

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

>> Mayor Reed: Good morning. I'd like to call the city council meeting to order. This will be the labor update portion of our agenda. Then we'll adjourn into closed session and then return into open session. At 1:30. To pick up the agenda then. Start with the labor update. Alex Gurza.

>> Alex Gurza: Good morning, mayor, members of the city council, Alex Gurza, Deputy City Manager. As we do every week, we just remind everyone that the proposals and information correspondence related to labor relations and negotiations is availability on the City's Website. Since last week we have received two proposals, from the bargaining units. One each from the firefighters, and one from the POA. They are the same proposal, although submitted separately. Those proposals are before you and also available on the Internet. Since receiving the proposals on Thursday we have not had an opportunity to meet with either bargaining unit to review it and we'll just provide you a very brief summary of the element of the proposal that relates to new employees which is the slide here. And in addition to this applying to new employees, current employees would be able to opt into this benefits structure. So with that, we conclude our presentation today.

>> Mayor Reed: Thank you. We have some requests to speak. We'll take the comments at this time. Nancy Ostrowsky. Followed by Bryan Dole, Robert Sapien and Vera Todorov.

>> Good morning, Nancy Ostrowsky, IFPTE Local 21. I want to share with you the address of our actuary, Mr. Thomas Lowman: Bolton Partners, Incorporated, 100 Blight Street, 9th floor, Baltimore, Maryland, 21202. I'm sharing his address because I know how much integrity some of you have and I know in light of Mr. Lowman telling you back in October about the known gains in our pension plans, and many of you ridiculing him for including known gains in his projections, that many of you will write notes of apology, because his projections were right and your projections were wrong. Basing a position on disproven numbers should mean reevaluating that position based on actual numbers. But not in San José. Instead, it's full steam ahead. Luckily we have leaders like Sam Liccardo, who is quoted in the editorial pages of the Merc yesterday saying if we have a opportunity to save city services, with less onerous cuts to workers' benefits, I doubt there would be a single vote against that. Well, you now have that opportunity. And when my friend and brother Robert Sapien from local 230 tells you of Tom Lowman's projection for reduce in cost of the Police and Fire plan, we know that Councilmember

Liccardo will march into closed session and advocate for less onerous cuts to workers' benefits because he is all about no lying, no cheating, and no stealing. We sent a letter yesterday waiving further impasse and we'll mediate all day long. But it makes little sense to vote on a ballot measure now and little sense to mediate unless you change your negotiating position. But we know that Sam Liccardo will be advocating for doing that, because we know his word is golden. Thank you.

>> Mayor Reed: Brian Doyle. Robert Sapien. Terra -- actually Vera Todorov.

>> Mayor and council, Vera Todorov on behalf of the association of legal professionals. Brian and I are trading places today. You're not at impasse with the Association of Legal Professionals at all on either the ballot proposal or on the other city proposals. The city has not responded to ALP's request to continue to meet and confer on the ballot measure. This is particularly required because of the new budget figures that came out and also because of the revised ballot measure that we received today. There's been absolutely no opportunity to meet and confer and comment on that as required by law. Also, the city has declared impasse on ALP on four out of five of its non-ballot measure proposals. We're not at impasse there, either. The city claims that it has had negotiations with us on those measures. There's been nothing but explaining a little bit what those proposals are. But the problem is, because of the City's, quote, immutable deadline on the ballot measure, most of our negotiation sessions, and particularly the last several, were spent going over the ballot measure. Not on the other city proposals. The city is also now conditioned bargaining and that the mayor's proposal requires or requests a waiver of impasse by all bargaining units. We're not going to waive impasse. First of all, you know, we're not going to waive rights to do that but we do want to continue negotiating, which will happen regardless whether there is a declaration of impasse or not by the city. We would like to develop lawful solutions with the council. We do not want to be in an acrimonious relationship. Please do not pass this ballot measure today. Do not put it on the ballot. Please continue to negotiate in good faith with your employees. Thank you.

