMI. The reductions that I've given him are at MMI restrictions, I respect Iver of the symptoms he's reporting the restrictions he is given are based on the hip replacement.

>> Conrad Taylor: Any further questions? We have a motion and second for approval, bring it to a vote. All those in favor of the disability? All those opposed? The motion passes. Steve good luck. I know you're always out there. Thank you. We're going to take a five-minute break, a restroom break. [Recess]

>> Conrad Taylor: We'll reconvene. [Gavel] if everybody on the board could take their seats again I'd like to reconvene the meeting. Appears everybody on the board is present. I'd like to reconvene. We'll continue with 1.4, change in status. 1.4B, Michael Hahn, police lieutenant, request for change in status from a service requirement to a service connected disability, effective jab 9, 2010, 27.89 years of Service. Just a reminder, if you are going to be speaking in the mic, that they are operational. Donna. If you could --

>> Donna Busse: Low back neck shoulders elbow and right knee he was 51 at the time of his service retirement, 27.89 years of service. Medical reports are listed in your packet. His work restriction is service retired effective 1-9-10, at the time of separation, at the time of application he was on permanent modified duty. There is no permanent modified duty available .

>> Conrad Taylor: Thank you Donna. Mr. Boyle.

>> Thank you, Mr. Chairman. On page 86 of your material there's a letter from lieutenant Bastillos dated 2009 stating that lieu 10th Hahn has not been on parole since February of 2007 when he took that retirement when he applied for his regular service retirement he also applied for service connected disability retirement at the same time. On page 81 through 94, there is a listing of his injuries. A March 25th, 1988 low-back injury, February 23rd, 1990 left-knees injury, a March 9th, 1996 left knee and right ankle injury, a September 1994 low back injury and a cumulative injury through October 11th, 2005, involving his neck and left arm. In terms of work relatedness, I refer you to page 54 of Dr. Carson's report. For the board members, Dr. Carson was an agreed medical evaluator in the workers compensation matter. That means someone who the City of San José's worker comp department or

their city attorney's office and my office agreed to, to evaluate. He's an orthopedic surgeon and he evaluated Mike Hahn for his orthopedic injuries. On page 54, in terms of causation, Dr. Carson says, with reference to all the diagnoses of the patient's present condition, I was police officer there is nothing unusual about the patient's nonindustrial activities. Dr. Carson continues that same conclusion on page 46, and page 16 in his two supplemental, subsequent agreed medical evaluations. On page 37, there is an MRI finding of his condition and on under impression it says degenerative condition, most severe at C five six and C six seven, disk protrusions at several levels, then he it says C two three, C three four, spinal canal, with moderate to severe right and severe left neuroforaminal narrowing, spiex canal with severe right and moderate to severe left foraminal narrowing. lists the further treatment necessary, including epidural injections, and on 19, Dr. Trennan gives the restrictions of no repetitive neck positions, no trem neck positions, no lifting or carrying or pulling or pushing greater than 50 pounds. And when she gives the reasons she talks about the difficulties that he is having as evidenced by that MRI scan that I referred to earlier. Dr. Das on pages 3 to 10, has analyzed and evaluated the case. And examined Lieutenant Hahn and suspects. On page 12 Lieutenant Bastillos says there is no position with those restrictions for Lieutenant Hahn. And I just wanted to offer Lieutenant Hahn an opportunity to speak briefly to the fact that he was working in his job at the time he took his regular retirement and applied for his service connected disability retirement.

>> Thank you for your time this morning. I got hired in 1982. From the time I was hired I think any officer in the room or anyone who knows me will say that I was very active officer, making a lot of arrests. Many, many letters of commendation in the file for many activities, above and beyond answering calls for service. In my last assignment, I was selected by the Chief of Police to be the commander of the sexual assault investigative unit. Sexual assault investigative unit handles the largest volume of calls in the bureau of investigations in terms of investigations and also in terms of the criticality of these investigations. Many of them involve city employees or officers many times. I equate or liken this unit to a vessel that needs a steady hand on the tiller. I do not modified duty positions for command officers at the San José PD. The positions that I've had have been successively more responsible, and I was selected for these positions because of my work ethic. Many in my unit who I did not think to bring today could have come to testify as others have had, or speak for them regarding my condition. And my level of physical comfort. The people that I worked with knew that I would be there no matter what. This I am

proud of. Perhaps it would have been a better strategy to use a lot of sick leave but that is not who I am. I just wanted the board to understand this as we go forward with the decision making process. I have great difficulty in moving my neck and lifting. My hands are numb. I have problems with my legs now. And I would just ask for your consideration in this matter.

>> Conrad Taylor: Thank you. Mr. Boyle.

>> Thank you. When lieutenant Hahn retired in January of 2010 he was still having difficulties. His last evaluation with Dr. Carson was in 2007 and when Dr. Carson evaluated him again on page 16, it was September 27th of 2010, and he indicated that his condition had deteriorated and worsened since his last evaluation. We needed that report before we could come here to present his disability. So on the basis of all the defendant and the evidence before you, I would respectfully request the board to grant Lieutenant Hahn's application to convert his regular service retirement to a service connected disability retirement.

>> Conrad Taylor: Thank you, Dr. Das.

>> Dr. Das: No additional comments.

>> Conrad Taylor: I have a couple of questions before we open it up. Is there any -- I'm reading the summary here. Do we have specific dates when these injuries occurred? I'm going through it for the shoulder there was no specific injury, numerous and then if we're going for -- we have numerous injuries over the course of the year. Do we have an injury that we could tie these -- do we have a date that we could tie these injuries or do we have a career, numerous times altercations?

>> Well there are on page 81 is the March 25th, 1988 is the low back injury. On page february 23rd, 1990 left knee injury. On page 91 and 92 is the March 9th, 1996 injury, on page 89 and 90 is the September 30th, 2004 low back injury. And then there's the cumulative injury on 87 and 88. That involves the neck, the hand and the arm and it is his cervical spine that is taking him out of duty.

>> Conrad Taylor: And then I guess it would be on page 1, maybe you've already talked about this, it says status at the time of application was full duty.

>> Yes.

>> Conrad Taylor: Elaborate on that, full duty. What's changed dramatically from being able to work when you were here to now? Because you were full duty.

>> I understand. Full duty in the job that I had involved managing the cases of the individuals that worked for me. There were nearly 45 people in that unit unit. Full duty in that job involved planning, budgeting, a lot of writing. And whenever my people were in the field which was frequently because we ran the Internet crimes against children task force, I believe it was necessary to be present. Unlike some other individuals I attended operations with my people. That means if something happened I would be there to assist, I'd be there to observe and I'd be there to be a command presence at any operation where somebody could be exposed to risk. search warrants then my ride gear went on and I went on with personnel until the scene is secure. I hope that answers your question.

>> Conrad Taylor: Yes, thanks. Dick.

>> Richard Santos: I'm going to go ahead and make a motion to change the service to service connected disability. As the lieutenant said he didn't want to use the sick leave and so on, he didn't want to abuse that. I understand that. I see where he has epidurals and so on. Dates, I was surprised it looks like he kept on working. It says here left knee requiring anterior cruciate ligament you kept working all those years could you elaborate on that a little bit?

>> Yes, sir in 1996 my team responded to an alarm at an elementary school. The school had previously been burglarized during our shift. We took that one personally because they stole the new computers out of the

school. In the date in question we responded to a silent alarm indicating there was entry and motion within the school. I was the first one on the scene. I positioned myself in an area where I could look at the most likely exits that they used on the last occurrence of the burglary. When I saw the door open and an individual look out and go back inside the building I jumped the fence. Superman didn't know that he wasn't 25 anymore. And about halfway down I realized that I was going to land wrong. The knee popped out of the school came the children, parents and janitors, they were wiring the school for net day. And they asked if they could take my picture for inclusion in their school paper. I was righting on the ground the recovery time was extensive and now I have some arthritis in there, sir.

>> Richard Santos: Thank you. That will be my motion.

>> Conrad Taylor: Thank you. Any other questions? Go ahead, Vincent.

>> Vincent Sunzeri: I notice here, for the service-connected disability retirement, they're referring to you avoiding frequent chasing and apprehending suspects. It seems like you've been quite successful in the department and moved into a leadership role and I wonder how frequent you're chasing suspects.

>> There's Murphy's law and there's Hahn's law, sir. If something can happen around me, it does. Unfortunately when I've been in the field going to lunch, many times I've made arrests, because unfortunately I cannot put blinders on myself. I wish I could. My people will tell you that I frequently made arrests, some related to sex crimes, some not and I was known for this and I kept a stop equipped car until the end of my career because there are officers needing assistance on calls wherever you drive when you listen to the radio as an officer should whether in uniform or plain clothes. There is no such thing as an average day, sir, I mean that sincerely.

>> If I could speak to that just for moment, too. Lieutenant Bastillos says there's no modified positions for command staff. That means Lieutenant Hahn has to modify through and positions but he must be able to do full duty patrol as well.

>> If I'm not correct, it's not saying he can't do patrol at all even if he were to do that. It's a question of consistently serving on patrol and having to frequently apprehend suspects.

>> Right. And I tried to understand that restriction from Dr. Das because what does that mean? Okay, I've chased three suspects today, here's the fourth one, that would be frequent. So I better not go after that guy. It just didn't make any sense. It seems to be a preclusion from apprehending suspects.

>> Conrad Taylor: Sean.

>> Sean Kaldor: So again with all these cases I just have to connect the dots from a work caused injury all the way through a disability, inability to perform the job. And I see the injury you had in your service to the department to the city. And I've seen the treatment taking place for those. Where I'm struggling with this is the final step, the disability. And I don't doubt that you have symptoms and pain, and the suffering from your service. It comes down to can you still do the job? And you know as I look at the reports I see you were doing the job, in was it -- in January, or in December, we'll call it and retired in January of 2010. And the doctor's report saying that you said you had -- what they report you stated were your symptoms were about the same as they have been for a long time, you've had good responses to the treatments as of January 12th, 2010, you had good response to the last treatment, and each one of these things in November 2009 you were on regular duty, coming back every four weeks for evaluations, specific body parts you had applied for for example, the left knee, there's no listed restrictions for the left knee, based on all the reports they submitted, for the right knee nothing, for the lower back, to reach maximum improvement no restrictions, left elbow no restriction is I'm trying to in December, you were talking to doctors and they were saying, you're getting appropriate treatment, that you were fully functional and then in January, you were unable to do the job.

>> As I said in my initial statement I felt it was important to continue to go to work. The reality is I'm deteriorating quite rapidly at this time, I don't know why. It's been getting worse. The injections are not working like they should. They're talking about fusing my spine now at the neck. I'm doing my best. I don't know how else to anxious that.

>> Sean Kaldor: Okay.

>> Conrad Taylor: Any further questions? I had a motion. Do I have a second? I have a motion for approval and I have a second. All those in favor of the disability retirement? All those opposed? Motion does not pass.

>> Mollie Dent: I will apply and the applicant's attorney will be able to take a look at that as well as Mr. Richeda of course.

>> What was the vote?

>> Russell Crosby: Two in favor the other against.

>> Mollie Dent: Two-six.

>> I'd like to thank the board for their time this morning.

>> Thank you for your service.

>> Conrad Taylor: Continuing on, 1.4C, Victor M. Tapia, Mr. Tapia is present with his attorney Mr. Swift, Donna, report.

>> Donna Busse: Based on neck, mid and low back and left shoulder. He's currently 60 and a half years old, 57 at the time of his retirement, with 33.54 years of service. Medical reports are listed in your packet. His work restrictions are that he should avoid frequent bending and stooping. He should avoid carrying very heavy items. He's currently service retired effective 12-1-07. At the time of separation at the time of application he was on full duty no permanent modified duty available.

>> Conrad Taylor: Thank you Donna. Mr. Swift.

>> Let me correct one glaring error. He never returned to work after the explosion in December of 2006. He was not on full duty. Had not been on full duty for quite some time. I have no idea where that came from. The medical reports make it clear that he never returned to work after the explosion. Having said that --

>> Donna Busse: I don't know if there is a memo from the department. It is a memo from Linda Chavaros, dated page 58.

>> Page which please?

>> Donna Busse: 58.

>> Conrad Taylor: Well, you could say 2006, he did not return for modified duty. So I would imagine -- because I had a question like that. Open page 1 it says full duty and page 6 says he's never returned. So I would imagine he's never returned.

>> Correct. In his 33 years of service, Mr. Tapia did have a number of injuries leading up to the last one in May of 1997, he injured his left shoulder, in October 2003, he injured his neck mid back and shoulder. In November of 2004, his low back, in October of 2005 his low back, in August of 2006, his left shoulder. But the coup de Gras was the gas explosion in October of 26. And I'd like Mr. Tapia to tell you what happened.

>> In December, December 2nd was my last shift of the fire department. We responded to a call, it was actually at 1:00, approximately 1:00 on the thirds of December. A typical house fire. We'd been to over my career, probably been to hundreds if not thousand or more of these typical house fires. Anyway, make a long story short, we'd been there, we responded there was a lot of fire, more fire than usually will fight over who gets the nozzle at these things but this time there was so much fire, there was no arguing about who got the nozzle, there was enough fire for everybody. We, my crew in just 30 took a line around back knocked the fire that was outside and we went

inside this residence and we knocked down a lot of fire, along with the other crew that was inside, through the front door. We were inside probably a good 25 minutes to a half hour knocking down fire. And at that time we had run out of air, and so we went outside and we took a break. And changed our air packs, our assemblers that we carry on our backs. After about a 15 minute break or so they told us to go back inside and do what we call hot spots which means the majority of the fire had been knocked down. And we're going to go in there and just check for hidden fires in the ceilings and the walls. Excuse me. And so our crew went back in, and we had been in there about ten minutes, working in the little hallway off the living room. And after about ten minutes, we got a vacate, that they're going to let the house cool off for about half an hour before the arson investigators do their initial investigation. So at that point, when I heard the vacate, I moved to separate myself from the crew and I moved to the pitching area and I figured well, we're going to come out. And then while I was waiting for my crew to come out that little hallway and join me so we could all go out together, I was standing there with my hand on the wall, and all of a sudden there was this, just this huge explosion. I kind of heard it, just microseconds probably before I felt it. And I was standing there, next thing you know I was propelled up in the air, like a rocket. And then next thing you know I was on the ground. I landed on my back on my air pack. And as soon as I was able to gather my senses, I realized what happened. And I realized I had to get out, and I tried to move. But all I could move was my head and my neck. And then I felt this tremendous pain in my back. And like anything I've ever felt in my life. And then I realized hey, I'm trapped. I got to get out. There's a fire ball coming here and I'm going to burn to death. And then I tried to get up again and all I could move was my head and my neck and I was trached. I realized I was pinned down. I started hollering for help and I didn't know whether the rest of my crew was dead or alive because they were -- like I said we were separated momentarily. And then, when I hollered for help I don't know, it took probably a matter of seconds, one of them showed up and they said Victor what's wrong, what hurts, and I said my back, my back's broken, I can't feel my legs. He said what can I do for you, I said get my backpack off, because I'm trapped, can't move. Make a long story short, they eventually got the rest of the crew in, to get me out. They said what's wrong? I said my back is broken, I can't feel my legs. Eventually they carried me out the front door across the street and they took me to VMC where I spent a few days. And months later I went into a deep depression and to this day I take pain medication for the -- four times a day. And medication for depression. And I suffer chronic pain all day long. Thank you.

>> Conrad Taylor: Thank you, Victor. Mr. Swift.

>> I don't want to thank Mr. Constant because he came and saw me at the hospital.

>> He never returned to work after that. And there are multiple comments in your file about work restrictions, regarding lifting, bending, stooping. He did suffer a compression fracture to his thoracic spine. For those of you who aren't familiar with firefighting, you have to realize this took place when he was wearing his turnouts, his bottle and his helmet, the combination of which is 50 or 60 pounds. All of which went up into the air, and then he landed on the bold which is in the middle of his back and did suffer a fracture of his thoracic spine. Without going into further detail, Dr. Das agrees that he should not do reflect bending stooping or very heavy lifting and the department has no modified duty for people with those restrictions. So I'd ask that his application be granted.

>> Conrad Taylor: Dick.

>> Richard Santos: Yes. My motion is to support the change from service to service-connected is based on the information we have in front of us. And mostly medical evidence. But it also says that above limitations would preclude fire engineer Tapia from performing his regular line duties at the time of his service retirement March 2008 as well as currently there are no modified positions in the fire department but also probably the most, not just that incident alone but surgical history, he got left rotator cuff repair, left knee, right knee, then had he a hernia repair, lot of stuff over 34 years. I looked look at Victor, for a lot of years, looks like he's lost a lot of weight but that's my motion.

>> Conrad Taylor: Need a second on the floor.

>> Second.

>> Conrad Taylor: I have a motion and second. Michael.

>> Michael Flaherman: The injury and your appearance before us --

>> You have to understand in general background terms, I'll talk about victor's case in a minute, but it is to the City's advantage for a person who it appears will not be able to go back to their normal duty to retire out on a service retirement, maybe even before they become permanent and stationary. Because then the city doesn't have to pay the full salary to that person and time and a half to the person who has to fill behind him on the line. So most, many Public Safety officers in this jurisdiction retire out on a service retirement with a disability retirement pending. The question is why has it been pending so long. Dr. Das appropriately says I can't determine anyone's permanent work restrictions until they become permanent and stationary. It has taken that long with the various body parts that are involved and the treatment for the doctors to get with regard to every body part to the points they could say he was permanent and stationary. Only then could he be examined by Dr. Das and be brought before the board.

>> Conrad Taylor: Yes.

>> The fractures have healed, appear to have healed, these are prophylactic work restrictions, I see these at least three or four times here. I agree, obviously this was a serious incident. From what the doctors tell me here from 2010, 2009, looks like, you know, you're healed and that these are prophylactic restrictions that have been issued.

>> Dr. Das.

>> Dr. Das: Yes I think in my report I actually address that. His treating physician given there are prophylactic restrictions, a lot of times it is difficult to distinguish between a preclusionary restriction and prophylactic. For me personally when I look at pathology, this is for a -- if there's sufficient pathology that states what the mechanism of injury, that prophylactic restriction is more reasonable. And in this particular situation, thoracic compression fractures can be quite painful. Mr. Tapia has another condition, the Shogrin syndrome. And my conjecture is that perhaps there is a predisposition to this due to treatment with prednisone, he does have diminished bone

density. He probably had a prior compression fracture which was not symptomatic. But he had a specific traumatic injury causing the compression fracture which can be quite painful. So even though it's stable theoretically it's not moving, it can still be quite painful and you can have residual pain for a long period of time. And this one is very appropriate and very reasonable because the mechanism of injury fits with the pathology, the symptoms fit with the pathology. So this is in my opinion fairly clear cut even though his treating physician called them prophylactic restrictions I think it would be unreasonable to expect him to do a lot of heavy lifting or those kinds of things with that particular injury because you don't see a lot of people coming back from that kind of a problem. Whereas I had mentioned earlier you see people coming back with the fusions or the instrumentation but in this type of case you don't see people coming back from that.

>> Conrad Taylor: Okay Dr. Das. We have a motion for approval and -- Sean.

>> Sean Kaldor: Couple of questions. The healing of his pack has it healed and erect, as a normal individual or has it healed with any kind of stoop or bend?

>> Dr. Das: He has a kyphosis, due to the compression fractures, yes.

>> Sean Kaldor: It has permanently bent his spine?

>> Dr. Das: Permanent is a strong word. Maybe surgically you can correct it but at this stage I'm not sure how beneficial that is.

>> Sean Kaldor: Is he someone who should put on a 50 pound air pack another 50 pounds of gear and walk up ten stories, five stories?

>> Dr. Das: I would prefer that they didn't.

>> Sean Kaldor: Okay.

>> Conrad Taylor: Thank you, Dr. Das.

>> Sean Kaldor: And one or two last things. The pain medication he's on Percocet and oxycodone, those are pretty powerful narcotics?

>> Dr. Das: There is a restriction I would add he shouldn't drive a city vehicle with those medications on board. it compromises.

>> Sean Kaldor: All right and then the last thing just to correct his testimony, there was a lot going on so I'm not sure he was as aware of everything around him but from what I've heard of people the entire building was lifted up and off of its structure off of its foundation and they actually had to take a chain saw and open up a hole in the wall to bring you out safely without bringing you through the structure that was falling down, just putting that. It's was a significant incident.

>> Fact not in evidence.

>> Sean Kaldor: This is a story we talk about around the station a lot. This is not a minor history of the department.

>> Conrad Taylor: All those in favors, all those opposed? Motion passes.

>> Richard Santos: To Councilmember Constant, thanks a lot for coming by and visiting one of our brothers in the hospital. It is not too much that we get that. We really appreciate that. Last time I saw we had a couple of guys in the burn unit, appreciate that. Victor known you a long period of time. Got a brother about 44 years in the fire service, got a niece presently that's got about 20-something years and a nephew so it's a great family who's done a lot of good for the San José fire department in this community. Thank you very much.

>> Conrad Taylor: Victor thank you very much for your service. Take care of yourself.

>> Mollie Dent: I hate to do this, I hate to interrupt but I need to ask you, when you ask the question of the procedure on item 1.4B, actually there does need to be a motion to deny on that and I've asked the applicant's attorney if we can go ahead and do that today rather than have to bring it back next week. Because there was a no on the motion to approve but there was no motion to deny. So the matter would still be considered pending unless there is an actual denial of the application. And so I'd like to ask Mr. Boyle if he agrees with us going ahead with this today rather than putting it over to next month.

>> I do agree.

>> Conrad Taylor: Is there a motion made for the denial of 1.4B on Michael Hahn on his motion for disability retirement.

>> I do make the motion.

>> Conrad Taylor: All in favor, opposed, motion passes.

>> Mollie Dent: Thank you.

>> Conrad Taylor: Moving forward, number 2, death notifications, there was nine thousand God, 3, new business, discussion and action regarding City Auditor's report on disability retirements dated April 12, 2011. Present is City Auditor, Sharon, hello.

>> Sharon Erickson: Good morning, my name is Sharon Erickson. For those who don't know me I'm San José City Auditor. The City Auditor let me briefly explain is an independence appointee of the city council charged with conducting performance audits of city operations and programs. We conduct our audits in accordance with government auditing standards and report the results of our reviews in public. For those whoosh in the private

sector that may be very different for you. The results of our audit are here before you today. Our conclusion was that San José's rate of disability retirements especially among the City's sworn personnel are much higher than in other cities. We called it unacceptably high. In a snapshot of retirement payroll we saw that two out of three firefighters and more than one out of three police officers are going out on a disability retirement. This compares to about 6% of Federated which explains why we focused on the sworn side of this equation. What this means is that a very high number of our sworn employees are retiring permanently disabled from performing the duties of their city jobs. When we saw these numbers, the first question we asked ourselves was whether San José was an especially unsafe place to work. But our audit did not uncover evidence that San José is more unsafe than other jurisdictions. The question has been raised whether, about whether the workload is too high in San José, and whether that's leading to a high number of workplace injuries. In 2007 the city's risk manager studied this issue and found that our sworn employees do not have a higher workload than in other cities. We concluded, in reviewing the other factors, that a key factor driving San José's high rate of disability retirements are the economic incentives associated with retiring on a disability retirement. Disability retirements for both sworn and nonsworn employees are partially exempt from federal and state taxes. During the audit, we learned that many of our sworn employees who took a disability retirement were also eligible to retire on a regular service retirement, but instead opted for a disability retirement. We feel the economic incentives have something to do with this. Further more in a previous audit in 2009 of the City's workers compensation program we learned that in the years leading up to their retirement, employees were filing multiple workers compensation claims, possibly leading to the retirement but possibly also to increase their chances for a disability retirement. While as a city there's not much that we can do to change federal or state tax law there are changes that the city can make that we believe will moderate the high rate of disability retirements. We recommend the city reconfigure the City's process for reviewing disability retirement applications to move the process to a disability committee made up of a panel of experts with medical expertise, and/or experience in workplace injury, and that the employer as well as the applicant be represented by an attorney at those proceedings. Another change that we recommend is for the city to tighten up on its eligibility requirements for a disability retirement. During our audit we found that retiring employees had often worked right up until the day they retired, either in their own job or in a modified duty job. This raises the obvious question of how these employees could be considered eligible for a disability retirement, when they're still working at the jobs, when they retired from the city. So we recommended to the city council that they consider taking steps to amend

the city charter and the municipal code, to clarify that the purpose of a disability retirement is to provide a stable source of income for employees who are incapable of engaging in any gainful employment, but are not yet eligible to retire, and to consider limiting disability retirement benefits to those employees who are incapable of engaging in gainful employment. Otherwise the decision will continue to be made as the charter now reads, that it is based on whether or not an employee is incapable of performing duties and functions in the same classification. We also recommended that the city council take steps to amend the Muni code to require employees to declare their intention to file for a disability retirement at the same time as they file for a service retirement. This is actually required under the city charter and would help address what we called in the report the empty exercise of trying to find suitable employment for an employee who's already retired but now requesting a retroactive change in status. Finally because many of our disabled retirees are being paid by the city for their workers compensation injuries at the same time as they're receiving a disability retirement we're recommending that the city council take steps to amend the Municipal Code to provide a disability employment offset for payments that replicates the offset that's currently in place for nonsworn employees. There's also an open issue for the city regarding sick leave overpayments that needs to be addressed. Although this audit focused on the City's disability retirement program we would be remiss not to stress the importance of ongoing efforts to address employee safety, health and wellness. And this is why the very first recommendation in our report is in full support of the fire department's pilot wellness program. And that's also why, in collaboration with fire department and San José firefighters I will be proposing in next year's audit work plan to include a review of fire department injury patterns and the timeliness of treatment for workplace injuries. Our report includes a total of six recommendations, they're listed in full on page 33 of our report. We're here to brief you on the contents of the report and to hear your thoughts and comments and answer any questions you have about our work. It isn't necessary that the board respond to the audit report. But it would be entirely appropriate for the board to either respond orally or to provide a written response to the audit, or to direct retirement staff to prepare such a response. I want to let you know that we presented the audit report to the Federated board on April 21st, and on that date also to the city council's Public Safety, Finance and Strategic Support committee. The city council heard this report yesterday, day before yesterday. On the 3rd. Seems so short a time ago. The city council did accept our report and our recommendations on an 8-3 vote with direction to the administration to research and conduct outreach on proposed charter changes to clarify the purpose of disability retirement. They also directed staff to return to the city council on June 10th with those -- the

results of that study. In addition the city council also directed the administration to look into the feasibility of establishing an independent disability committee that would be independent of the boards. Again, for the new members, we follow up on open audit recommendations every six months, every six months. So we will be following up on the open audit recommendations to the city council. Our next follow-up would be a status report as of June 30th of 2011. And I'd be happy to come back to you after that date to respond to you with whatever progress had been made up until then. With that, I really want to thank retirement staff, including the board's medical director and the city administration for their time and cooperation during the audit process and helping us to understand what you very well know, it's a very difficult and complex subject. The city administration's response to the audit was included in the back of the report on yellow pages. I'm happy to answer any questions that you may have.

>> Conrad Taylor: Sharon, thank you for the report. The board recognizes the report. As you can see and trust flairm brought the point up earlier that comparing public safety to Federated, as you just heard the case right now is somewhat unjust when you have individuals that their work environment is not stable. It is a -- it's always changing on the fire side and on the police side. So that was one of the issues that I that was with the report that I had. Also with the other reports I know you compared the different agencies that were out there. I know, talking with some of them and I know it's a comparison and we can never compare one city to another city, that has to be difficult, I know some of the cities have some of the drop programs if they go out on a disability they will lose the benefits of their drop program. And I know that was brought with some Fresno and Los Angeles has a drop program. I don't know if they have one but that wasn't in the report either. Dick.

>> Richard Santos: Yes, I would recommend, there's a lot of information here, of course, we need a couple much remarks and I'm sure the people want to talk. I disagree with a lot of things and some that I agree with. Some people think that disabilities here today when you read this in the paper and all that's going on, it was done the same thing years ago back in '98 and we were interviewed and so on. And at the time I said well, how many reporters died in the line of duty, they of course say we don't know. There's 110 firefighters and X amount of police officers dying each year. They said Santos doesn't carry about statistics. Statistics can be manipulated. The wellness things has really not changed so there's many, many issues I could bring to the table

and hope we can have a discussion. The best way, I don't preclude discussion, but the person has a job to do. A wellness committee whatever it takes to explore this so everybody can understand the experiences of police officers and firefighters, if that doesn't conclusion but let's have a good discussion. Not going to take one day. Everybody have a chance to read this and you may have conclusion. I hope not. There's a lot more to this. As you just said Mr. Chair, comparing Federated, we're not librarians in an hour we had 24 calls. Nobody really cares, half the guys I worked with are dead today. Police officers and firefighters don't live more than 15 years after they retire. I don't see people flag raising 11 years ago, half are gone today! Because of the hazardous chemicals and all the things we had to go through. But the wellness programs so on, the city did not reinvest. Couple hundred you pounds more than they should, there should be way of processes going on. Again I really believe if we have a committee we could sit down and share this experience with a youngs person like Damon and Vincent and come back with some sort of suggestion and come back. This is my suggestion.

>> Conrad Taylor: Vincent.

>> Vincent Sunzeri: I'll provide some suggestions I had an opportunity to dig through this, I'm not sure all of you did as well. Page 10 of the report which is exhibit 4, it looks fairly consistent that many of the other cities, San Francisco, Oakland, Fresno, have a fairly consistent level of payouts in terms of the percentage of total retirement payments. It's glaringly obvious that San José is off the charts. That cannot be denied. That's not comparing Police and Fire to Federated. That's looking at other cities overall. If you go to page 12, and 13, and you look at the last paragraph on page 12, 25% of department firefighters have not met the minimum standards, and there's no corrective action. Now, in my profession, if I'm not meeting the requirements I have for my industry I'm terminated. I'm kind of shocked by that frankly. And that could be easily one of the reasons why we have a higher preponderance of disability claimants pain the fitness levels are not where they should be. I'm not here to debate whether it's a dangerous job to have. I appreciate the efforts of our firefighters and police officers in keeping our city safe but there is also abuse and in my mind, this points out the fact that there are abuse. What I also found interesting though, on page 13, was how Gilroy chose to handle that. In the fact that they didn't reach a particular fit score, that if they got there, they received incentive bonuses. Frankly, my recommendation would be to penalize them if they didn't get there. Not to motivate somebody to get extra income for something that they

should be required to do. I'm somewhat started by that. So I agree, that we do need to address this. As I had pointed out earlier, talking about this will be important as a subcommittee. But this process handled by this board alone is flawed. The fact that we don't have medical expertise representing us at all on this board can allow us to make decisions even though we are listening to what Dr. Das is saying, that can then reach the incorrect conclusions. And that really concerns me. Those are the thoughts that I wanted to share. And I appreciate the work that you put into this.

>> Conrad Taylor: Damon.

>> Damon Krytzer: To that point as well, there is only so much we as a board can address as well, that is a matter of process. It's about if process and do we sit here and struggle over cases for three hours, then maybe there's an alternative, there is an alternative to because what we can't address are things we brought up which are some of the incentives as well. And if we're not changing the incentives what I'm really hesitant to do is to create a culture where a policeman and firearm are good at their job and are better off taking and going out on for the sake of going out on disability as opposed to trying to work up to the last day and sitting in here and having us have to say well okay, I know you were hunched over and limping but you did go to work every day. That's hard to justify for sure. So, you know, I don't necessarily know what action we have regarding addressing some of the incentives, or what kind of -- you know, what our actionable item is on that.

>> Conrad Taylor: Okay.

>> Just a couple more questions here as well. We saw a situation for firefighter Victor Tapia, where clearly he had a situation that occurred that took place, those are situations that you have to address, it's easy making a decision on that. However, to Damon's point, there could also be a culture that takes place. I actually have family members not in the City of San José but outside of the City of San José that are safety officers, firefighters, and that have gone through a disability process, as well. And there is a culture in some regimes if you will where it's not acceptable to deal with your problems along the way. The challenges you have. In fact, it's more accepted to just kind of grind through it. And we did see that with one of the police officers here, who continued to get on that

motorcycle day after day. And maybe felt pain that he just kind of worked through. And going through and looking at the culture and the structure, some of those things are beyond us. They're actually more inherent in the fire department as well. And I'm not sure if that is something that can be addressed and how that is different in the City of San José versus other cities.

>> Conrad Taylor: Pete. You raised your hand.

>> Pete Constant: Thanks Conrad. I just wanted to say a couple of things that I said at the council meeting just so everyone's informed. Because there's been a lot of discussion as Sharon said, I've sat through this presentation, this is my fourth time, because of all the different committees and I happen to be associated with all of them. But I think that what should be clear is what the council did do and that was accept the report. But it was very clear direction to have the City Attorney, the City Auditor and the City Manager, go do more research on the definition of disabilities, in many different plans and compare them and come up with stakeholder meetings to really look at the definition. Because there are two separate things. There is the process that the boards take to administer the funds and there's the bigger container that's the charter, the municipal code which is the box you have to work your process within. And we've made sure that we recognize that those aren't two separate processes and they need to be looked at. But one of the things that struck me significantly and I'm sure many of you have experienced that already, in your service on the board, is the dysfunction in the workmen's compensation system in the city. We heard it very clearly today, on one person that took, I wrote a note somewhere but I couldn't find it, six months to get the surgery approved. And there are stories that I've heard from a number of employees directly. I think many of you know I had a personal experience going through the process myself, where people have injuries that, had they been diagnosed, treated, and the city invested in their treatment early-on, they would not have limiting injuries. We see that you could have sports, professional sports athletes who can get serious injuries, they're treated and operated on within 48 hours, they're intensive rehab, back 100%, 110%, they are back stronger many people run out of there 48, 50 times just waiting to get their treatment. And that is something that the city is becoming increasingly more aware of. I know I've been pushing very strongly on that because we recently had an audit of the workmen's compensation system as well, I think I may have mentioned to you I was very upset because throughout the whole discussion the administration never

once talked about treatment of the patient. I think that's where the failures end up and the situation ends up here and the burden of the retirement pavement falls on the retirement fund and the burden of being permanently disabled falls on the individual employee because we don't address it on the front end. I think that's a serious issue that we have. I think we also have issues with how we accommodate employees, and accommodate their injuries. It's interesting when we see someone, we saw that today, at a period of time their injuries are accommodated fully, and then after a period of time their injuries are no longer accommodated. There was issue made by somebody about whether the accommodation was due to the budget process or not. I will tell you that there are changes in the budget process that are going to be forcing more people to come before the boards. This is not just one issue. I tell you this because we are aware that there are many things intertwined in the system and this is one piece that we can neither ignore nor put all the blame on, this one piece but we need to address it comprehensively. And I think there is a commitment by the council and the administration to take that approach and just to let you know I'm being very vocal on that and I'll try to keep you informed as we go through in my role as the go-between, whatever we end up calling me as the go-between, between the council and the board to keep you informed and keep them informed on your feelings on it.

>> Conrad Taylor: Thanks. One of the things that I said when we first started I think the board wants to be involved in that process. We don't want to be left out in the process. We have valuable input like we showed today, you can look at people that come back for their retirement but you hear their cases that it was just the time lag that takes to get individuals back to service. There is a lag out there.

>> Pete Constant: That's what I wanted to point out the direction from the council was to have not only those through council points to work on but to reach out to all the involved parties and not get just have one party make the decision.

>> Conrad Taylor: Thank you. I'll get Dick, Sean and Mr. Swift.

>> Richard Santos: As I said every time I hear a certain comment I get defensive real quick because I know the person had the experience. I really appreciate Councilmember Constant's remark because I agree. Most of you

don't understand because right before 1968 when I came on this is nothing new. At that time it was called dead wood and the fire department threw out something like 41 people. We had a very disciplined dictatorship fire chief. If you did nothing wrong after you were gone. It was an all-out war. People were scared to death, I remember having injuries, many of the older guys know what I'm talking about. You wouldn't say a word, he would put your papers in the retirement system, out you went. I was really sat as Councilmember Constant said, later on when had your injuries you weren't getting the best of care. So as chiefs go and come, we still had the issues and we always try to negotiate and so on. When I hear some comments, that's what I'm saying, make some comments, but let's get a committee going. It's not that we want to address it, we were appointed to remit this plan. And -- represent this plan and we need to take each one of these recommendations, some may be good and ooms go through these because there are some that are just misleading. This young man next to me made a remark about Gilroy, doesn't know the whole issue. So I had an opportunity to say something so of course when it comes to finances, I'll lin. We're not financial experts either but many of us in the fire department have medical training. Are we doctors, absolutely not. We can follow these things pretty close, we see them day in day out. There's so much in there, when the person doesn't respond, thank you very much, they are not in the fire department, not apprehending these criminals, they are not. The councilman made a good point, you've got to change those things, you don't even know you bring on people with spinalothesis and all those things what I don't want to take an hour over this stuff I've lived it and I've been gone 11 years and it's not changed but there are ways of changing together get a committee where we can make some great recommendations, we have people that were on the PERS system here, you don't really know the other sides of it you just read somebody's report who is not a uniform person. They do not know what it really is. It's some statistics somebody gave you. So when you live and breathe it and then you share the information and you have facts, you can't compare Gilroy and San José fire. I got one station that has more calls than them the entire year. So it's a different ballgame. I don't want to put any librarian down or anybody else. Call a politician the next time you get a fire or you got somebody raping or killing you. You're not going to do that.

>> Conrad Taylor: Thank you.

>> Richard Santos: I'm sensitive at the same time we need to sit down and address collectively all of these issues and hope we'll come down to some good issues.

>> Conrad Taylor: I think we all agree, we need a subcommittee.

>> Richard Santos: Thank you for listening.

>> Conrad Taylor: Sean.

>> Sean Kaldor: There's been comments made and I want to address them. Councilmember Constant's comments about workers comp. I greatly appreciate that. I stopped counting at eight, doctors have said, you have been approved, one doctor said, I am going to declare you permanently disabled, I haven't gotten authorization for this treatment. I'm not saying workers comp is the entire problem, it's not a system that I'm tremendously involved in but it's something that's affecting us. You also made the comment with modified duty. If those positions are changed it's going to accepted a flurry of people just towards this retirement plan. It pushes the issues around but the issues are still very much there. Couple of comments before the -- couple of questions before I get to your recommendations. Brought up exhibit number 4, showing that San José's disability retirement payment percentages versus other systems, I think the comment was made, we are wholly out of line. One of the ones that were included in there, I'm pulling up an older report. One of the ones that was in there was Los Angeles. Did you review the towers Paren report and their comments about Los Angeles ?

>> Sharon Erickson: Yes, but if I could because we've gotten a number of questions about Exhibit 4, we did go back and look at the source of that data. For exhibit 4. And if I could just take a moment to say what that is. So this is coming from the state controller's report. It is self-reported. So each of the jurisdictions is self-reporting. It's a controller's report on retirement systems, comparing retirement systems. We looked at payments because we are naturally interested in how much money it's costing everyone. But I also went back and looked at the straight up flat up number of retirements and we compared those. And let me give you a comparison. I did this for the city council the other day. So San José, in the last year of this table, so it was 2007-08, the controller's a little behind,

there were 748 disability retirements. And only 635 service retirements. And that compares to San Francisco, where there were 1239 disability retirements, and 2800, almost 2900 service retirements. So the rest of these jurisdictions just -- the rest of these jurisdictions, when we were just comparing the total number of retirees classified in that manner, San José is way up ahead. Now I want to also echo what Councilmember Constant said. There are a number of reasons for that. And by no means are we saying that the boards are to blame for this. In fact what we concluded was you're operating within the parameters that you were begin by the definitions in the plan. So the plan says somebody has to have a job in the same classification, and so on and so forth. You are operating as far as we could tell within the box that you've been given. Our recommendation to the council was, given these numbers and given fact that we are working on wellness and safety and we can do more, that we ask the council to reconsider what their definition of a disability retirement was. If they want to leave it the way it is then things will stay the way they are. If they want to change that definition and that's where the council asked us to go back out and do some more comparisons and do some outreach, because they wanted the way I interpret that, they did want to reconsider or at least think about our definition of a disability retirement. So our definition is very different from what Social Security is, for example.