>> Mayor Reed: Robert Sapien. [applause]

>> Good morning, mayor, council, staff, Robert Sapien on behalf of San José firefighters local 230. Last night, begin today's agenda items, decided to put some thoughts on paper, and submit a couple letters to you. You should have received those probably about 30 minutes apart or so. In those letters, you'll find some things that I think are important, certainly important for me to say to you. Certainly important for me to share with my members. And I hope you will consider them carefully. As Ms. Ostrowsky said, I would be talking a little bit about what we've learned recently based on upon the new valuation of our plan, the new costing. We were very curious about what this year's savings meant in relation to the out years. We know that there's a five-year cost projection that's due to come out so we asked our actuary to work on those numbers. What we found over the next five years, given the system as we have it today, the status quo, that the difference between the projection and what we see coming down the pipe now is about \$337 million in savings over the next five years. I think every one of you will agree that that's a significant number. Certainly significantly different than what has been put before the public for so long, as we began this very ugly March to a ballot initiative that is unlawful, that is unnecessary, that has been an obstruction to true negotiations, police officers and firefighters have before you two proposals, then, one takes us back to a plan that was implemented in 1970. But it has with it the small problem of trying to get members to opt into it. A second plan is a three tier plan that we believe will take the majority of our members and put them into a lesser benefit and save millions upon millions of dollars for you. Unfortunately, all we have seen at the bargaining table is continued ballot initiative language that is unlawful, that has had --

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

>> Thank you.

>> Mayor Reed: Brian Doyle. [applause]

>> Good morning, honorable mayor, councilmembers. On Sunday night I saw one of you on the news say that you know that putting this ballot measure on the ballot will cause litigation. Having been a lawyer now for almost 30 years, if anyone is telling you that the only way out of this situation is to litigate your way out, you have been given atrocious advice. There is no way that litigating this will solve San José's problems. Two years ago, about a

year and a half ago Councilmember Liccardo came up to me, sitting in that chair, and thanked me for the fact that our union was the first to come to the table, and the first to conclude negotiations with the city to give the 10% cut that you asked for. And I said to him at that time, we just did not want to litigate with the city. We as attorneys do not want to litigate against our client. We still do not want that. But if you put this ballot measure on you will be forcing us and all the other city employees to be in that position. Please, please, defer the ballot measure. There is no reason to do it today. Absolutely no reason. Please, Councilmember Liccardo, please return the favor. Thank you.

>> Mayor Reed: Jeff Welch.

>> Good morning, council. Just wanted to finish up on some of the comments, and tie this all together. We're looking for an opportunity to provide us some space and time, and that's been given to us by the new numbers provided by Cheiron. I think it would be remiss to move forward at this point without having those numbers validated in January. Our actuary has provided that forecasts for us preliminarily and it looks good. There's real opportunity for real reforms that are viable, lawful, and can save the city hundreds of millions of dollars. Please allow us to have that time to go back to the table and find those solutions. We have them in front of you now. We need a real partner at the table to discuss them with direction on finding a solution, and if a ballot is necessary after those solutions are found we can do that and work together and if necessary, go to the ballot as a partner together, to change the rules on the charter. Thank you very much. [applause]

>> Mayor Reed: That concludes the public comment. We're going to adjourn into closed session. We'll return here at 1:30.

>> Councilmember Rocha: I have a question.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Question is for Robert Sapien. You talked about a five-year projection, I'm looking through the documents I have in front of me, and it doesn't -- or maybe it didn't reference in there.

>> Yeah, I sent two e-mails last night containing letters. There was a second one that includes a table of documents. I can resend it to you.

>> Councilmember Rocha: I'm sure it was somewhere. I was hoping to have it for closed session. Thank you.

>> Mayor Reed: All right, we're adjourning into closed session.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for December 6th, 2011. We'll start with the invocation. Like to introduce our invocator Danny Sanchez of Calvary chapel. Danny has been a pastor since 2006. He works to effectively communicate the gospel, invest in the lives of youth, just as others have invested in him. Danny welcome.