>> Sean Kaldor: Sure, understood. I want to get back to the question I ask which is you included Los Angeles in this. Did you look at what the city's previous consultant had said about Los Angeles and their retirement system?

>> Sharon Erickson: If I could bring up Robin Opheim from my office who reviewed the Towers Perrin report. Did you have a specific question? Scldd at the report on page 12, I don't want to go through your entire report, this is why a discussion should be had they said the city of Los Angeles maintains low number of disability retirement applications when compared to other dis. Applicants can enter into other parts of the disability system and may not be counted in the retirement plan's numbers their data is therefore not included in our report. Again we're comparing San José with them and saying we're way out of line with Los Angeles and I was wondering if this was taken into account in this graphic.

>> Sharon Erickson: Let me -- that's one of the reasons we are saying that the city needs to consider. you were operating within the box you were given in the charter. Each of these jurisdictions has different disability

benefits. San José has a different disability benefit than other jurisdictions. But we are substantially above in terms of numbers, in terms of dollars. And we think it's worth exploring whether or not that is where we want to be.

>> I think the reason Sean's question is important, if I can jump in, I think that have been around the issue know it's an intrinsically inflammatory issue. The trends like to scamming the system in how they retire, they love to suggest that having a high disability retirement rate is indicative of large numbers of people scamming the system. And I think there's a little bit of a disconnect between what you're saying here which is very measured, and some of the language of the report, and more importantly some of the graphics of the report which really, speed an inflammatory framing of the issue. So I think it's a an issue that really needs to -- I think Sean's point really needs to be called out.

>> Sharon Erickson: If I could just respond to that and I had to respond to this at the council level. We -- in the reports that we reviewed, in the file cases we reviewed, we found you were operating within the parameters given to you under the city charter. We found medical evidence in almost every time but not one that went beef the Federated board. But I should say that different. There was one that went before the Federated board where we did not find evidence that substantiated in our opinion a but in your case we saw medical evidence in the file that substantiated a disability retirement. So I do -- I had to object at the council meeting to the characterization that you were outright fraud. Those worth words do not appear in our report. It is our job to look at and compare and the comparisons are very difficult, to try to get to the bottom of that problem. now that problem is not striblightd with the retirement board and that's why I said in my opening comments that I am recommending further work. We have done a number of audits of workers compensation over the past. I think we have trended with the fact that the workers compensation function was operating within the boundaries of the law, that's where auditors tend to workers compensation program I think we need to look a little broader and here's my thinking. If two out of three firefighters really are permanently disabled, if you were running a small business and two out of three of your employees were going out permanently disabled, you would close your business down until you figured out what was wrong. And when -- you know this came up at the Public Safety committee meeting when I looked at one of the firefighters and I believed he really believes that two out of three are permanently disabled. And I

thought you know, that is not what the administration believes. And we have a disconnect here that we have got to close the gap on. And that means dealing with employee safety, health and wellness.

>> Sean Kaldor: I don't want to get into -- I'm not going to -- I have three more points about this charter, size or greater than the Los Angeles issue but I don't want to get into the data and there is a good discussion to be had with that and I would welcome the opportunity for the board or individuals on the board to be involved in this analysis and review and looking for solutions. There move that cost into another area so the total cost to the city is the same. There's no savings. All that needs to be researched. What I'll do then is just focus on the recommendations, and I'm looking at what we as a board can do to help. Yes.

>> Sharon Erickson: I'm sorry, if I could just say one other -- the reason I talk about the two out of three is in some ways when we encounter that kind of number, it does matter how we compare to other jurisdictions, yes, it does matter. That's why we included it in the report.

>> Sean Kaldor: I understand, injured not disabled, don't have that number --

>> Sharon Erickson: My point is two out of three is not acceptable. I mean just for our own -- you know two out of three is not acceptable. We've got to deal with that problem as a city. So we can spend a lot of time going back through the comparisons. But --

>> Sean Kaldor: Thank you for those comments, if I could finish with those questions and we're looking at what we as a board can do. Your recommendations are primarily to city council. City council should, city council should. We here I think that could be done immediately or already available. For example, in recommendation number 2 you said the city council should have its own legal council advocate available for hearings if the city has someone in the process who would like to be prevent and make their case to is about who we're mitsing in somebody's case that that option is available if they want to pursue it. There's no rule that's not going to make that possible .

>> Mollie Dent: That's correct. The administration could appear at the hearings if they so desired. I think there's been some question about legal counsel. Your legal counsel for the board can't really advocate because you're the judge and jury. I think that to be quite honest with you, it's a resource issue. Having someone from our office appear on behalf of the administration. And the administration hasn't asked the city attorney's office to appoint someone to appear and oppose the application. .

>> Nothing needs to be changed to let that happen here ?

>> Mollie Dent: That's correct.

>> Sean Kaldor: The second thing is experience in disabilities and workers compensation laws. We've been talking about having a committee to talk about how we could approve the project here. I think that's a great rule, I don't know if a rule has to change in the city in order to enable a panel of experts to evaluate these applications. So that's something else that I think we could consider, I mean there's limited things we could take action on. And then finally I wanted to understand the final point on number 6. The amount that's owed back to the city. Is there anything we could do, could there be a process where for someone would apply for their stabilization. They must put that money into some kind of account or some process before they're given their account -- before they can go through the disability process, that way the money is --

>> Sharon Erickson: We actually recommended that if we were to enforce the charter provision where people have to apply for a disability retirement, at the time they retire-out, that then, the sick leave payout would be reduced at that time. And then, if the disability was not granted it could be refunded to them later.

>> Sean Kaldor: For them to lose entirely --

>> Sharon Erickson: That would keep you out of it.

>> Conrad Taylor: Mr. Swift, Drew, you'll go and then Sean.

>> Now it's on? Okay cool. I wanted to agree with Councilmember Constant on the medical treatment issue, I'm not sure that you folks have dealt involve yourself so council really understands why these relations take place. If there's a -- first of all the city farms out to a company called the Mitchell corporation. The Mitchell company employs doctors who sit in Arkansas and look at the treatment options and say no. If that happens, you don't get your MRI, you don't get your physical therapy post-surgery or whatever. The individual must object within 20 days and request a panel of three doctors from the sated. That panel of three doctors must issue within 15 days, three weeks. When you select one of those doctors that doctor has to see you within 60 to 30 days, and five months of the delay over getting an MRI or getting, more importantly, post-surgical physical therapy. They got six they want six more UR says no. My desk is full of those delays and denials and we have to go through the QME process. Now there are cities that have cut the deal with the union to expedite that process and select a panel of doctors that we, everyone agrees upon that will see the person within 30 days and give an opinion on that treatment issue. And that will get the treatment going and get the people back to work and maybe not have the problems that Mr. constant properly identified. Second point, I didn't see anything in the auditor's report about the comparison with other jurisdictions, how many of those jurisdictions provide permanent modified duty for their employees? Because if you look at the statistics, it's clear, with police officers in this jurisdiction, that the 33 to 40% is not out of line with anyone else. It's only the firefighters. Well, why are the firefighters out of line? Because the fire department has no permanent modified duty positions. If there were a budget like the article 39 in the police department, for the firefighters to do permanent modified duty then they would service retire when they got their 30 years in. That's -- you wouldn't have to change anything in this plan except that, and you would be back down to fire and police having the same percentage of disability retirements. All the other stuff is nice and interesting but that's the difference. And there's nothing in the auditor's report that tells us, it was mentioned, I think Mr. Tairlt mentioned the drop program in permanent modified duty to their disabled officers? Final point is: The auditor says that two-thirds of firefighters being disabled is unacceptable. I agree. But if they are disabled, do you make them less disabled by changing the test? And saying, well, if you can be a greeter at Walmart then we're not going to give you a disability retirement. Did that solve the problem of the two-thirds being actually disabled? I don't think so.

>> Conrad Taylor: Thank you Mr. Swift. Drew.

>> Andrew Lanza: When I dysfunction. So we're doing something very dysfunctional as a board here. Dick you are doing part of it. You're challenging without setting ground rules. First taking a words from you Dick, these people are a family. We get that. There's something we can all agree on. These people serve us and serve us well. There is something else we can agree on and the councilman touched on this. We want these people to be healthy. We don't want to hear that the gentleman is injured in a explosion and suffers permanent pain. There is a third thing we can agree with on a high level, there is a population and statistics are valuable. The report has statistics. We can debate whether they're right statistics or not but we should all agree that we need to use statistics as a tool and we should as a board agree on what we agree on and then get on with the confligted. If you just start with the conflict you don't figure out what you're all about. It seems like we can agree on is relatively are straightforward. They are all a family. We care about their health and want to improve it and we recognize there are numbers and treat those prudently. If we start with that this unfolds pretty prudent reply and what I suspect is we have very little control over any of this. It is good the councilman is here because he has probably some control over it. That would be my contribution for functional boards.

>> Conrad Taylor: Sean.

>> Sean Bill: My point is, for point of clarification don't we need to wait for the council to determine, before we get involved because they might decide outright that they want to put it on a separate subcommittee Your recommendation number 2.

>> Conrad Taylor: If I may, I know we've been talking seems like we're going arounds in circles. I know we said we are going to establish a subcommittee, and we'll all work together. I think that's where I want to go now. Pete I'll let you talk and we can move on to another subject and we'll get our subcommittee or committee and all work together and try resolve this issue.

>> Pete Constant: I just wanted to sum it up, there are two issues. There's the box and how you freight within the box and I think what the auditor has said is that the retirement boards have operated within the box that they've been given. And now it's a matter of a policy discussion and determination, are we working in the correct box. And I think that's the way the council is approaching it and how this box relates with all the other boxes. Any input you have that you feel is important on the box that the council provides you, it's important for you guys to have that discussion. And then I'll report that back to the city council. That doesn't mean that you should ignore ways that you might be able to make more efficient the way you work within the box you currently have. Or respond to the box that you ultimately get. And I think that's what we're looking to achieve here. Two things kinds of running in parallel that can complement each other. And anything I can do to facilitate either direction I will.

>> If I can expedite this on item 3.2, although we're not quite on it, I'm ready to make a motion on 3.2 and the motion I'd like to make is that we in the next 45 days gather the subcommittee I'm willing to be a part of it or chair that committee to look at the process Both within the box and outside of the box. It sounds like they're looking for feedback from us. As well as us getting more information from them. We could pull together a list of additional items that we'd like to know some information on. So that is my motion, I'd like --

>> Chairman point of order. I'm sorry I don't mean to be a stickler or a jerk. But I --

>> But?

>> But it is my experience in deliberative bodies it can get very messy if you are actually addressing two agenda items at the same time. I'd be happy to second your motion, if we could actually, as -- complete the business on 3.1 if there is any. It could be as simple as our chair saying we're done with 3.1. And then move on.

>> Conrad Taylor: I think we're done with 3.1.

>> Motion to accept the auditor's report.

>> Mollie Dent: Unless someone wants to make a motion. You can make a motion to accept the auditor's report. It's not required that you do anything with the auditor's report though. Rtsz that's for information.

>> I thought it was very useful.

>> I make a motion. Motion to accept the stots report and extend our willingness to work with them as they try resolve that.

>> Second that.

>> Conrad Taylor: Okay, all those in favor, motion passes. 3.2. Discussion.

>> Russell Richeda: Just one brief comment. I think I mentioned this before. I'm not sure if Ms. Erickson has a comment. There's at least one reported case that says to change the disability standard, which is an important focus in conclusion of her report, violates the vested rights of employees if it's applied to current employees. I hope somebody is looking at it.

>> Mollie Dent: We are looking at it.

>> Russell Richeda: Perhaps other courts won't agree but if major emphasis is going down that road only to find out it's going to violate someone's constitutional rights it may have been a lot of energy not efficiently expended.

>> Mollie Dent: The city attorney's office is very aware of the decisions concerning vested rights including vested rights in the disability context. And of the specific decision, you're mentioning and as Mr. Constant said we've been directed to work with the auditors office and with the management and with the stakeholders in terms of addressing the changes in the standard.

>> That is something out of the box we could provide feedback on --

>> Mollie Dent: Correct.

>> I like in box out of bottom.

>> Conrad Taylor: 3.2, discussion and action regarding formation of a subcommittee to review the disability determination process. You were putting that motion where you were going to chair it. I don't have a problem within the 45 day we have a chairman of this board and I would like this chairman although he can't be here because he had the flu, out with the flu he get in contact with Russell and they can make the determination or he can make the determination how this subcommittee is going to be established who is going to chair it and so forth.

>> I would say that I actually don't favor that idea. I think that the composition of the subcommittee should be done in the light of day here, in the -- in the public eye. Because I think -- I think it's important precisely what balance is struck on that subcommittee for our own purposes and for purposes of satisfying those looking on from the public that it's not, you know, not a game that has been tilted one way or the other in terms of those who represent the employees versus those who don't. So I would prefer a process right here where we decide.

>> Committee of the whole you're saying?

>> No, a process of deciding who is on the subcommittee here, rather than delegating to the chair of the board the appointment authority.

>> Richard Santos: Mr. Chair.

>> I agree with that.

>> Richard Santos: I think it's a good comment but I would like to see the chair come back.

>> We have a time issue though.

>> Richard Santos: I agree, I don't think the chair has to appoint a committee. I hope it's as well balanced, my example make sure you have a retiree, a umpled person, to be on that committee. I agree with you Michael.

>> Councilmember Constant, city attorney's office is going to return to city council with recommendations for changing the charter in June. Is there a date in June?

>> Pete Constant: Yes, the time sensitivity is that the council will be addressing this in June. The reason they're doing that is the final date to get something on a ballot if the council chooses to do that, council has to take action by the latest Tuesday in August and council has a legislative break in July. There is a very limited window. So I would suggest that you get working on this right away so you can be part of the process.

>> So our time frame for inside the box we can do whatever makes sense to us. But outside the box recommendations need to be made to this board and approved in time to get them in the advance of the mid June meeting. We need to so it's not a 45 day --

>> I think you got to put a committee together here. To hit that time deadline.

>> Does the chair have to appoint committee heads, is that in our rules? It's always been done that way I don't know --

>> That's been the practice.

>> Russell Crosby: I don't know it's codified, the chair appoints committees.

>> Mollie Dent: It is not codified. if you want to form a subcommittee at today's meeting you can do that. It would be -- it's going to be an ad hoc subcommittee of the board so that it needs to be no more than four board members. And -- but you as a board can do this. Because it has been delegated to the chair in the past but you as a board can do that if you want.

>> So no more than four board members and staff can be involved.

>> We know that Vince is interested in doing that and we just to have to find three others. I would be interested.

>> I would be interested.

>> One more, Drew?

>> Richard Santos: I didn't hear you. You aren't coming out too loud here.

>> Myself, Conrad some Sean and Drew.

>> So in that composition we had a couple of independent, couple fire, police, bringing the issues in.

>> You have the newest board member who is probably going to be the most open minded in not having gone through this.

>> Richard Santos: Through the chair, you going to have --

>> Mollie Dent: There needs to be a motion that.

>> We're in discussion mode.

>> This isn't final.

>> Richard Santos: Mr. Chair, is there going to be four members that what I'm saying? So I'm asking we have one retiree one uniform and you have two financial people.

>> The -- sorry, what do you mean financial people?

>> Richard Santos: Staff that aren't uniform.

>> Conrad Taylor: I understand that but fire has a different role than police meaning the jobs are different. So the injuries may be different. Or the circumstances that you may have hit. So if you have, let's say we have Sean and yourself on it we have the perspective of just on the fire side where we don't have a police perspective. Our jobs are public safety but they're completely different.

>> Richard Santos: There is no debate, as long as you have four people, two that are uniform, that's fine. Mr. Bacigalupi is a retiree and so amount I. You need a retiree on there, if you want to make it fire or police that's fine and you have a firefighter that's fine. You got a representation, police and fire and one should be retiree.

>> Conrad Taylor: I understand so Mr. Bacigalupi is not present so I don't want to appoint or have him appointed without him being here.

>> Are you asking Sean to step off the committee?

>> Richard Santos: Am I?

>> It would be someone a fire and retiree perspective which I cannot bring to it. It's something I'm very much involved in and very interested but it's important to have this committee to be cross representational.

>> Should I make the suggestion that we consider expanding so that we have not only five a retired person but also -- we cannot.

>> And not have a majority.

>> Mollie Dent: A committee of the whole.

>> Is there a Brown Act issue for them to meet, if I'm a member of the board but involved in the discussion?

>> Mollie Dent: Do you want to do a committee of the whole?

>> No.

>> Russell Richeda: Brown Act onerous but it's just a --

>> Mollie Dent: Well depending agendizing it, would you have to agendize it under the Brown Act. Well, the noticing requirements when you don't even know what your agenda is going to be, with an ad hoc -- ad hoc committees are normally less than a quorum for that very reason. Because if you're trying to turn things around quickly it's difficult to comply with the noticing requirements under the Brown Act. But if you want to do it, and you want to have five people on the board we'll make it work under the Brown Act. Five people on the committee we'll make it work under the Brown Act. And sunshine rules, yeah. Even more than the Brown Act.

>> Sean Kaldor: And that's primarily the notification of the meetings and have an open meeting.

>> Mollie Dent: And making sure the topics are agendized on the agenda so you can talk about them.

>> Sean Kaldor: And this is a pain for three meetings maybe four. I'm willing to do it -- I would very much like to be involved I just --

>> Richard Santos: Are you saying yourself rather than Mr. Bacigalupi? I understand that, it would hard to be on that committee or myself, if myself is not on there he should be on there because he's a retiree rep.

>> Conrad Taylor: To put.

>> Richard Santos: I'm sure he would want to be on that committee.

>> I also think that having a physical presence is critical given the timing of these meetings as well.

>> Mollie Dent: Can I -- if the board as a whole would like Mr. Bacigalupi on, but would like to just give him the opportunity to say whether he can do it or not, you can have a backup to hitch as part of your motion. You could do it that way.

>> Conrad Taylor: I have no problem to that. I could be his backup if you -- if people would be more comfortable with that.

>> Richard Santos: I want to be on the committee but I'm not knocking off Mr. Kaldor. I'm just surprised. Right now.

>> Right now we have myself, we have Drew, two financial. We have Sean, who feels very passionate about this and I think he's done some research on it as well which should be valuable. So we're looking at who that fourth person would be. Since we're fire, since we are fire, we actually need police, police retiree. So the question is if chairman Bacigalupi cannot do it then where do we go from here? Then we don't have a retiree representative, are we okay with that?

>> Richard Santos: I can handle that.

>> Our position is to have chairman Bacigalupi be that, if he can not then Sean be --

>> To return this entire board for recommendations inside the box outside of the box so we can rule on our next board meeting.

>> Second.

>> Conrad Taylor: We have a motion.

>> Go to the tape on that one.

>> No one cares.

>> I got it.

>> Conrad Taylor: You have it down?

>> And you got (inaudible).

>> Conrad Taylor: Okay do we need the motion for everyone to understand it?

>> Russell Crosby: Motion made by trustee Sunzeri, to June board members committee members to suns Lanza, Bacigalupi with a backup of Taylor and Kaldor.

>> Kaldor is not a backup.

>> Russell Crosby: Kaldor is the fourth member.

>> Conrad Taylor: I think we got it.

>> Russell Crosby: Flaherman second and we are ready for a vote.

>> Conrad Taylor: All those in favor? Motion passes.

>> Russell Crosby: Thank you. Okay, if we could take a break for our food, ten minutes. And we could eat and then we will reconvene. So let's try to limit it to ten minutes. That way we could keep it going.

>> Richard Santos: Make sure nobody kills us, put a Heimlich on it. [Recess]

>> Conrad Taylor: Can we just reconvene. We'll start with 3.3, discussion and action regarding see gal company's June 30, 2010, retiree health care actuarial study and establishment of rates of contribution to be effective July 1, 2011. A, staff memo of April 27, 2011. B, Segal report of dated April 27th, 2011. Mike.

>> Yes, as an introduction, two of the duties of the board are to establish contributions, for the retirement benefits, pension benefits and also to set contributions for the retiree medical benefits. The report in front of you is the report from Segal, your current actuary, which establishes contributions for the retiree medical OPEB benefits. Now as a bit of background, in prior years, the funding was accomplished on what was called a ten year basis, where only the next ten years' cash flows were funded as of July 1, 2009, the police members agreed to a five-year phase in to fully funding the arc. And just recently, firefighters agreed to a five year phase in effective July 1 of this coming year. So Segal's report reflect both of those agreements. Firefighters will be their first year of that phase in, police members will be in their third year. Since the police members agreed to this ramp-up earlier than the firefighters, the board directed us last year, to divide the assets for setting contribution purposes to reflect the fact that the police had paid higher rates, contribution for a couple of years. So we worked with Segal to divvy up assets and there were two methodologies that were used. One is, as Segal refers to it, in item B, is called contribution rate method. That allocation or division of assets works in such a way that the rate structure that was previously in place remains intact. There's another method which they used called a reliability based

method. Which -- since, well, it divides the assets in such a way that the funded ratio for both the police members and the firefighters are equal. And staff recommends that the board adopted that methodology as opposed to the contribution rate method. You'll see in Segal's report that regardless of which method is used, it doesn't matter which method is used this time. It will only make an impact going further down the road but we do need direction from the board because internal accounting feeds to track that division going forward. So we need direction from the board which method to use. Our recommendation is to use the liability based method because it basically undoes any cross subsidization that may be going on between the two groups. Since the fund is really commingled, they are commingled assets we believe that is the start, there should be co-funding for both groups our recommendation is to use that method. So when I refer you to the Segal's report it will be those sets of contributions and rates that we believe the board should adopt. If there's any questions you can go ahead and ask as I go through this. Now, the board establishes contributions for both the city and the members, and Segal's report has both sets in it. The board previously adopted and the assumptions that were used for this valuation. I think it was in January so the assumptions have all been established. And in terms of the contribution, I'd like to point your attention to page 7 of Segal's report. That shows contribution rate as a percentage of pay you'll notice the contribution method on the top and the liability based method, the results are the same. And if you look at page 8, the dollar contribution, the reason that's the case is because under this five year phase-in, there are caps on the annual increase. So the city's contributions cannot increase more than 1.35% of pay. And the members' contributions cannot increase more than 1.25% of pay. Both police and firefighter contributions under both methods are capped out. So that's why the rates are the same. Top and bottom of each page. So as I said the allocation methodology is immaterial for these purposes. Long term it may have some impact.

>> What is your recommendation? Good our registers is to use the bottom numbers, the liability based method. At the bottom of page 7 and also the bottom of page 8. And in line with what the board has previously approved our recommendation is that the board approve city contributions of -- this is at the bottom of page 8, Sekany, 944,788. .

>> Mr. Chairman, I would move the liability based method as proposed and the contribution you would like it as a dollar amount?

>> For the city, a dollar amount.

>> The specified amount of 16 million and change.

>> And it would be the rate of at the bottom of the page 6.21.

>> 6.21.

>> Mollie Dent: I would like to offer that under the municipal code they need to specify a rate and a dollar amount. You can specify a preference, you can say that you think the dollar amount is the way it should be paid but under the municipal code for most of the -- for this particular medical contribution, a rate is allowed and needs to be specified.

>> Why would we suggest a dollar amount again?

>> Well, the dollar amount, well, what's happened is, there's been declining payroll. And if you look at the unfunded liabilities --

>> Russell Crosby: Actually I think I can cut right to the --

>> The higher of the two?

>> Russell Crosby: The higher of the two because in the situation where the employer is decreasing the population you're not going to collect enough with a rate-paying population. You have to have a floor in there of the dollar amount that needs to be collected.

>> I would change any motion to reflect the higher of the two either the rate shown associated with the liability based methodology or the dollar amount shown.

>> And that rate is 6.74% for the city.

>> Mollie Dent: Yes, I -- I -- that's fine for the board to specify that that's the rate that they would like to see the city pay. Under the municipal code as it's currently written, the rate that the city can pay simply the percentage rate. So I think it needs to be clear, that you are setting a percentage rate, and a --

>> Russell Crosby: Well, Mollie that doesn't exactly work. And we have an agreement with the city at least on the pension side about how to modify the rate to collect the floor. We've been through this before. And it's the same principle as was addressed in the pension plan.

>> Mollie Dent: It's not -- I'm not aware of an agreement with the city.

>> Russell Crosby: Well, it's an informal agreement but it's exactly the same principle we went through several months ago, on the pension plan, exactly the same discussion of floor or rate. And floor is what the trust fund needs. It's the dollar amount.

>> Mollie Dent: I appreciate that and I think the trustees can express that. But the rate-setting resolution needs to express it both as a percentage and as a rate, as a percentage and as a dollar amount.

>> Russell Crosby: I think that's what Mr. Flaherman just made a motion on.

>> Richard Santos: I'll second for discussion.

>> I completely support the liability side, it's a complicated issue that we don't see reflected in the numbers and I can't really envision how it would be less appropriate or be -- why it would be right to do it the other way in the

long term so I support the liability. As far as setting the rates though, my understanding was the last time we discussed this, we discussed whether it's just pension, that was the only thing on the agenda. OPEB was not on the agenda. Mollie said she would draft it both ways and it would come back to us for review. It would be reviewed, it would be sent to city council, city council would have to approve that change because it would be a change to the actual municipal code. I haven't seen that back. My understanding is neither for pension nor for OPEB have we implemented any kind of change where there is a floor or the dollar amount. That action hasn't been followed up on. Somebody tell me if I'm wrong.

>> Mollie Dent: That's correct, the council hasn't followed up on amending the municipal code. It's simply that the municipal code as it's currently written would allow the council to make the payment as a percentage. For the OPEB for sure. And council hasn't -- I haven't -- I have not had any conversations what discover with them about whether it's going to be made as a floor or whether it's going to be made as a dollar or a percentage. That's not something I know anything about.

>> Sean Kaldor: Weren't we supposed to draft up a municipal code change with our explanation of why it would be better for the plan? Are they waiting for that or why would they initiate a change to the floor if no one's ever talked to them about it?

>> Mollie Dent: In order for that to go forward, council staff would need to make a recommendation for how they want that floor to read.

>> Russell Crosby: That was already done Mollie. It was done two or three months ago.

>> Sean Kaldor: They did that and this board approved that --

>> Mollie Dent: This resolution was provided to council by retirement services and there was no direction from council to come forward with an amendment to the municipal code.

>> Sean Kaldor: So they have reviewed that then instead of --

>> Mollie Dent: They have seen the resolution, yes, I don't know if it included OPEB or not but they have seen the resolution that was adopted.

>> Sean Kaldor: If we didn't draft it if they were just given a resolution -- how does this process work then?

>> Russell Crosby: Well, there's only one entity in the city that drafts municipal code changes. It isn't the retirement services department. Perhaps Mollie can tell us who it is.

>> Mollie Dent: So with respect to changes to the municipal code, the way that they're commonly done, the council provides direction to the city attorney's office to direct those -- to draft changes. In the absence of direction, from the council, the staff makes a recommendation to the council that the city attorney's office be deregulated to draft an ordinance.

>> Russell Crosby: Which that --

>> Sean Kaldor: Whose staff?

>> Mollie Dent: The department that wants a change to the municipal code.

>> Russell Crosby: This is news Mollie, this is big news.

>> Mollie Dent: I've explained this once or twice before.

>> Russell Crosby: No you haven't Mollie we've been around this, the only aracely would like to stand and address this too because we've been with OER on it is the city attorney's office.

>> Mollie Dent: That's correct. Let me explain again. Council -- council will actually in an open meeting direct the city attorney's office to draft an ordinance. Or --

>> Russell Crosby: And you've never brought forward an ordinance at the behest of this board and directed it to council?

>> Mollie Dent: I've never brought forward an ordinance at -- any ordinance?

>> Russell Crosby: Any ordinance yes, a draft, uh-huh.

>> Mollie Dent: Yes I mean I did I brought forward --

>> Russell Crosby: Of course you did, you do it all the time. What's different on this particular case?

>> Mollie Dent: On this particular case the resolution went to the council and the council did not make any direction back to our office on an ordinance. That's all I can say.

>> Russell Crosby: Okay but this board has directed you to draft something.

>> Mollie Dent: The way for that -- the way for that to be done is for the -- and it happens with other departments all the time. The way for that to be done --

>> Russell Crosby: And other departments don't have assigned attorneys.

>> Mollie Dent: Oh they do, I'm assigned to other departments and the way that happens to other departments that I work with is the staff makes a recommendation to council on the ordinance that the staff is recommending. This is a policy matter. It's a policy call. And so the recommendation --

>> Russell Crosby: And the board made the recommendation.

>> Mollie Dent: And so retirement services staff or O empletDR can put a memo in to council at any time, recommending a change to the municipal code. They can do that.

>> Russell Crosby: Okay well I just see that there are different rules on different times so I'm not sure which rule applies at a particular moment in time.

>> Mollie Dent: At this moment in time.

>> Russell Crosby: You've made a determination that this is a rule for this case at this moment in time.

>> Mollie Dent: Because this is a policy ordinance. So council needs to decide whether they want to move in that policy direction. It's -- the board's policy was clearly stated. And the board's policy in the form of your resolution was provided to the council.

>> Sean Kaldor: Okay so I thought we had agreed to have a municipal code change drafted for them to consider but if they've just got a resolution they have formally considered it and not taken an action on it and that's a dead issue now and seam with Federated is that correct? Del.

>> Mollie Dent: I think they've considered in connection with the budget hearings, I think that's where it was to considered.

>> Sean Kaldor: There is to be no action on that, and the same for the Federated side?

>> Mollie Dent: I don't know whether there is or isn't.

>> Sean Kaldor: It will lead to something with the change in staffing and the layoffs, we're going to see significant reduction in our funding which will lead to the increase of unfunded liability. Just understand that's happening. I'm not -- when it comes to this, there is no floor issue. We simply set the percentage, there is no reason to set a dollar amount. Or is there?

>> Mollie Dent: I believe it's totally appropriate consistent with your prior resolution. If you want to set -- if you want to say that you as a policy matter, that you think the OPEB contribution should be made as the greater of the dollar amount or the percentage, you can say that. And there will be a resolution that will come back next month for the actual contribution rates. Today, what you're doing is you're accepting the report. There will be a resolution that will come back to you next month for the actual setting of both the OPEB and the retirement contribution rates.

>> And this dollar amount is based on no staff reductions, same rate?

>> Russell Crosby: Correct. Well, the dollar amount is flat. And what they're doing with the rate is dividing by the number of hours that are going to be worked during the course of the year --

>> That same rate, had there been no fluctuations --

>> Russell Crosby: Correct, the dollar fluctuates, more than the dollar fluctuates.

>> The unfunded rate is like 2 to one compared to normal cost here so if there's a shortfall it could be much more significant in this case as compared to pensions. Where it's about 50-50.

>> Conrad Taylor: Pete.

>> Pete Constant: It is my understanding is that the city administration grace with the retirement services administration, there should be greater of the (inaudible) city administration understands that that is particularly

important given the declining employee population, that we as an organization, the city, don't contribute to a larger unfunded liability in our plans. All the discussions that I have heard have been related to retirement contributions and I can't say that I specifically remember us talking about OPEB. I would imagine that the position is the same, because it has the exact same cause and effect. The council has not taken an official action, I believe because we haven't even started our budget hearings yet. But it has been explained to the council why it's important, why it's significant, there's been a clear statement at several committees, including at the council, that the council is very conscious of unfunded liabilities and the burdens that they cause on the retirement system, and is committed to not exasperating those. And I know that we've had Alex Gurza here speaking specifically to that and I can tell you that I've talked to both the City Manager and the mayor. I think we are all on the same page. Whether or not the ordinance has been drafted yet or not. We are going into this budget season, and we just had the budget released a couple of days ago, on Monday, with the intent of paying the greater of the two numbers. I will personally check, and I'm sure Russell will be checking with the City Manager's office and Alex and I will personally check with the mayor to ensure that the thought is the same for OPEB. And I will let you know. It is the reasonable and appropriate thing for the city to do.

>> What do we do now?

>> We can set it both ways and then --

>> Can we just stand on the motion?

>> Yes.

>> Conrad Taylor: Everybody stand on the motion?

>> Richard Santos: No, I seconded it for discussion and there was a little change so I got staff's recommendation. Let's hear it again so I can understand. Are I believe it was a percentage --

>> The motion is to set the contribution rate according to the liability methodology recommended, and to set the rate percentage as shown in the liability-recommended scenario, which is 6-point what?

>> 6.seven for the city, 6.21 for the members.

>> And that the contribution be either the higher of that rate, or the dollar amount that is -- has been computed in the --

>> For the city.

>> For the city which is --

>> The 16,918,744.

>> Conrad Taylor: Second? Okay.

>> Richard Santos: Thank you for the contribution.

>> Conrad Taylor: All in favor of the motion, motion passes. Looks like we did AB andC.

>> Before we leave this item I'd also make an additional motion to accept the actuarial report dated for June 30th, 2010, dated April 27th, 2011.

>> Second.

>> Conrad Taylor: All those in favor, motion passes. 3.4. Staff presentation on plan's equity investment structure. Deferred from April 7th, twin. Carmen, you're on.

>> I thought you would refer it to a longer meeting. [Laughter]

>> Carmen Racy-Choy: I know this has been a long day for everybody so I will try to make it short and sweet. If I go too quickly at least people free to stop me at any point in time and ask questions. This is more a starting point for discussion, as opposed to me giving a presentation. And just to give a little bit of background, today we're going to talk about the equity investment structure. In past sessions we actually went back on the asset liability study and tried to give context to why our asset allocation is what it is. We've also, today, brought forward an EPC to talk about the investment structure of real estate, and private equity. We have also asked them to address performance of private equity, because this is hot off the press for year-end. In future meetings, we're going to talk about the structure of we are also going to talk about the alternative structures at large meaning hedge funds, real assets, including opportunistic. And in later meetings we're probably going to discuss currency Rick, currency alpha and portable alpha, as well as the management of the short term asset allocation. So this is to come in a future meeting. Just as a reminder, the asset allocation of the plan has a 25% allocation to fixed income. This actually includes a 10% allocation to TIFs which is technically in the real assets bucket. A 40% allocation to equities, as well as a 35% allocation to alternatives, which is split between a 10% allocation to commodities, a 5% allocation to absolute return strategies, a 5% allocation to opportunistic investments which is currently private debt, a 10% allocation to real estate, as well as a 5% allocation to private equity.

>> So we never show our RFX exposures or any alpha or Vega we're getting from FX, is there a reason we don't do that?

>> Carmen Racy-Choy: So far we have done very little as a result of -- obviously we don't have a risk system in place so we're not focusing at all on that exposure.

>> How is that coming by the way, the risk like where are we on that?

>> Carmen Racy-Choy: The next step, I think the various members have accepted to be partly of an informal committee that's going to look at --

>> Are we.

>> Carmen Racy-Choy: We haven't -- we have don't some of that with the Federated plan because they are about a month ahead of this board as far as the investment program. And the investment introduction. So we've actually talked to two trustees of the Federated plan and they've kind of communicated what it is they'd like to -- the risk system to do. The next step would be to add Police and Fire trustees and sort of just make sure that everybody is on the same wavelength with respect to the risk measures. And then pretty much have -- go and chat with the various risk system providers, and try and see which ones we think make a lot of sense. Then put an RFP in place, and then, you know, fundamentally go forward probably with more hands on experience on the system. So it's very much still in the introductory phase.

>> Russell Crosby: If we're lucky that board has an executive with Algorithmitics, and a major practitioner with a corporate plan. They've got about \$20 billion worth of investments, so --

>> Why first and --

>> Russell Crosby: Quite frankly, not to run down the rest of the board but we'd really like for crierdz and Bill to join on risk management risk analytic system.

>> It always ends up with we're a month and a half behind. Always remember we're the board with guns. [Laughter]

>> Carmen Racy-Choy: So away you have in front of you is the structure of the plan's equity allocation. Currently, we have an allocation of about 2% to a global convertible mandate. However, this was done on an opportunistic basis about two years ago. So in the plan structure it shows as a zero percent allocation. One thing I want to convey is so far the equity structure includes U.S. large cap, U.S. small cap, ooms and emerging equity. And we have very small mandates for each of the managers constrained by geography. This is one of the

things that staff would like to move a little bit away from, in the next investment structure, and would like to introduce global mandates. The Federated plan has had a very significant allocation to global mandates now for over a year. We believe there's significant value in looking at global value mandates, and in certain situations, if you want a passive core, it makes a lot of sense to have a one manager -- one global mandate as opposed to have individual smaller passive mandates. So the topic of the presentation today, we're going to talk about our existing structure but we're also going to talk about global mandates.

>> And is there an overall benchmark for the equity portfolio?

>> Carmen Racy-Choy: The the ac wee AMI, that's where we're going currently there is no specific, we use the actual allocation for the individual segments.

>> So it's a composite?

>> Carmen Racy-Choy: Yes, it's a composite. But going forward we would like to use the IMI index because we feel it's representative of the broader investment opportunities. And probably better than just using the S&P or the EFA and so forth. This is the investment structure of fixed income. I won't spend a lot of time on it so I will move to the next slide on page 7. This is the structure of alternatives, so I'm going to comment a little bit, just because you are going to listen to an EPC and they're going to provide you with the investment structure plan for private equity and real estate. My comments there, on real assets, we have two commodity managers that were funded about a month ago. Absolute return, no allocation yet, fundamentally you want to have the things that staff has started is in the budget that's currently being approved, we're asking for a hedge fund database called Alborne. When we are granted is -- when the budget is approved then staff will move forward and start discussion with alborne and we'll have a plan to implement the allocation. Finally, again the opportunistic allocation is filled with three private debt managers.

>> Real quick, you mentioned the not yet allocated. Are there other things overallocated here? Or where does that stand? .

>> Carmen Racy-Choy: Any amounts not allocated, it is 5% for 4% of the private debt allocation. Because private debt, they fundamentally ask for money as they find investments. So I believe a very small portion of the 5% allocated to private debt only 1% has been called. So the 9% overallocated -- underallocation there is currently in fixed income.

>> Thank you.

>> Carmen Racy-Choy: By the way, there's typically two approaches to where you basically put the money that's underallocated for hedge funds and the opportunistic allocation. The two approaches, one is you choose the lower volatility, which is the fixed income, and so you put the money there. The other way is, fundamentally the board can decide that they want to keep the same return and volatility, and in doing so, you fundamentally allocate that 9% over all the asset classes, all the liquid asset classes. So you would end up having approximately half the amount in equity. Maybe a third in fixed income, and so forth. Where probably a bit in commodities.

>> Are we overexposing ourselves to risk or underrecognizing potential returns by doing it the way we are doing it now, throwing it all in fixed?