>> Good afternoon, ladies and gentlemen. Would you bow your heads with me in prayer. Dear wise and loving father, first let me thank you on behalf of all who are gathered here today. Thank you for your many abundant blessings. Thank you for life itself for the measure of health we need to fulfill our calling. Thank you for the ability to be involved in youthful work for the honor of bearing appropriate responsibilities. Thank you as well for the freedom to embrace you. Thank you for loving us. For your boundless and gracious nature. In scripture you have said that the citizens ought to obey the governing authorities. Since you have established the very authorities to promote peace and order and justice therefore I pray for our mayor for the various levels of city officials and in particular for this assembled council. I'm asking that you would graciously grant them wisdom to govern amid conflicting interests and issues of our time, a sense of welfare and true need of our people. A keen thirst for justice and rightness confidence in what is good and fittings the ability to work together in harmony even when there is honest disagreement. Task specifically for our mayor, for wisdom, strength, and humility to oversee this city. I pray for the agenda set before them today. Please give them an assurance of what would please you and what would benefit those who live and work around our beloved City of San José. In Jesus' name amen.

>> Mayor Reed: Thank you, pastor. We'll now have our pledge of allegiance, please stand . The queen of apostles third grade in District 1 is going to help us in our pledge. [pledge of allegiance]

>> Mayor Reed: Thank you queen of apostles third graders, it's always nice to have students help us. First item of business are orders of the day. There are a couple of changes to the printed agenda. Item 2.3A, E and F, council committee reports need to be deferred for a week to the 13th. Item 3.3, the declaration of fiscal and service level emergency is to be deferred to be renoticed for a later hearing. Any other changes under the orders of the day? Councilmember Pyle?

>> Councilmember Pyle: I would like to bring 3.3 in reference to deferring the emergency, fiscal emergency status, to the regular section, not defer it.

>> Mayor Reed: We have a motion to approve the orders of the day which would include the deferral of item 3.3. Councilmember Constant.

>> Councilmember Constant: I just think -- I just want to have the motion to handle it under orders of the day.

>> Mayor Reed: So that would include the recommendation to defer it. Yes so Councilmember Pyle.

>> Councilmember Pyle: In light of the fact that we have spent considerable amount of time and money on this, this has been out on the air waves, it's been in newspapers, magazines, you name it. I think it's only fair to put to bed properly the statement of the fiscal emergency. Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: I wouldn't mind asking a question or two on the item, and with the deferral under orders of the day I don't think that allows for it.

>> Mayor Reed: That would be correct.

>> Councilmember Rocha: I would prefer to have the discussion at 3.3 when we recommend deferral.

>> Mayor Reed: Anyone else? We have a motion to defer. On the motion, including the two deferrals, all in favor, opposed, one two three four opposed. Kalra, Chu, Pyle, Rocha, and Campos. Five opposed, that passes on a 6-five vote so that is deferred to a later date to be determined we will of course still take up item 3.4 having to do with the ballot measure related to that item. We'll take that up today. So the orders of the day are approved. I would like to note that we will be adjourning this meeting in memory of Sean Walsh, specialist Sean Walsh, 21

years old, San José person was killed while on patrol in the Khost province in East Afghanistan on November 16th, 2011. He was deployed in the California National Guard's 185th military police batallion December 2010. Sean died during his courageous service to our country. We have some of his family members and friends here today. We appreciate them being present. Councilmembers Herrera and Chu have additional comments. Councilmember Herrera.

>> Councilmember Herrera: Thank you mayor. Today we honor and pay tribute to the life of specialist Sean Walsh, who paid the ultimate price while serving his country. On November 16th, 2011, Sean was killed in the line of duty while serving with his California unit while serving with his California unit on deployment in Afghanistan in support of Operation Enduring Freedom. He was the fourth generation in his family to serve our country in the military. Sean was a San José resident and attended high school in San José. He was 21 years old. We are honored to have Sean's mother Cheryl Walsh here today with us, Rolando Webbe, Gloria Savantes from Blue Star Moms, and Lee Wanatec, a friend with the family. Sean was serving in the 18th, 870th Military Police Company, a California National Guard unit out of Pittsburg, California. He enlisted in the California National Guard on October 20th, 2008, where he achieved the rank of specialist. Sean was two weeks from coming home after being deployed for almost a year. Last Wednesday, the patriot guard riders, along with military personnel, police officers from Santa Clara and San José, family and friends, provided a hero's farewell motorcade escort from the landing field at Moffett Air Field to Sean's final resting place at Oak Hill Memorial. All along the route from the Moffett air field along highway 101 to highway 87, every single overpass had emergency vehicles from the City of Santa Clara, the City of San José, parked with their crews standing atop their engines in full salute. I was moved by the show of respect and dignity they showed Sean and his family. Cheryl wants Sean to be remembered as a happy, positive person. Friends and family remember Sean always smiling. Live every day to the fullest because you never know about tomorrow, was his motto. A long time skater and surfer, he was also involved with the Santa Clara Police Department Explorer Program. And was a Santa Clara police explorer at the time of his death. At the age of 18 Sean entered the national guard, in 2008 as a military police officer. So he could further his training in preparation of joining the police force at 21. Sean was very proud of his military service and he felt that in law enforcement, he had found another career in which to defend, protect and serve. That motto also meant so much to him. He had dreams of continuing his career in law enforcement as a canine officer. To honor