>> Carmen Racy-Choy: I would say that given the -- the perception and the investment industry is interest rates are going up. Given the amount of money that is overallocated to fixed income I think it is a fair statement to say that we should reexamine where we are putting the money and having the money described to equity, commodities it would take all these asset classes to cash together in order for basically something to happen. So I would say right now given where things are that maybe reviewing where the money is, is a good idea. So maybe we'll bring that forward --

>> Could I offer a recommendation on that?

>> Carmen Racy-Choy: Yes.

>> When it's being held in fixed income though are we adjusting the duration down a bit so it's not right? So we're maybe still underexposed to what our full fixed income position would be? Crrng yes. I believe our duration is significantly below the benchmarks so yes we have.

>> And Carmen did we have -- I want to say Dow Jones UBS commodity index, is that what credit Suisse are or did we change?

>> Carmen Racy-Choy: Benchmarks what we've asked them to do we've constructed a benchmark for them and the intent was to reduce the volatility of commodities at large. As you know the volatility of the Dow Jones although it is better than other indices is very heavily weighted towards oil. The intent of the risk parity index was to bring up -- exactly, increase the allocation to lower vol decrease the allocation to oil. don't necessarily think that would increase the return. Really doing to reduce the risk of the asset class.

>> Lower vol commodities or lower vol.

>> Carmen Racy-Choy: This is a long-only mandate.

>> All right.

>> Can you give us a sense of the allocation you're using within commodities in your own index which you created?

>> Carmen Racy-Choy: I can't -- I believe the oil -- I don't -- I can come back with the exact numbers of what it would be right now. I know the two managers we have different time frames. One of them it's based on a five year historical numbers. With the other one it's a shorter time frame. So the numbers would be different for each of the managers. So we can bring that back and kind of show what it would look like basically as of a recent date.

>> And then do you rebalance as your other managers --

>> Carmen Racy-Choy: The managers because the benchmark is a rolling benchmark for either five years or three years. So as time passes they incorporate new months and the benchmark automatically adjusts.

>> And then is that fully collateralized?

>> Carmen Racy-Choy: Yes, fully collateralized.

>> Or something or --

>> Carmen Racy-Choy: No leverage.

>> Okay.

>> Carmen Racy-Choy: Any other questions? So again, what I want to discuss. There are two options, currently the plan is doing the first option which is specialized mandates by geography and by capitalization. This results in U.S. large cap, U.S. small cap, emerging second option we're going to look a like is global mandates and fundamentally the main advantage of global mandates is that when you hire an active manager you give them the flexibility to pick the best stocks. Regardless of geographic boundaries. Regardless of capitalization levels and regardless whether the stock is an emerging asset stock or a developed stock . So the size of the plan would allow both approaches to be very similar in terms of fees. No fundamental difference there. So the reason for doing one or the other really lies on the investment repercussions. In this slide, what I'm going to do is discuss the advantages of both structures. So first, I'm going to discuss the advantages of our current structure. By having specialized mandates you really are using a best-of-class approach. You are -- there are a large number of managers that are really good for U.S. large cap, for international developed stocks. So typically picking good managers is easier. And the fact that in reality, globalization is slow in a lot of sectors, so separate mandates still make sense. The advantages of global mandates is, as I have mentioned, it allows the manager the freedom to

pick the best stocks. It's less limited by geographical boundaries which don't always make a lot of sense. And the third one is really important. There's potential for value-added through the asset allocation decisions between U.S., EC and emerging. And this is one area where fundamentally global mandates have actually made a lot of money. A lot of value-added through that asset allocation decision. Another point is that it provides for a less complex investment structure, and the fact that staff doesn't need to be on top of the world capitalization split, constantly adjusting the investment structure allocation. In this slide what we're trying to convey is fundamentally there are good managers regardless whether you go with the global option or the specialized U.S., EC emerging option.

>> What does an A rating treefer?

>> Carmen Racy-Choy: Funnely if you are conducting a search you would only include A-rated managers from your investment database. So when we convey the number of managers that are A-rated if we were to start the search, we'd start looking at that pool of talent. Typically managers in the investment databases are rated A, B or C. And obviously there is plus or minuses that may be begin. And typically for a search you would start looking at the A plus, A, maybe in some cases A minus managers.

>> What's the criteria that determines someone being an A manager, is it assets they're managing is it performance is it organizational strength?

>> Carmen Racy-Choy: I think it's all of these. Typically you start with historical performance although it's really not an indication of future performance. If the manager hasn't been able to perform in the past it's hard to make the case that they can really add value in the future. So you might eliminate managers that haven't had a track record that shows that they can add value. Then you look at the investment philosophy. The idea is, that they should be doing something different, that allows them to add value. Because if they're just analyzing stocks the same way everybody else is, then their capacity to add value is very limited. So something in their approach, in their investment methodology needs to stand out. This way you can ensure that they have the capacity going forward to consistently add value. Of course the organization is a factor. And stability is very much a key. So that

this is something that would be part of the rating. And their capacity to retain staff and so forth. So all of these are considered in the ratings. And this is from the investment database that staff currently has. So I'm moving on to slide 14. On this slide what I'm trying to show is fundamentally the distribution of added value over the benchmark, for value mandates as well as global value mandates. And the key there, is typically staff tends to focus more on the ten year number except if we see a real trend either upward or downward on the four-year numbers. So that's where I'll be commenting. For the EFY value, there is the last column of the first graph and fundamentally you can see that the value-ated has been higher in the global value mandates than in the distinct, actually either U.S. or EFY mandates. the reason for that again, we believe that the capacity to use asset allocation as a source of added value helps significantly.

>> Is that the real key issue here, which is graphed in some ways the blue lettering relevant benchmark and there is a real -- the question of what is the relevant benchmark for this kinds of a universe?

>> Carmen Racy-Choy: I mean, that's a fair point. I think we've used the Russell 1000 benchmark for the U.S. value mandates. And the MSCI, IMI for the global mandates. I mean, I don't really know that using significantly different mandates is going to change the answer.

>> But aren't there, on global equities, aren't there different benchmarks you could use to produce pretty different results?

>> Carmen Racy-Choy: Yes but where structuring a mandate, where you have global across emerging, currently the benchmark that is most representative of that opportunity set is the IMI, and so we fundamentally are using something that is kind of the broadest representation of their investment decisions.

>> I guess what I'm driving at really is the broader the universe of opportunities, the more the benchmark can seem like a subjective imposition. And you know I understand there being some value in having a benchmark so you know what you're comparing things to. But I think as we all know, the -- one of the biggest challenges in the whole investment industry is the economic imperative of investment managers to manage excessively to a

benchmark and there is a lot of value that is given up by the customers in acquiescing to that imperative, right? So to me that's always one of the most fundamental questions is what incentives to you put in front of a manager and how do they cause perverse behavior. And so it's something I want to be very, very mindful about.

>> Carmen Racy-Choy: I totally agree. That's part of the reason staff doesn't focus on just the median number, for example. We tend to focus on the difference between the upper quartile and the lower quartile. The capacity to add value is really the difference of those two and if you look at the second graph which is really the global mandates, it's the difference of 6.7 minus 1.9. That is a 4.8 differential. That is actually very significant. What this actually means is that really good global value managers can really differentiate themselves from the bottom. So I totally agree that really as you've said the value of the median number is actually based on the benchmark. And so you can't just make that judgment, you can't make the decision to go towards global mandate just based on that. You really need to look at the difference -- you really need to look at whether managers can add value. If you compare the upper quartile to the lower quartile for EV, EFY value mandates that's the first graph, last column of the first graph, 4.2, minus 1.1. Can I see the somewhat but definitely not as significantly as the global mandates would.

>> I guess I'm even going maybe a little bit further which is just as an expression of personal preference that in constructing a strategy like this, would I want to see the plan convey to the managers that we are not very benchmark focused, and that that's how they should understand the nature of the mandate. Because the opportunity to take the requisite risk to get to the upper quartile, you know, requires them not being scovel benchmark phossed either.

>> Carmen Racy-Choy: Actually we wouldn't want to recommend managers that want to stick to the benchmark. Which means if you don't have a high tracking error, in order to be a good manager and add value leafed fees you need to be good and take on risk and the way you do that is by having a very large tracking error. We prefer to see a tracking error of 6 to 9, or 6 to 10. So we definitely convey that we are not benchmark focused. Actually if the manager like to hug the benchmark, we don't -- we wouldn't even pick that manager even if they have a track record of being able to add value.

>> If I can comment on that, too. I think it is more of an issue of in the alternative space, what you are talking about where managers are sort of unleashed to have that flexibility to roam. Where, when you're looking at managers and trying to compare them to the benchmark as you said you don't want them to hug the benchmark but you need to hold their feet to the fire to determine what process are we going to use to restrain that manager? How do we determine whether they're failing us? What I'd like to know, and it might be in your presentation, is what's the makeup of that particular benchmark. Because it's very easy to find one particular market that can dominate an index and cause some very misleading numbers. As an example we know Japan for one time, go back 20 years, it was 20% of the ECY index and.

>> Carmen Racy-Choy: I can't off the top of my head convey the allocations of the MCSIFI but I believe the U.S. is approximately 40%, and this both across capitalization. Developed countries I believe of international developed would be 45 and about 15% emerging markets. I will come back with the exact numbers, because I could be off by two to three percentage points each.

>> In the capitalization part, I think would be very important as well, when you are looking at the international managers.

>> Carmen Racy-Choy: The small block really and that's approximately 25% of the index, 75 being the large cap stocks.

>> No mid cap?

>> Carmen Racy-Choy: I tend to put small and mid cap together. Because we view that -- in both situations, small and mid, there's significant value that may be added by kitchen management so we tend to view them as one block. They also have the same behaviors, it's just -- you know it's different volume tilts but more or less in the same direction. So we tends to group the two together. So I will come back with the exact percentages of the IMI index. Here fundamentally what I'm trying to show is, we're showing the same value-added numbers but on

the gross side, on the gross side the less compelling whereas on the value side there seems to be significant value. We can't necessarily draw same conclusion on the growth side. Actually, the U.S. growth numbers dominate international and global mandates. So the fund's current investment structure includes a 45% allocation to U.S. large cap and a 30% allocation to international mandates. Currently others on the global convertible mandate there are no additional global mandates and staff definitely recommends adding global mandates to the equity investment structure. We think that providing managers with a bigger box, if we can choose good managers, this should increase the potential for value-added to the fund. So next we're going to look at the equity structure relative to the benchmark. Again, this slide, I'm trying to convey that we are not using the MSCI the EFY and ooms most benchmarks do, the reason why, they are unexposed, about 20, 25% of the developed market capitalization, we are choosing the MCSI AQI MII which is a broader representative of the broader opportunity set. As you can see later on once we get to emerging markets even that benchmark really fails to capture the investment opportunity set. So we are going to show that in a few slides. As of December 31, 2010, the target allocation of the investment structure to U.S. equities is approximately 60%. Exactly 57. And the fine equity allocation is 43%. The MSCI ACQI oochtion 43%, 43% U.S. equity and 57% foreign slight U.S. value bias, there is no theoretical evidence suggesting that one market will produce better long term performance or better long term diversification benefits. So really, justifying a significantly -- one could justify a different allocation than the benchmark if, for example, the plan feels that we can source more, better managers in the U.S. than in internationally, this would definitely cause us to have a bias. Fundamentally though, we feel, especially with the globalization happening, that this is not necessarily true. And so in the next investment structure review, we would probably move a little bit closer to the benchmark allocation. The allocation to emerging markets. First let me define what emerging markets is. Fundamentally it imriez a stock market that is in transition. Typically it's increasing in size, activity and level of sophistication. The typical characteristics of emerging stocks is that in fact, they are higher volatility and typically there might be liquidity issues in the markets. One key risk factor is the political risk factor. Emerging markets tend to be very concentrated, also, and typically just a few companies will dominate almost every emerging country.

>> To some extent also this winds up adding to our commodity exposure or volatility at least.

>> Carmen Racy-Choy: Uh-huh.

>> Which I personally think is good. But I think that outweighs the political risk in a lot of these markets, to me, at least.

>> Carmen Racy-Choy: Yeah, yeah.

>> When we're looking at risk right now, and I guess we don't really model it out completely, but does that show up, are we weighting that in any way?

>> Carmen Racy-Choy: Yeah, informally meaning when we look at the numbers and kind of look at what is our exposure to credit or to commodities and so forth, and the idea is just when we're looking at the asset allocation, we're trying to make sure that the various risks, whether it's commodity, credit, you know, equity risk, that we're within an appropriate frame.

>> But then if we're saying okay, out of our 5% emerging markets portfolio, 3% is in Latin America, for instance so now we've doubled up on copper and you know a number of other asset classes that's not considered at all right now?

>> Carmen Racy-Choy: No because even with our two commodity managers we don't necessarily, I mean we don't aggregate risks to that level of detail. Once you have a risk system then you're going to have the holdings of every manager in there and you can look at terrific say what is my exposure to copper or gold or gas. At this stage we can't really do that. Unless, really if the board is concerned about the specific commodity then we can go and ask a -- staff can do it manually in that we can go and ask every single manager what is your exposure to X and aggregate that and then come back to you with the answer.

>> That's ridiculous though.

>> Carmen Racy-Choy: Yes.

>> I mean that's just --

>> It's just insane because by the time you did it anything you were worried about is going to happen anyway and it takes six months to make a move anyway.

>> Carmen Racy-Choy: That's why we need to move towards putting the risk system in place. Even before you're aware there's an issue hopefully the system alerts you and then you know discussion about what to do can start.

>> But I guess without getting into it like what I see the most value in having a risk system isn't trying to be anticipatory saying, wow I think duration is going to change or corp's going to move. When we're building an allocation we could say okay, what's our exposure to, you know, insert factor, and we could just say okay by removing this 4% allocation, to emerging markets we remove 15% of the risk of our portfolio. Like it would be great to be then able to reallocate those assets to other that is are diversification benefit or just you know, or more productive assets.

>> Carmen Racy-Choy: Absolutely, absolutely.

>> That was I guess more of a comment.

>> Carmen Racy-Choy: That's not included in the budget. That's why it's included in the budget and you know, the intent is definitely to move in that direction. Because it is a very valuable tool.

>> Richard Santos: Nothing wrong with passion.

>> Carmen Racy-Choy: So with respect to the emerging markets allocation, currently the funds allocation is 13% of total equity. And that's approximately the allocation of the mimpletl in benchmark. However, the key there is that the nominal GDP of emerging markets is 33.5. And although not all of it is investable, this would suggest that the emerging markets deserve a significantly higher allocation than what is currently included in the benchmark. So that's fundamentally the state of emerging markets. And the average allocation of public pension plans to emerging markets is 4%. So we're significantly higher than the average pension plan. Next is the allocation to both small and mid capitalization equities. The allocation of the IMI index to both small and mid capitalization equities is approximately 28%, as of the end of the year. And the funds allocations quite close at 25% of total equities. Next we're going to discuss the decisions between active management and passive management on our various mandates. So just before I get started, the fundamental belief, with respect to passive management, is that markets are efficient, if one believes markets are efficient, then what you want to do is keep fees to a minimum. And you're almost certain to get the return of the benchmark, less the fees that you pay for the passive mandates. Active management characteristics, typically believe that marks are inefficient, then you want to hire an active manager to try to capitalize on these inefficiency and to add value in excess of fees so staff views on active versus passive decisions is that some of the larger and more liquid financial markets are efficient. But that most others are inefficient. And so really, we examine that decision mandate by mandate. And we are currently using the following criteria just to establish, to recommend active management. We look at the gap between the top quartile and lower quartile managers value-added in that space. And we typically like to see a net of fee gap of approximately 3.5% or higher. When we see such a gap we typically like to be active. Another reason fundamentally for active management is the presence of political risk, default risk, these would typically -- regardless whether there's value-added or not, if -- any of these risks are present, we like to hire an active manager. Another reason really to pick active versus passive or a criteria that typically can influence the decision is just how stable the trend of value-added has been historically. And in -- this has actually led us to move away from active mandates on the growth side. So that's just the criteria at large. The distribution of this slide is showing the value-added for a U.S. core equity mandate, benchmark versus the Russell 1000 composite. Clearly from this graph, just a basic core mandate. The difference between the upper and lower quartile is 1.9%. So net of fees, that's significantly higher than our threshold. So for our core mandates, looking back at the investment structure, let me see if I can get up there.

>> Sorry real quick, those were returns over the benchmark?

>> Carmen Racy-Choy: These are the returns over the benchmark, absolutely, so the value-added.

>> Sorry.

>> Carmen Racy-Choy: And fundamentally this justify why in the U.S. large cap space you will see that drumline is managing both the Russell 1000 and the Russell 1000 mandates oop pps Robico is managing the active mandate is as of the time of the last investment structure, Robico was the top quartile manager at almost every horizon that we considered. So they have been a manager that we've had for a long time. They have done really well for us. Clearly, Robico have struggled a little bit of late. But typically a lot of value managers have also struggled at that point in time as we had a bit of a junk rally in the market. So at this stage we're maintaining Robico. But our strategy in U.S. large cap is fundamentally to be active -- to be passive, sorry. Small cap, this slide, I'm on slide 38. Fundamentally, it shows the value-added, again, for small cap mandates. This is benchmark versus the Russell 2000 value. So it is U.S. small cap. Clearly from the history, the gap between the top quartile and the bottom quartile is approximately 3.2 for the last ten years. It's a little bit higher at the 4.3, for the last four years. So small cap is still an area where we feel that there's value in active management. And currently, both -- the intent definitely of the structure is both the growth and mandates be tiff merchandising. Are there any questions?

>> I do have a question going back to when you're looking at the net gap on the large cap growth.

>> Carmen Racy-Choy: Uh-huh.

>> So you do point out that you do have a trend that's declining but it's a pretty significant gap and that gap is actually greater than what you're seeing in small caps. So I'm surprised you're not using an active manager there.

>> Carmen Racy-Choy: Now the ten year number really shows a gap of approximately 3.7. But most of the value-added really comes from the years 2002, 2003 and 2001 and prior years. If you look at the median number from 2001, the median value-added by growth manager was 8.7. All the way to 2009, where the median value-added is zero. So that's a very significant trend. And growth is known to be very date-specific meaning the answer changes based on the date of the signals. In the time periods where growth does really well you get phenomenal return in the growth periods but then in very significant periods where growth doesn't do well, if you're actually active on growth managers, you could lose your shirt. So that typically we like to have a more consistent level of value-added. And of late, the level of value-added is not really that significant. Meaning if I look at the four years ending 2010 it's 2.2 less -- plus 2.1 net of fees, you're around 3.5 so arguably you could go either way. But given the decreasing trend we prefer to be passive.

>> So a thought here, with respect to that, is we are in a period in the early 2000s where it -- managers did add value and it was a very, very difficult period of time. And now we've had an extend period of time where growth has really underperformed other market classifications particularly value. If we see large cap growth start doing better than value would you anticipate that that's going to flip again back to what we saw before?

>> Carmen Racy-Choy: Potentially, I mean managers over the last little while have actually did manage to add a little bit of value. So there was a slight improvement over the last year and a half. So with growth you can expect a flip at some time soon. So typically growth percent do well when you have a growth bubble and those typically happen once every 15 years or so. So typically you can expect if you are active in that space you can expect to do really really well, arounds that time period. But over the long term, whether net of fees, remember these are gross of fees. Net of fees, whether you can actually add value being active consistently, I guess we don't have the proof to really say yes absolutely.

>> Could you come to a conclusion that there is a time that they could add value, and there is a time that they cannot add value?

>> Carmen Racy-Choy: Yes. That's why we do the analysis every time we add investment structure. Every year or every other year we do the analysis and to the extent we find there is a significant shift in some of the numbers then we will clearly communicate it to the board and if appropriate, maybe recommend a change in strategy. This is not -- this is not set in stone at all.

>> Real quick right along those lines, small cap value equity, the spread over ten years between the upper and the lower seems to be 3.2.

>> Carmen Racy-Choy: Uh-huh.

>> In that case I guess it makes sense to go active.

>> Carmen Racy-Choy: If you look at that time 10 year it is 3.two, if you look at the fewer year it is approximately 3.3. .

>> Domestic growth equity our 4.6 or 3.9 if you look at 2010 but we're passive there. Just because of the decline of.

>> Value-add out of another area Weaver clearly said it's worth going active?

>> Carmen Racy-Choy: More value-add 2.1 minus 1.

>> It's 3.9 versus 3.2, small cap we got to go active. I know it's a makes sense but when I look at the data here,.

>> Managers are adding.

>> Why can't we go passive there?

>> Carmen Racy-Choy: That were recently added can add significant value. And they have, over the past quarter. So on the small cap mandates we still see that managers can very much add a significant value.

>> Despite these numbers?

>> Carmen Racy-Choy: Well, look at the numbers but look at the trend. If you want me to agree on the fact that let's say if we ignore the trend we should be active in large cap growth, I'm going to agree with you. But I will tell you that you can't ignore the trend, very simply because this trend can continue for the next five to ten years. Are you willing to be in that space? A lot of the numbers, especially the ten-year number is very heavily influenced 502001-2002, because these are four year rolling periods. So I guess purely, and only, if you look at just the static numbers I would agree with you that we should be active in this space. But we don't think you -- I mean the volatility of the value-added in this space suggests you could be active if you really want to but then you need to give the managers a lot of leeway if you are active. Meaning you can't just see underperformance over a four year or five year economic cycle and get rid of the manager. Because a lot of the managers tend to do well in specific periods and they tend to not do particularly well for long periods of time thereafter. So if you're willing to have a philosophy that you're going to really stick with the manager and understand this issue of large cap growth managers, then I would say okay, let's be active.

>> Sean Kaldor: What that tells me the charts we're seeing here should not be the basis of choosing whether you should go active or passive and that's been our whole discussion here.

>> Or not value-adds these charts because they're in aggregate right?

>> Your point you look at that time information co-fisht and to try to gauge managers skill as opposed to just good luck being the benchmark.

>> Gut from these charts I don't buy that we should go active in one and passive in the other.

>> Well the other thing I think that's important here too is we have a consultant and that is not what -- isn't that what we are paying him for is when we should have this manager and when we should be firing this manager?

>> Carmen Racy-Choy: Uh-huh.

>> I'm shocked that we would consider keeping a manager for ten years to ride through the whole good and bad cycle. There's going to be a time when we want to terminate the manager and we have to determine what that leash is.

>> Carmen Racy-Choy: And we are not recommending any way shape or form that the leash should be ten years for any type of manager but definitely if you are hiring active growth managers they tend not to do well for long periods of time. And the tod attitude is supervolatile, and you can clearly see that in these numbers. And that's my only comment is to this is the nature of activity growth mandates. Whatever the leash is, whether it's ten years or five years or some other number is to be debated but I'm just trying to kind of make sure everybody understands the fundamental and at this stage, we've chosen to be active.

>> I think the overarching philosophy that you initially laid out the lest efficient markets will be the opportunities for active management.

>> Carmen Racy-Choy: Yes. So I guess to answer your question on table D and --

>> I believe that I just look at tease tables I could go to F is another one where small cap developed equity market another place hey we should be able to get in. You see the exact same trend, narrowing down, we're only talking 2.5, 2.6 per but we're still active there and I'm agreeing with everything that's been said, these charts are meaning less to me than the discussion that we've had about where we could add value.

>> Carmen Racy-Choy: Yes, and part of the reason, can you expect the added value to continue to decline, especially global mandates. The neat thing about global mandates is the manager is going to indicate when they

investment opportunities they're going to go there. Remember that in the numbers that I'm showing you, you're actually restricting the manager to only do small cap regardless of the market conditions of the investment. He has a mandate, he needs to fill it with this specific allocation. And that's part of the reason why we spoke early on about global mandates. And giving the manager the leeway to move into the small cap, and overweigh it when he feels the opportunity ask there and to move maybe towards value stocks if he feels that's where he can add value. So that's kind of the neat thing about global mandates and that's why this plan we need to move in that direction.

>> What's required for us to move in that direction on global mandates for the equity market and fixed income market? Is that something we could make a gradual step to do by have the board vote to open up that door or --

>> Carmen Racy-Choy: At the end of the presentations we're going to bring the consultant with the asset liability study and redo the investment structure of the plan. At that point in time, if the consultant doesn't bring forward global mandates you should be asking for them and you should be making the case that they ought to be included. So that's the right time to do that.

>> Okay, thanks.

>> Carmen Racy-Choy: Any other questions? Emerging markets, again, it's -- the key thing about being active in emerging markets is that a manager, due to the presence of political risk, potentially, default risk, it's nice to have an active manager in charge of the mandate and it almost doesn't matter what value-added is in that space. So yes, the value-added is below the threshold, but you know, if there's a melt down in the credit space, you actually want active management. Because they can definitely see what's happening and react to it. Style of the current managers. Fundamentally, stocks or managers with a value style typically look for undervalued companies. Whereas those with the growth style typically look for companies having superior growth prospects. Managers with a core style typically don't have any significant either growth or value bias. So this is the jargon that you will need to know in order to understand the rest of the section. Fundamentally, I'm not aware of any study or any economic theory that can predict, with accuracy, which style will out-perform in the future on a

long term basis. So that part of the reason -- that's the fundamental reason why a lot of pension plans typically have core styles. Clearly the board could decide that for example, they like specific characteristics that value tilt brings, so the board could decide that they want to tilt the value portfolio towards one style. Typically the most common style is value. Most boards to the extent they choose to fill the portfolio, will have a value-tilt so --

>> When do we actually decide that? I mean --

>> Carmen Racy-Choy: During the asset liability study, the -- the main reason for the asset liability study is to set the allocations between fixed income, equity and alternatives. At that point, we kind of redo the board in conjunction with the consultant and staff, will redo the investment structure. So to the extent you'd like to change either the allocations or the investment structure underneath, we could do it at that point in time. However, the investment structure is something that could be done more frequent than the asset liability study. So let's say next year you're quite comfortable with the allocations to alternative equity and fixed income but you simply decide that there's some element of the investment structure that you would like to change. So we don't have to redo the asset liability study. We could just redo the structure of that component. But this time around, since we have a new board, we kind of thought the most important thing that the board needs to look at is the risk-return positioning of the plan and that's determined in the ALM. So we're going to ask the consultant to come first, do the ALM and propose a new structure.

>> In light of something I'm going to propose to you guys and we've talked about too, the real boom and bust of San José as a unique municipality is growth in technology. It's wonderful if we're doing well but the tax revenues are soaring and if it's blowing up not only does our portfolio blow up but so do the venture capital or underway growth and it may be swayed more towards value. I think the decision is a little bit defined for us just based on the makeup of our income anyway.

>> Carmen Racy-Choy: Yes, actually, I think one of staff discussion points with the plan's consultant is we think that the equity portfolio, currently let me just convey that the equity portfolio is positioned to be core. And so here, the items circled in red is both the large cap equity composite at the top and the small cap equity composite at the

bottom. core, we think it should be value tilt, what that does to the extent the equity markets struggle, equity value tilted portfolios will typically rough the storm a little bit better. And typically it implies a lower volatility. So you know, I kind of like to have my cake and eat it too, lower vol, potentially better positioning from a risk perspective, I think it makes a lot of sense. So this will be something that we'll definitely consider with the consultant. We'd like to tilt the portfolio towards a value.

>> And not to mention if we can wait to Adobe and Intel aren't our two largest holdings then we're great.

>> Carmen Racy-Choy: I think the -- this is something you have in front of you in the next item, the private equity investment structure, a new one is being proposed. And I mean that's something that you can do immediately on that front is to kind of convey that maybe the venture capital component should be piped down a little bit. All right I'm -- the discussion brought us forward to more or less the last slide. The only other item that I wanted to convey is, I wanted to show the impact of changing the current constraints on the managers, currently, all the managers in all the asset classes are constrained to be long-only. And what staff wanted to convey is, what would happen if we released that constraint on the equity side? So here what I'm showing is the value-added from the manager universe, where they're allowed to take both long and short positions. Clearly can you see that either at the median level or if you look at the difference between the upper and lower quartile, there is significant value-added. And although fees in this space are significant, typically, two and 20 or something close to that, on a net of fee basis there is still value-added to be had. So we would expect -- we like the idea of releasing the constraints, the long-only constraint, we think the plan would benefit on a net of fee basis, and this will be something that we will be discussing with the plan's investment consultant. You know, and we will be having greater discussions on that front.

>> I'm sorry go ahead, you were ahead of me.

>> Well the only comment that I want to make about these charts is they're valuable in talking about the value-add with different styles. What's glaringly missing from this, is whether it's the same manager. You can have one manager that would move into the top quartile and then the next year it's another manager and so forth. And so it

could make it -- we could set ourselves up for significant underperformance based upon use just using this data on driving our decisions. What I'm very curious to know is from a policy perspective how are you looking at both the strategic and the tactical allocation? Because there are times where we're talk you can about value, where growth might be significantly undervalued relative to growth today. Small cap is extremely overvalued relative to large cap today. And so if we look at just benchmarks and we look at having the strategic allocation, how are we jaifg for that? How quickly are we adjusting for that?

>> Carmen Racy-Choy: I would say we're not adjusting for that and that's going to be part of the discussion of the short term assets mixed rebalancing. The idea, our recommendation or our view on that topic is definitely, somebody should be looking at whether growth is undervalued. But the -- I don't know that the staff and the board should be doing that. If you'd ask me I would say that potentially hiring a manager who is constantly on Bloomberg and who is very much in touch with the market who can from a GTA mandate or some overlay be able, giving him the capacity to either overweigh growth or greater leeway, he can make the decisions in a more timely fashion, and execute them. So I would say currently, we don't attempt to be tactical on the short term basis. There is evidence that there is value added from doing that. However, right now, I can say, honestly, that staff is not equipped to really go in that direction.

>> And I don't mean tactical on a daily weekly or even monthly basis. There are trends that last for a while and we have to be careful about not pigeonholing ourselves, we can have monthly meetings and make communications we need to shift. As a simple viewpoint you can look at real estate and say our personal wealth was allocated, portfolios when in fact we probably should have underweighted real estate. And we can apply this to small cap, we can pry it to growth, we can apply it to commodities and TIFs and so forth. I think that needs to be an ongoing dialogue what we should be discussing at board meetings and our consultant should be telling us this.

>> Carmen Racy-Choy: My view is a manager is in a better position to make these calls than the board or the consultant. The reason is, the manager is more in touch with the market and that's his only job. I mean fundamentally the board and staff, I mean you have a very broad array of responsibilities. And the time you can

dedicate to investments is a small fraction of the time that you're here. So putting -- trying to make tactical decisions in this context is actually quite difficult.

>> And I'm talking about a shift here from -- if we are split 50-50 between growth and value and we're asking the manager to tell us that, I'm sorry, there's a conflict of interest. They don't want us to take money away from them on the value side and give it to the growth side. My experience is that's what the consultant's job is to tell us this is where the opportunity looks to be for us. Not necessarily looking in the rearview mirror but going forward, certain markets look overinflated, you might want to shift that allocation for that opportunity.

>> Russell Crosby: That's exactly what our risk program is going to do and GTA. When Carmen is referring to a manager she's not talking about --

>> The money manager.

>> Carmen Racy-Choy: An overlay manager whose job instructedly is to build your portfolio. So the board would given him the long term target asset allocation and you would also give him ranges that you would allow him to move. For example, if the range for emerging -- if the target for emerging market is 25% you might want him to move up to 35% and go down as low as 15 so if he feels emerging is overvalued he would underweigh it. You could also allow him to go down to zero, for example. So hiring a manager whose sole job is to make these decisions about whether a specific segment is overvalued or undervalued and I can come back with a deeper presentation on why a manager can actually help you do that on a tactical basis. Now staff and the consultant do it but on a longer term horizon. Typically, the asset liability study and the structure is reviewed, I would say every other year. And so typically if we find that real estate is struggling we're going to move away. And if we find there's specific opportunities, for example the opportunistic allocation was meant to help us be tactical. When we see opportunities in the market the idea was to go and grab them. Without really needing to redo the asset allocation, without needing to redo the investment structure. So we have a 5% allocation within fixed income to opportunistic investment. We have a 5% allocation in alternatives to opportunistic investments. So through that we've built a leeway that allow us to be tactical. Beyond those two things though, being tactical on a monthly basis I think the

question, greater discussion about who should be doing it, we all agree that somebody should be doing it. The question is, should the board be making the calls, should staff be making the calls, should a manager specialize in this make the calls? We will have one of the section we're going to discuss be short term asset allocations and the management of the short term allocation did I answer your question?

>> It does help. I guess I'm looking at the long term asset allocation mix and the target mix and that is also a factor although it is not quite as tactical, the board adopted this. We're continuing with this. And I think that's something that needs to continue as well, which does have somewhat of a tactical impact on what we're doing. If we say that we are continuing with a 10% allocation to TIFs and we've been doing that for a year and a half now, when is that decision made to shift that allocation?

>> Carmen Racy-Choy: So far it's at the next vex structure which is going to be in a few months .

>> Russell Crosby: That's what you're here for.

>> I want to speed up the process.

>> I'll second that.

>> Carmen Racy-Choy: Remember, this is a pension plan, it's a 30-year horizon.

>> Absolutely, absolutely.

>> And Carmen is there anything we're waiting for in allocating the 5% of the return bucket?

>> Carmen Racy-Choy: We need to have access to alborne in order to be able to initiate any type of a search. And I think that's -- so really we're waiting for the budget to be approved. The board has approved the budget and I believe it's in city council now.

>> You should tell them every day they delay they cost us money.

>> Carmen Racy-Choy: Are there any other questions? Thank you.

>> Conrad Taylor: Carmen, thank you. What I'm going to do is, some of us have some time constraints. I'm going to change some of the items around on the agenda here. We'll skip 3.5. We're going to move right into 3.6 and from there we'll go to 3-- gee, okay. We'll go, 3.6, 3.7, and then we'll go to 3.8 and then we'll move down to 3.16. So 3.6 will be presentation by NEPC and action regarding the plan's real estate investment structure.

>> Russell Crosby: 3.16 is there. We're going to keep that there.

>> I have the old --

>> While Vana is getting the technology ready, we're the team from NEPC. I'm joined by Kevin Tatlow who is a specialist in private equity. Claire who is our real estate specialist, from an overview, and darn works with me as a generalist consultant on the account. I think A, it's nice to meet you. B it was interesting to hear the whole plan. We come to similar conclusions as Carmen maybe from different backgrounds but most of the discussion with regard to mix of active and passive and the conclusion as to where you should take active best, are consistent with our views. We are great believers, if you can find a manager with skill you ought to remove constraints. Including the long-only constraint. So we have many clients that in their equity lags have equity long-short managers to fully take advantage of the manager's insights. The allocation you have, if you were here a three years ago two years ago, you would have what I called a classic 60, 30, 20 funds in your case it was real estate. We as a firm, are a believer that volatility kills long term returns. And that the concept of balancing risk across a portfolio is important, as Carmen said you now have an allocation equity 40%, of fixed income allocation of 25 and an alternatives allocation of 35%, including 20% in TIFs and commodities which together give you an inflation sensitivity that puts you in a leadership position with respect to a lot of public funds who don't recognize that the actuarial smoothing process does not exempt you from the rules of economics and, if -- if interest rates

rise as they must that your liabilities and assets should have some association with one another. So it's nice to get to know you. Again, the plan Carmen described, we are working actively right now on a re-look at the asset-liability study. We tend to do that every year so to the question on some of these tactical matters, the actuarially based consultants tend to look at very long-term, and they tend to have very static allocations. We go through that process, but every year, we look at what the markets are telling us about opportunities. Two years ago, it was fairly obvious that the credit markets were in dire circumstances. And that the spreads had reached a level that made an investment in more credit-sensitive instruments compelling. I have clients that went to almost 40% of their portfolio in credit-sensitive assets. So at that very macro level we do that look. Every couple of years we work with staff. We typically don't say monthly now is the time to go into value versus growth, I'm much in Carmen's camp if you want to manage that and there's some indication it's worthwhile, the critical question is how to do it. And as Carmen said there are a number of ways to do that some of which we can be helpful in. With that are we ready to talk -- so it's nice to meet you. I'm sorry we haven't met before. I know you've been going through with Russ 'em's guidance a process of changing governance and getting people with maybe more long term investment perspective on the board. We welcome that. We are your consultant. I'm in Redwood City, Claire unfortunately was Boston, we brought her out for this your core team is in Redwood City, it is very easy for us to get down here, all of you have questions real estate. I'm going to cover for you from a long term strategy standpoint I understand real estate greatly but we have two professionals on the team who are our experts. So I'm going to try to be brief. In the first page and hopefully you've had a chance to look at all of this but what you have in the material is a San José Police and Fire real estate plan which is the first few pages which we'll talk about. The remaining three sections provide context to that. So the real estate overview is really what is real estate, as an asset class, what is it for? A lot of plans in the last three or four years as everybody got dued by opportunistic and planning invest in properties that are reasonably fully occupied when you are collecting a rent in buildings that are stable. So over time you collect rent, it's inflation sensitive it grows and maybe you get some appreciation in property value. That moved into buying undeveloped properties or building warehouses or investing in hotels. And those who moved into that, chasing capital appreciation, got burned pretty badly in the cycle. So the Real Estate overview is just a reminder of why we have real estate, the real estate market update is a review of where we think we are in the real estate cycle. And there is a real estate cycle of pleasant times, build, typically you overbuild and then you go through the chron tracting part of that cycle. so being aware of that is

important. And then real estate portfolio construction is really how you might build a real estate portfolio through time. So I'm just going to start on page 4. Your current exposure to real estate is as follows. And again when we started with you all you really owned your own buildings. That was your real estate portfolio. That's something a lot of public funds in the '80s and '90s did. It's tremendously taxing on the part of boards. I would sit in at board meetings where the board would debate for hours about improving the flower bed in a strip mall that they happened to own. You happened to get into very very micro issues it was very ill liquid and it tended to be very diversified. So most plans have moved from individually held buildings to core funds and professional managers to oversee that. You have done that, so you let go of Kennedy and MEBT a while ago. You have hired a firm called American realty advisors. They are going through a program of orderly liquidations of that we have outlined here so right now you have \$128 million in existing real estate net asset value. It's about 5% of your total plan. There's no uncalled capital relating to those investments and that is your exposure. Your target right now is about 10% out of our last asset allocation study. Carmen mentioned that we are in the middle of doing that and I suspect without having done the numbers that ten is probably a little high. Maybe we'll come up with eight maybe we'll come up with seven. It won't be five and it probably won't be ten. The median for California public plans is around the 8% range. So I suspect that number will decline a little bit. To build real estate like in private equity if we come growth manager we can execute that tomorrow. 5% times your asset, so many million dollars, call the manager, hire them give them the money and it's put to work in a matter of days. Real estate and private equity, you hire a manager, the deals aren't already done. So you make a commitment to invest. And the manager, over time, will draw that commitment down and put it to work. While that's happening, investments he made in the past are maturing over a five to seven year cycle. A company that they bought as a private investment might go public and be liquidated. So the issue of building a portfolio to a target is a little bit less precise than the process of hiring a manager. Effectively you over-commit early on in recognizing that the manager will take time to draw down the assets and invest, and so the process we describe here in Real Estate is one of setting commitment levels that would put you above your target, but it's going to take you a number of years to get there. That would imply a target total real estate exposure of \$307 million including uncalled capital. The substrategies with respect to real estate are, essentially, a -- and this gets into something Carmen talked about a lot which we think the board certainly ought to be aware of. It's one thing to deal as you well should with your macro allocations to the various asset classes. That's how you control your risk. That's how you take advantage of markets over time. But how you

build the substructure is also very important. To your point on private equity everybody around here thinks privately equity is venture capital. But in fact private equity is growth equity, it is mezzanine debt, it's buyouts, there are a number of pieces of private equity and how you choose to implement that has a very great degree of influence on what you actually get. Even without you being in San José, we would have you underallocated to venture for a host of reasons, above and beyond your points which I think are very well taken, given the dependence on the revenues that support this plan, on the success of venture companies. So the underlying structure would be 50% core, 20% value-add, 20% opportunistic and 10% REITS is what you see in this plan. To move towards that substrategy allocation we're suggesting commitment levels and I recognize one, it's a long day and B, this may be the first time you've seen this. So we wanted to put something on the table that was actionable but recognize that there may need to be more education and discussion before you're comfortable. But we didn't want to make this just a general education session. Wanted to lay at least something specific in front of you. So currently we're recommending commitments of \$25 million in 2011, \$20 million in 2012 to value added closed in funds, 25 million and 20 million to opportunistic closed end funds and 5 million per year in REITs. One of the things that your staff likes to do which in general we're sympathetic with is when you develop an asset allocation an illiquid asset classes a lots get there but you can sin that click invest. So a real assets portfolio for example, you could go out and buy commodities and TIFs to get you synthetic exposure while you find the managers to do it. In real estate the opportunities to do liquid real estate synthetics are fairly small. We had with another client been trying oto figure out how to sell real estate a couple of years ago. We were very right about that but we never found if you'd done a swap it would have cost you 3% and in hindsight that would have been a cheap 3% but nevertheless at the time we didn't do it. There are managers that are coming into that space. There are some long-short REIT managers that are very interesting. We probably wouldn't recommend using REITs as a parking lot for the build-out now. REITs tend to track real estate over long periods of time, but they can perform very close to small cap stocks. And so our worry, where we are in the cycle now, is parking exclusively in REITs for nonstrategic reasons, doubles up on your equity risk on the down side and we'd be a little concerned about that.

>> Are we assuming all public REITs then?

>> We were here, but we've been interesting stuff, I don't know if Carmen and staff have had a chance to look at it address some of the issues.

>> Would you have the same comments?

>> No with longshore REITs I'd be long only REITs a lot of them are selling as premiums right now and again, the historic correlations with small cap stocks is very high.

>> And how do they get exposure to rates in real estate ?

>> The managers actually short individual -- either they'll do a fund to funds where they'll be shorting rates in the market --

>> In the public?

>> Yeah, it's an emerging space so I don't know how many managers do anything more than that. That's sort of the summary and the nice part is, that's my strategic view. We can walk through more detail. I'd take your direction. We could go to the other sections and talk a little bit more about the real estate overview and the markets, I'll take your direction on how much you want to go back to the basics of why you have it and how to do it.

>> Would you guys mind if I ask two or three questions just direct.

>> Conrad Taylor: Couple of questions it's been a long day and I'd like to --

>> Want to give you a couple of my own personal biased thoughts that will tell you how to deal with the rest of this presentation. One of them is I'm not personally convinced although open that 6 to 8 is a realistic assumption for the core right now.

>> You mean for the return number.

>> Yeah yeah yeah. And I'm again personally biased having such a large allocation to core value-added and or maybe private REITs or some other asset class. I'll just leave it at that then. I guess one other question if you can talk about as well if you guys have a entry points into some of these casts, too.

>> I mean we're actually working and looking at -- there is a number of secondary strategies, a couple are in the market now. It's not a strategy that's been around for a long time. But it is an interesting way to build a portfolio. Particularly to, you know, get exposure quickly and sort of get sometimes a better valuation than is available in the market. You don't see the same sort of seller mentality in real estate than you see in private equity where we really have a well developed secondary market. Sellers, you know, you could think of a lot of the investors in funds are really public pension plans. And a lot of them the decision to sort of sell off their real estate portfolio, sell off fund investments, is a difficult one. And so a lot of the sources of sellers is corporate endowment, investors who have some liquidity issues. So it is a reasonable thing to consider right now.

>> I have a kinds of a follow-up. From a 30,000 foot view in your target allocation you're talking about 1.2 times target allocation. So what is the catalyst that NEPC sees that says take this real estate investment at 5% to 1.2 at this time ?

>> We think the 5 is low. The timing of doing it and how you do it is, is a critical issue. We do think, in general with respect to strategic allocations, once you affirm them and we're going through that process now, the next question is, how fast do you build them, and you have to be particularly careful in private equity and real estate, because they are illiquid markets. When you put that money to work you can't call the manager and get it back tomorrow. These are legal contracts. It's frustrating sometimes when you've made a commitment to a private equity guy and you decide you don't want to do it anymore you can't call them and say, we're sorry we are taking it back, because your contract blightsz you cycle that while we're not quite ready to say we should get aggressively into some of the distressed markets, we think we're a lot closer to that than we were a couple of

years ago, and it's starting to be in our view a better buy-point. Although if you follow residential real estate there's a fair amount of indication that we could actually continue to see drop in sales as well as new sales. So one, we would like it to move closer to the target because we're well below it now. I can't conceive of a circumstance where we won't have a target of 7 or 8. And that 1.2 can be adjusted as you move through time. We also think it's important that you do a certain amount each year so you're not exposing yourself to expensive vintage-year exposure. Any private equity deal done in 2006 and 7 is not going to do well. And knowing when those years are, and not doing it in some years and doing it in other years does not pay off. You ought to be sure that in each vintage year build through it in real estate I'd say the same thing is true. We'd like to get you started to not miss the 2010 year and we'd be more inclined to do it in core and some of the emerging value-adds than to get too opportunistic. There is also some real estate debt opportunities that are interesting in the current market.

>> Buy distressed real estate debt.

>> Sigler Gov has one right now cfn how would you characterize it?

>> Commercial loans are commercial real estate loans on secondary market. You have to realize the financial services as banks continue in this cycle, they're still shedding some of these assets as they can because they're not in a position to really hold onto them, there are opportunities for debt --

>> Causes me to be a little nervous about increasing real estate is it doesn't seem to have necessarily started to appreciate as an asset class. And you know as a hedge fund manager we have rule number one is never add to a loser. Rule number two ask never add to a loser. Number 3 is never ever add to a loser and wait for it to get to some positive change in direction of the trend . I guess one other area that might buck that trend is international real estate. Has NEPC looked into any opportunities for pension funds to invest in international realities and give us a run down on what's available there ?

>> I think that the distressed opportunity is a global opportunity. In terms of deleveraging from financial institutions, it's that -- that opportunity is a global opportunity. And in general, we've always advocated you know,

having some international in a real estate portfolio. Part of the -- one of the things to remember is that sort of institutional investment in real estate is much more highly developed in the U.S. than abroad, and so you know, a U.S. focused portfolio that also includes international investment is what you often see in implementation.

>> And we have done some -- Claire is the expert and would have the list of names for you but indeed we tend to be an advocate of diversification and advocate of international. We're an extreme advocate of emerging markets now in particular.

>> I'd be interested in seeing that list of emerging market or international oriented real estate investment opportunities. Rather than going straight line increasing U.S. exposure.

>> Carmen Racy-Choy: Actually just for clarity we can ask NEPC to revise the allocation and include an allocation to international investments I think just for --

>> I think that will make sense.

>> Russell Crosby: Carmen, we will lose a quorum before too much longer. Do you need a decision, or we'll come back around to it? Or this is just an opening at this point?

>> That's just to point out an observation. Every always have to either delay or push ahead the core portfolio stuff.

>> Great topic for that committee.

>> Russell Crosby: Exactly and that's why your committee needs to get this off your agenda.

>> Real quick on that, is the whole issue of investing as well. Bee used to have a subcommittee that did it. We all want to be involved in investing but there might be pieces we can break off and look at our whole organization,

what investing stays a focus or all of us, are there other missing stuff that could be brought to us as recommendations rather than us spending all day?

>> I thought disability are very important, I do think that the financial health of the plan is our number one priority.

>> Conrad Taylor: I agree.

>> You get no arguments from my side.

>> Conrad Taylor: And I think you're up next, 3.7, plan's fourth quarter 2010 private markets review by NEPC.

>> Could we make one more request, only if it helps everyone, I was trying to look up some things on real estate and I had to go through the meeting minutes of all these past meetings. Would it be possible for us to have some central repository where everything real estate related is in one folder and one what did they say six months ago would other people use that or would that be --

>> That would be tremendous.

>> I think that would be level.

>> This is part of our conversation on digitizing our records.

>> Yes, I agree with that.

>> Sorry Russ.

>> Russell Crosby: Remember the size of your staff.

>> We could nominate each meeting, hey do this --

>> Private equity from real quick this is just the fourth quarter of private markets review. I would give you a liberal of context that your program really began investing in fund to funds in 2005,2006, and as new board members, you've been spared four years of hearing that your entire private equity portfolio is in the J curve, returns are still negative and it will be a while for the portfolio to develop. And now we're sort of at a point where some of those early investments are really coming out of the J curve. So while long term performance you know we expect to see private equity performance sort of kick in and be enhanced you know after you're in there for four or five years, we're sort of getting to that point.

>> Everybody understands what the J curve is?

>> Great. So essentially where we are today, in the last year we actually saw a 12 and a half percent return from a private equity portfolio. 4.3 in the fourth quarter. In the -- that's all right. There's just a few statistics on the first page. You've committed \$155 million to that asset class, funded about \$113 million. Received --

>> The distribution not mrk value right?

>> So you've received back in cash about 13.8 million, the distribution. So but within the fund to funds, there's things going on internal and capital being recycling this is really to you, 13.8 actually coming back in cash, going into some cash account and being redeployed somewhere. The report -- so the plan's been about 73% called of what's been deployed and distributed is a percent of what's been called at around 12%. We look at your target is of 5%, the actual reported value of your program is 4.3 right now. And if we look at what hasn't been called, the market exposure includes that amount, we're closer to 6% in what we're exposed to if everything was called. In, I think if I jump ahead to sort of the value-added page, this sort of shows you what's happened in your portfolio to date in terms of value-added. It's still early, early days but we are seeing some value-added, sort of across the portfolio now, actually some value-added in the venture portion of the portfolio, buyouts, a little bit in the

mezzanine, there's not as spike because we made big distressed allocation in 2008. So there's a lot of that's really played out and you've benefited from that.

>> You think secondaries deserve to be their own asset class or just a style of --

>> In this report there is a tiny bit of stakes which we can capture in the fund to funds. We do think secondaries is interesting and we would like to call it an asset funds, pension nice risk return characteristic. Sort of get immediate return, you get cash back from a private equity portfolio, in a shorter period of time, and so it's sort of a lower risk. Slightly lower return, form of private equity, which sort of fits better with a pension plan than sort of venture, something you put the money out and wait ten years to see it come back.

>> Why is it lower return?

>> It's a little bit lower -- its a little bit lower return in that you're not necessarily -- you know we're in a very strong market for secondaries right now, our returns are pretty good oochtion but in general the return characteristics are more modest. You're buying in at a discount. You're buying decent assets. And so you're going to get your return more quickly. The opportunity to really see really upside huge surprises have sort of been priced in to the secondary portfolio. So that's surprisingly you give up a little bit of the upside excitement. But you actually get sort of immediately the day the secondary's purchased you often see like a 20 sometimes a 30% return immediately on the books on that cash. Let's jump to this slide. For those getting to know the portfolio to know how you're currently allocated. The bottom is actually reported value so you're about 17% venture, 42% buyouts and as I mentioned before you actually do have a pretty decent allocation distress space right now. In terms of benchmarking your portfolio, it's a young portfolio to benchmark but we sort of ran a benchmarking report. The initial reason to do this, in talking with staff can we're really trying to get a -- dig deeper into the fund to funds which allocate over a three to five year period how things looked, whether they looked decent relative to their peer groups. And it's a little tricky to benchmark the fund to funds. But there's two things here that in an abbreviated presentation I would want to bring your attention to. The first is really just a discussion of what's in these charts which I'm not going to go through in detail. But essentially what we've done is taken the fund to funds and gotten

a lot of details from them and sliced them into the individual years they've been investing that allows us to benchmark them against the database which essentially takes peer groups of funds from a particular vintage year when the funds start investing. And in that way we can get a closer look at how the fund to funds actually look, versus their peers. And what we see on the venture shied, you the first slide you see really on the venture first and second quartile versus that peer group. Which is a sort of interesting observation because we have been looking at these funds with very modest returns we're just starting to see them turn positive. Similarly what we see on the buyout side of the portfolio, to summarize what's there, we're really sort of close to median right now, more or less as we slice things up, a lot of second, third quartile right on median. If you want to study these on your own there are two things that make sense to look at. First of all we're benchmarking funds fund to funds show up at the top of the heap. It would be very unique. Pooled average which is a big pool of private equity all dollar averaged out, versus the peer group at times if small funds are doing really well versus deviations between the pooled average and the different quartiles and that's what you'll see at times, pretty good differences between those numbers.

>> I have a naive question on this. So the benchmark returns are self-reported, and the fund returns are self-reported.

>> Right.

>> They may or may not be apples to apples against peers and there's different valuation techniques against the mark-to-market, is that fair?

>> The challenge is sort of what's in the venture universe, what's in the buy-out universe versus your portfolio can deviate. Venture in this universe is really defined from early stage to a lot of later growth companies that are, you know, you might not think is venture capital. And so there can be a misfit with your portfolio in that regard. And the self-reporting, the way to think about it is, this is not a perfect benchmark. There's a number of people who aren't in it so it's not scientific but it's a good helpful indication of where things are.

>> But even like the fund returns there's probably like 30 different valuations for Facebook now for instance.

>> I mean the Facebook is a funny example but I mean we're some of the places where we're invested in it we're not holding it at the latest value. We might be a little more conservative. But in general with the adoption of really fair value accounting practices we've really moved to where the private equity portfolio actually moves more with the public markets. But it goes -- it does lag a bit in that we are -- you know the managers still pull back and are hesitant to quickly write up a portfolio you know as the markets surge. We are seeing more consistency in valuation methods. But that being said, the real tyke to take time in the stock of the fund is towards the end of life when they work through problems and be marked down and see how things ends up.

>> Your observations are correct. It's messy data, it's valuation based. When you see our performance reports we don't have is the 12-31 data and we are in the middle or the end of may so we do the best we can to try to get as much out of it as we can to try to draw conclusion.

>> Okay there's one more slide that is actually pretty cool. We used to do this manually but the system we subscribe to now, private eye, has the program versus policy and basically what it does is say your policy does to add value versus private market equities in your program which is pretty typical, we want to add a little alpha. So what this method does is it takes -- looks at all the cash flows that have gone into your private equity program and essentially alongside that runs the same cash flows but into a public markets index. So this page is the S&P 500 so it basically really is a good way to look at your program. Also serves in terms of opportunity costs if the money had been invested in S&P. So right now you can see on an individual fund basis, the right most column the IRR spread basically that shows sort of the difference between the fund investment versus being invested in public markets with the same cash flow pattern. Which you know, it's been a rough period in the markets and so your private equity portfolio which isn't fully matured actually is well ahead of the public markets for this time period. So it's a good -- a good way to get a feel for it. Interestingly the one investment that's behind is actually your most successful investment, at a -- one of your more successful investments the TCW Mez fund which is close to 7.5% for a 2008 fund, the fund is done really well and already has a pretty decent return. But the cash flows of the public markets during the time period for that fund actually you know public markets outperformed it. So actually

interesting. For over very long periods of time when you do this and look back at the end of a fund's life it will be really meaningful and ups and downs of the market will sort of get washed out over time.

>> Can you give us a sense of the timing of the cash flows by vintage years? It looks like in 2005 there was about \$80 million that was committed to private equity, 2006, then there's a gap, then 2008? Just trying to get a sense of --

>> Yes, basically --

>> What drove that.

>> -- the underlying, the underlying cash flows and we actually modeled them to run your strategic plan. So we're looking at the commitments at the fund to funds level. So what really happened is that the fund to fund commitments took place and then those fund to funds committed from either the shortest one committed to underlying funds for three years and the longest one is just finishing up now. So you've actually -- so you actually had sort of a steady pace of commitment to private equity funds to the fund of funds which at that point was well below target, your target now is 5%. But at that time your target was -- trying to think if it was 8 -- but -- (inaudible).

>> Okay, we were well under. We were contemplating a higher target and we were well under. So essentially that was the allocation to distress was complementary to the rest of the portfolio. And so you did, in 2008, a distressed fund to funds that committed capital for the next couple of years. And they're finished. And a direct mezzanine fund those guys are still investing, they're about 60% invested at this point.

>> And we joined you in 2008, so prior to that you had fund to funds, essentially. As most funds starting a venture capital or starting a private equity program would. So the draw down of cash was totally at the whim or call it not whim but managed discretion of the fund to fund manager, when we came on we wanted to accelerate that pace

and do more discrete investing distressed being one and that's when you saw that other sort of increase in commitment pace.

>> So is your anticipation in the future there will be less fund to funds and more single manager? Okay.

>> In the -- so anyway that sort of wraps up the benchmarking and performance discussion. See if there are any questions.

>> Richard Santos: Just going back real quick, how many pieces of property do we own? How many do we own, real estate?

>> Russell Crosby: I want to say 11 at this point.

>> Richard Santos: Okay, thank you.

>> Alaska's two so you're going to double that one.

>> On page 6 of the real estate presentation, had each of the individual properties listed out here and there --

>> Russell Crosby: Which page?

>> Page 6 of the real estate presentation. Each of the properties was listed here, there's nine of them.

>> Not a superdiversified portfolio.

>> So NEPC recommendation. What we essentially do in this plan is, we look at your portfolio, how we would like to be invested, sort of look as where you are, and where you are not invested in private equity. And in general we also do a pacing model which takes all your prior investments and sort of models out into each vintage year and

future vintage years to determine a right pace to sort of keep you on target. And where you are right now in the modeling is the fund to funds commitment pace is pretty much over. There's a little bit more money to go out but not a lot. And so now we're looking at modeling sort of coming in where those commitments are rolling off. In summary, what we would recommend is looking at about a total of \$35 million being allocated to 2011 vintage funds. We think it makes sense to look at \$15 million of that going into the secondary mark. And about 20 what we call growth which is more growth buyout, not the late-stage venture type of growth but more small buyouts in growing '50ss.

>> So would that be generally one commitment to each or how do you slice that pie?

>> We would see -- we would see the secondary commitment as being a single commitment to a diversified secondary fund. In the growth side, I've put in the plan that it's two. It might be possible to invest in someone who's highly diversified and do one. But in general would I expect to see a commitment to two funds within that \$20 million allocation, to get good coverage in terms of diversification.

>> So is it typical at the board level that we know who these firms are that the money is going into prior to that?

>> Yeah, basically we would start at the strategic plan, work with staff through market surveys and sort of exercise to figure out how best to build the portfolio. Sort of reach a consensus with staff on those allocations. And then, generally in the past we've really brought a best idea to the board. But also sort of presented the -- sort of the rationale and the context and the background behind that recommendation, and brought -- brought the funds in, also, to present to the board.

>> Carmen Racy-Choy: So absolutely you would see -- the managers I mean did come forward, we come forward and ask your approval. Nothing goes into the portfolio without you having approved the commitment.

>> This is one of the governance issues that is a personal style for you. I've seen a lot of boards when they first get in want to see four managers come in and go through half hour each. And after a while they say you know,

why don't you bring the best and let us ask the final manager as popped to the approach. That's a final down to bring the finalist in and tell me why they're the about finalist.

>> Conrad Taylor: No further questions.

>> Carmen Racy-Choy: Kevin, could you please cover page 10 which is the strategic allocation to private equity?

>> Yes, 10 basically shows your current exposure. And sort of what the exposure would be with the -- what's in the 2011 plan, sort of put in there. So essentially, you know the -- we're essentially filling in, in secondaries where there's really not an allocation, it's more of allocation that flowed through the fund to funds. As well as, coming in with some growth that's really -- growth buyouts pretty broad ranges. And the targets are really what we recommend for you know a pension portfolio. That sort of wants to be sort of -- sort of broadly diversified.

>> Conrad Taylor: Kevin, if I may, if we could poovingably bring this over to the next month. This has been a long meeting. I'm sure we have a lot of questions on this and I'd like to get all the questions asked.

>> Richard Santos: Just a comment. Thank you for the appreciate that I was just curious do we have a policy or anything that says I realize we're trying to make as much money as possible but is there any possibility we're trying to keep real estate and other investments here, is there anything we are looking at?

>> Russell Crosby: No we're trying to dispose of those individual properties at this point, anyway.

>> Richard Santos: Okay.

>> Conrad Taylor: Gentlemen, thank you.

>> Conrad Taylor: 3.8, approval to rescind the March 3, 2011 board decision to hire Milliman and the plan's actuary and discussion and action regarding selection of Chiern as the plan's actuary and authorization for the secretary to negotiate and execute the contract for an amount not to exceed \$600,000 for a term of three years.

>> So moved.

>> Second.

>> Conrad Taylor: Any discussion?

>> I'll put forth a motion to execute --

>> We just did.

>> What's my motion there?

>> Is there any discussion?

>> Russell Crosby: Discussion, motion and second.

>> I just start with I liked those guys, I thought they put forth a good presentation too and we chose Milliman to some extent to get diversification from Federated plan so I see zero problem.

>> Conrad Taylor: We have a motion on the floor for approval. All in favor, motion passes. Going to move down to 3.16. Discussion and action concerning government code section 7513.51 and its impact on board members I don't have anything in my folder on this.

>> Is there anything in writing?

>> Conrad Taylor: Nothing in writing.

>> Mollie Dent: So I can have -- government code section 75119.15 is pretty short, I'll read it, it's one sentence, a member or employee of the board shall not directly or indirectly by himself or herself by an agent partner or employee of a person or intended of the board sell or provide any investment product that would be considered an asset of the fund to any public retirement system in California. And government code section 75193.5, was adopted through an assembly bill 1584 in October of 2009. And I believe it was an urgency ordinance so effective in October of 2009. And the definition of -- the definition of public retirement system as defined by the legislature, in this series of code sections, includes this board.

>> So dumbing it down we can't selling or promote or market anything that we, this board owns, or has invested in, to any other pension plan?

>> No, I think what it -- I'm going to speak here as not the counsel to the plan but here's how I read it which is, it says, a member or employee of the board, so that means you know anybody here, shall not directly or indirectly, right? The big question is around what does indirectly mean. Directly is kind of clear. As a partner or employee or whatever, of a business, right, be involved in either selling or providing investment management products to any public retirement system in California. Do you disagree with that?

>> So four of us have to basically resign.

>> Russell Richeda: The parsing out of that, you don't have in front of you, when it says indirectly or directly, has also modifies himself or herself. I think it means, the indirectly means through placement agents or separate individuals. Doesn't necessarily mean I think, I would have to look, within the entity that you're dealing with. But unfortunately we have a -- and also it doesn't say investment management product. It says investment product. That doesn't help maybe a whole lot.

>> I think it s's that would be considered an asset of the fund. I would simplify that by saying that is an investment product. It is not consulting services, not legal services.

>> Russell Richeda: Not investment services that's an important distinction right that you're making. I think that it does. So for example a board member it seems to say can't sell investment products to other retirements boards. Now I know we need to qualify that.

>> Russell Crosby: Other retirement boards in California. Doesn't say anything about outside of California.

>> Russell Richeda: Yes you're exactly right, restricted to laugh.

>> Mollie Dent: And the directly or indirectly language there isn't any interpretation of this first of all and it's a fairly recent statute. There's no cases, no attorney general's opinion. But it certainly appears that if a board member, personally and individually were selling an investment product that would be considered an asset to another public retirement system in California, there is -- it's certainly -- it appears that that might be covered by this section.

>> Why do you say appears and might?

>> Mollie Dent: Well, because as Mr.-- there's a couple of pieces of this that are not entirely clear. The directly or indirectly piece and the piece that says an asset of the fund. So Mr. Kaldor when I read it out said he considered - he thought that meant an asset of this fund. That doesn't seem like that was probable the legislative intent. The legislative intent of this scheme of statutes was more broad than that.

>> Wouldn't government code 1090 prohibit that point blank in the first place? It would be superfluous.

>> Mollie Dent: It would.

>> Russell Richeda: That wouldn't stop them from enacting it.

>> Mollie Dent: It would. We also have a council policy that it would not be as explicit as this but we also have a council policy on what board and commission members can and cannot do in their official.

>> But this is not in your official capacity, this is in your unofficial capacity.

>> Mollie Dent: But this covers when you are not an official.

>> I remember seeing that when I was brought online the board.

>> Mollie Dent: I'd be glad to provide a copy of that too.

>> What did it say?

>> Mollie Dent: It's not as strict as this. It's more about using your board position to do something that's not on behalf of the board. It's not as strict as this.

>> So my interpretation, I looked at it because obviously for any of us who are in the financial services area has potential impact. And my -- so my take is that let's say you worked for you know GASB, I'll use the Bogey man out there. You know you could not go as a representative of Goldman Sachs, may have someone else at that firm that has a relationship with San Bernardino would go knock on the door and we would not be prohibited that way. I also looked at Dianne Feinstein's husband, Mr. Blum who clearly has California pension money and is on U.C. regents board, if it's okay for him,.

>> But it's not a public retirement board.

>> U.C. regents?

>> Mollie Dent: It's not defined that way.

>> Well there you go.

>> Should we ask for a legal intermingling of this and its impact on us?

>> Russell Richeda: We need fact situation not just in general.

>> Given our current fund.

>> I'm starting a buyout fund and I may or may not choose to sell to California municipalities and pension funds.

>> Is that hypothetical or real?

>> No that's real.

>> Russell Richeda: You're starting out, it's your fund you're going to own it.

>> Over 10% is the critical threshold.

>> Mollie Dent: So the statute talks to an agent or partner doing this directly.

>> Or indirectly.

>> Mollie Dent: That's why it's fact-specific and it could be specific to your own compensation structure I will say our own office because this is related to what you would do in your employment capacity, it's not related to what you're doing while you are on the board, we would encourage any board member to get their own legal advice if

they are concerned about it. That's not to say we won't give you our interpretation but we would encourage you to get your own legal advice because you are talking about what you are doing in your private capacity not what you are doing when you are on this board.

>> In that vein, I probably work for one of the most rigorous security firms on Wall Street, major security firms like Morgan Chase, to get through their compliance department to get through act of God and they allowed it and the only conflict would be if in fact this board chose to float a municipal bond then I would have to resign from the position. I cannot offer or sell securities to this plan. It doesn't mean that I can't be involved with another plan so I guess that might be a gray area. But it passed muster with our department. It's filed on my U-4 which is a form that is a public record for the securities industry.

>> But the way I hear this though if you decided to sell bonds to San bern dynel oh it's not permissible.

>> I didn't have intention to so that doesn't apply to me.

>> If you have a manager who was going to buy it, do you know who the ultimate holder is? We have investment managers working for us buying and selling ought kinds of things.

>> I think it's probably directly dealing with --

>> Mollie Dent: Dealing with you e-one of our own investment managers, if you had a board member trying to contract directly with one of our investment managers, as I say I think it's going to be a pretty fact-specific inquiry. We can try to --

>> Russell Richeda: Sean, you were saying Vince might sell a bond somehow, a single fixed income security to western, one of its giant funds or Pimco one of its giant funds and a public retirement fund in California invests in Pimco's giant funds, I mean its asset, this is a ridiculous skate, no getting away from it. We're doing the best we

can to read the words that you can read them as easily as we can or note the ambiguity as easily as we can. So might be it a problem? It might be.

>> That's an interesting observation.

>> Russell Richeda: I hadn't thought about that before Sean mentioned it.

>> What is the intent, the intent is someone trying to get on this board trying to sell investment assets.

>> Russell Richeda: That's not the intent.

>> That's not the intent of the --

>> Russell Richeda: The intent is Caesar's wife.

>> To get from another pension plan is that what they're addressing?

>> Russell Richeda: Don't try to bring public policy clear coherent understanding of the intent. I think the real intent for this was just appearing to be doing something. Okay? Government code 1090 has caught lots much people who didn't think they were doing anything now all of a sudden they have committed a criminal violation. So I just don't think can you take these things light and assume they really could not mean what the words seem to mean. Because I'm -- here unlike 1090 and I don't know if that rings a bell with any of you but there's a lot of very unpleasant things that happened under that statute. It is not clear who can enforce this. It's not clear that the local D.A. and there's no regulatory agent, the AG is not going to come in and enforce this. It's not clear under other stawssmentsdz where the public records act it is unclear who can enforce this but it is also unclear whether someone could anonymously could drop this to a regulatory body that licenses you. It's a very, very awkward thing. And to get an A.G. opinion, assuming we will get all the relevant hypos is going to take six to ten months.

>> Another especially aspect that I would be concerned with is the possibility that you could actually by violating this give the customer, at the other public pension plan, a right of rescission on the transaction at any point.

>> Mollie Dent: That's what happens under government code 1090, the contract is voidable by the other party.

>> What was the city council's thoughts on this issue when they decided they wanted to bring all these financial people onto the board?

>> Russell Richeda: I don't think they were thinking about it.

>> Mollie Dent: I don't think -- so I don't think that they -- the city council was certainly aware of conflict of interest provisions. I don't think they were looking specifically at what board members might be doing with other pension funds. What they were looking at was what the board members would be doing with this pension fund. So I would just offer, a little bit of response to what Mr. Richeda said. The stated intent in the bill was to ensure that public pension board members, employees and consultants because this bill included more things, conduct business to the highest ethical standard, comply with all fiduciary responsibilities and actively work to eliminate actual or perceived conflicts of interest as soon as possible. So it's a very broad -- very broad statement of legislative intent behind the bill. Now, what, you know, specific legislators may have said, on the floor of the legislature, as this bill was being debated, I have not had a chance to look at that.

>> Russell Richeda: Well, and that's probably not going to be tremendously helpful anyway.

>> Mollie Dent: You never know, when you start looking at the legislative history.

>> Russell Richeda: That's not the kind of history that legislators pay attention to .

>> Conrad Taylor: Molly, these gentlemen have righteous concern the path these gentlemen should --

>> Mollie Dent: We can provide, and Mr. Richeda's office can too, a general analysis of the section. I personally would be somewhat in -- it would not be a good -- I don't provide advice to individual board members. That's not my function. That's not the function of the city attorney's office to provide advice to individual board members. So I would again say that if individual board members have a concern about their specific situation, they would need to seek legal counsel, as Mr. Sunzeri did.

>> Russell Richeda: We within the limit of our knowledge respond to it let's assume that we don't think it violates the statute. The remaining question is the more important question is where does that get you or if you get your own attorney to issue, you get the best private law firm in the country which means expensive and you have that in your hip pocket where does that get you? It doesn't get you anywhere, really. So what do we really want to do? We want to get some governmental entity to tell us some advice that you can rely on. And what's the only available one, the attorney general's office. And that's going to take time. The City Attorney is going to have to request it.

>> Mollie Dent: Yeah, I think that the board cannot.

>> Russell Richeda: No, the board can't. The City Attorney could.

>> Mollie Dent: The city attorney's office could request an opinion if you wanted to ask our office to do that. I don't know what the response would be. But --

>> Conrad Taylor: You just need to write a letter to the city attorney's office?

>> Mollie Dent: No I think if the board wants to vote today to request an opinion of the attorney general's office, you would have to do that. I would say it's not a very quick answer. You have to provide the attorney general's office with usually a very specific fact pattern.

>> Russell Richeda: . We could have a very specific fact pattern but you must have a specific area you have answers to.

>> Mollie Dent: And they're not required to answer your question either. They're not required to take the request.

>> Russell Richeda: But if we don't submit a question we don't have a chance to get an answer to it.

>> They could say we decline to issue an opinion on this?

>> Mollie Dent: They can.

>> Is that something Russ can you do?

>> Russell Richeda: It has to go through the board and you can use names but just as a hypothetical, sure we could do that Sean. But is that helpful enough? I mean maybe it's a start.

>> Sean Kaldor: I think there's some dreg that someone in five years could say hey look we wrote down what thought we might be an issue the same interpretation and fact patterns to the attorney general. And asked for their input and they decided to give us no direction. I'm no expert but I think someone reviewing what good faith effort to --

>> Russell Richeda: In the bare minimum that might get us a malpractice action to my firm. It might be the last thing left.

>> So my experience has been exactly that. We should do three things. You will tell us what you think it means. We will come up breaking that rule, and then we will try to find a way to get somebody with higher authority just short of God to tell us what this means. But every time I've ever seen this, you're exactly right

Sean. Tell us what this means. Sunshine is very effective medicine. It is very hard to get in trouble with the law if you believe honestly that you've done full disclosure.

>> Russell Richeda: We can could up with hypos.

>> And Oz by the way please get the highest authority to rule on it and if you can't get a higher authority to rule on it it's very difficult to get tried if you are going through full disclosure.

>> I agree with that.

>> It's difficult.

>> In Damon's case if Damon wants to offer a hedge fund he's on this board and he wants to offer to the city of Riverside county, can he do that?

>> Russell Richeda: Another retirement board. He can offer it to the city or county.

>> The retirement board of the city or county.

>> Russell Richeda: Right. Is that the only one? Is that the only hypo, you're interested in?

>> I have a hypothetical. I was an employee of a private equity and alternative asset firm and in that capacity, sold private equity and hedge fund interests to five different public pension systems in California none of course were there one. I left that fund at the end of December and am a consultant to that firm and will likely actually shortly be initiating the process that is new this year, which is registering as a lobbyist in California so that I have the potential -- and only at that point will I then have the potential to actually market investment products to the state pension fund of the state of California. So I'm not doing that now because I can't -- because I by definition can't because I'm not regnd as a lobbyist.

>> Russell Richeda: But you intend to.

>> That would be a clear you know intention in the record accessible by the public that I intended to sell investment products to the state pension fund.

>> Mollie Dent: If I make sure I understand the scenarios, these would both be as employees directly selling?

>> No in my case I would be as a consultant to --

>> He has resigned from the firm.

>> I'm not an employee I was previously.

>> Mollie Dent: I'm trying to understand what -- trying to understand so we can ask you a question.

>> I would like to act as an agent for a firm.

>> Mollie Dent: You would like to act as an agent, okay.

>> Russell Richeda: To sell, you're not just going to talk with them.

>> To sell, right.

>> Mollie Dent: One scenario is an employee selling an investment product to a public pension plan. The other scenario is a person acting as an agent selling an investment product that would be considered --

>> The key fact is that number 1 I would be registered as a lobbyist exclusively for this purpose, part of this whole new weird regime, whole lobbyist registrations regime to sell to the state pension system and the other historical factor is I have as an employee in the past sold investment products, that are assets of the fund to five different pension systems in California, meaning there's a clear history that I have done that in the past.

>> Mollie Dent: Are you asking us to look at whether or not the statute applies to what you have done in the past?

>> No no, there is no refutable that I do.

>> And I would add through intermediaries as well.

>> Mollie Dent: If you want to talk about through intermediaries, we would probably have to understand a little bit more that relationship was. And I think probably whether or not there would be some financial benefit to you from that.

>> Using like product.

>> Russell Richeda: You pay them, sort of the legitimate placement agent.

>> Which I'm not doing right now by the way.

>> What about if you sell something in your portfolio, in a trade, to I think you should raise that as a scenario.

>> If I was to sell something in my portfolio to a dealer and that dealer has then sold it to a fund that owned or had the venture plan as a investor?

>> What if Cal PERS directly bought it? You traded with them?

>> I've never actually had a direct trade with a pension --

>> You don't have that kind of transparency, I can't imagine that is even in the realm of --

>> My only concern would be if you are working for a firm, let's say Franklin tem mton because it's big, your marketing department is selling to a California pension fund would that be a conflict of interest to somebody?

>> Mollie Dent: We can address that.

>> Russell Richeda: I think more troublesome things to think about is if you were either on the governing board of Franklin templeton or investment staff and say we've got to spend 50% of our assets on the public fund area of California, if you had that decision making I think that would raise a lot more issues under this rather than if you are just an employee ever Franklin templeton.

>> If I own half of a hedge fund, I don't go on the road I don't talk to any of these people directly would I then have a liability I guess?

>> Russell Richeda: Again we'll have to sort of flesh that out with facts.

>> Passive general partner you mean?

>> As a general pattern, I don't know if there's such thing as a passive if you are involved in the company operation, right?

>> If you are not involved in the company --

>> Not marketing. Financial general partner but not marketing.

>> Russell Richeda: I mean a paves owner would seem to raise --

>> Or are we better off registering as a lobbyist.

>> Russell Richeda: That's not clear that's a solution to this provision.

>> Are there scenarios that we're worried about?

>> Richard Santos: Mr. Lanza said, let's put down what we agree upon.

>> If everyone's agreed for them to --

>> Richard Santos: For now, try to answer it. We can expand from there. If something comes back and we view something missing do something more.

>> Russell Crosby: Do you need a motion?

>> Mollie Dent: No you can do this -- why don't we do this as a future agenda item next month with some analysis back from the attorney.

>> Then we can forward that to the attorney general.

>> Mollie Dent: You can decide at that point if you want a attorney general's opinion.

>> Building that agenda already.

>> So what did we decide on the next up for the disability committee?

>> Russell Crosby: You're going to meet as soon as we get it off the ground.

>> Conrad Taylor: Finish this up and --

>> Talk right now and get the dates.

>> Conrad Taylor: What we're going to do is we'll continue 3.5, 3.9, threne 10, 3.lean, 3.12, 3.12 3.13 and 3.14 until next month. Stack committee reports recommendations there's none. Consent calendar , make it all in one motion, 6.1 through 6.66 until nir items can be pulled?

>> Can I ask two items be pulled and we ask discuss them next month. No urgency on them. 6.6a and 6.6c, Charly.

>> And how about 6.6C -- E, sorry I think we should come back and follow up with discussion on E.

>> Conrad Taylor: Sure.

>> And one thing is that the minutes show me in April as being absent. That needs to be correction corrected.

>> Richard Santos: He was here in April, I'll verify it. Materiel 6.6 A pulled 6.6 C pulled and 6.6 E pulled. Unless there is any other items I'll make a motion to approve. All of them with the exception of those.

>> You made the motion?

>> Conrad Taylor: Yep. All those in favor, motion passes.

>> Seconded, sorry.

>> Russell Crosby: You did or --

>> Sean bill.

>> Conrad Taylor: Note and file for education and training, there's numerous classes that are out there, so review and get in contact with Russell for those that you want to attend. Proposed agenda items I'm going to make one. Next month I'm going to when this agenda gets made, service retirements, disability retirements are going to come at the latter part of the meeting. We're going to start moving up the investments, I feel it's important because we had individuals sitting out there almost the whole day, I felt uncomfortable that we were rushing them through and I know we have a lot of questions for them so we may have to bring them back, obviously we're going to have to bring them back, so I'm going to change the agenda around, the retirements are at the end of the report.

>> Maybe we could establish a time for the disability, so we know when that time is 11:00 or 10:00.

>> Richard Santos: I think that's a very good suggestion. This time, let's say 1:30 or whatever that's what we are going to be doing. I agree there is a lot of other business here and we don't want our retirees also sitting. Same thing.

>> Conrad Taylor: Any other proposed agenda items that we have here? Anybody else have any proposed --

>> Richard Santos: Yes I'd like to have us have some business cards.

>> Conrad Taylor: Okay.

>> Richard Santos: 2:00, I want cookies to keep me awake. Got to keep me awake with a little energy. I know, you have that special diet, keep that energy going.

>> Get that card so you can go.

>> Conrad Taylor: No other proposed items here so we'll go with any public comment? There is no public comments, meeting's adjourned.