Sean's dream the family has set up a memorial fund for the purchase and care of police dogs. At Sean's memorial service this weekend father Ernest Cockerel said of what happened to Sean, life is random, but love is not. What father meant was we cannot control about what had happened to Sean, but Sean was always intentional about how he lived. Sean was always a loving person to everyone around him, and now I would like to turn over to my colleague Kansen Chu to say a little bit more about specialist Sean Walsh.

>> Councilmember Chu: Thank you very much, Councilmember Herrera. I would first like to ask the mother of Sean, Mrs. Walsh to stand up and be honored. Thank you. [applause] I'd like to thank my friend Michael Cruz who is also a friend of Sean's had who is actually currently serving in Afghanistan for notifying me about the passing of Sean. Sean was a good son. A friend to many, and a great warrior. And a dedicated specialist in the army national guard. Sean attended high school in San José. Soon after he got his GED through the national guard where he placed in the top 10 of 125 student class. Sean was known for getting along with everybody, because of his easy going nature. He also took his job seriously, and performed his duty with enthusiasm. Sean was highly respected, admired, and recognized as an excellent role model for all. Sean's effort has touched many people's lives and has provided hope and positive motivation to those whom he interact. He will be remembered in our country, especially in our community, for years to come. Thank you very much, Cheryl, for coming.

>> Mayor Reed: Now move the agenda to the closed session report. City Attorney.

>> City Attorney Doyle: The City Council met in closed session this morning. There's no report.

>> Mayor Reed: Turn to the ceremonial items. First ceremonial item I'd like to invite Councilmember Campos and Chuck Peters to join me at the podium. Today we're commending Peter's bakery for 5 years of outstanding service to the community. Those of you who have been there know it's a great bakery in Alum Rock. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Good afternoon. It's always a proud moment when our city gets the opportunity to celebrate a business that has been serving our residents for so many years. Today we get to

celebrate Peter's bakery for 75 years of high-end customer service and quality baking. Peter's bakery opened its doors to the people of San José on April 15th, 1936. On Delmas avenue and San Carlos. The next decade, founder Tony Peters moved to what was formerly a county pocket called Alum Rock, Alum Rock avenue, moved his bakery to Alum Rock afternoon and been there ever since. 75 years later, Peters bakery continues to serve the people of San José and is presently owned and operated by two of Tony's children, Chuck and David Peters, making it the oldest family-owned bakery in the city of San José and in silicon Valley. Throughout so many years of operation, there is at least one thing that has never changed and that is the exceptional family feel, customer service you will always receive at Peters bakery in East San José. Throughout Tony's years in business he was able to teach and mentor more than 100 bakers, in his time. And many of these bakers have gone on to open their own successful bakeries in San José. After serving hundreds of to us of customers and many birthday parties, there are so many satisfied people that can tell stories about their first bite into Peter's trademark the burnt almond cakes. I encourage all of you to head out to Peter's bakery and try it. I congratulate Peter's bakery and I look forward to another 75 years of success. So with that I ask mayor Chuck Reed to please present this commendation to Peter's bakery. [applause]

>> I just want to thank everybody, I mean, I get the credit, but I think it goes to my father. He's the one that started this great business. And it's family-owned, going on. I got my daughter working for me. She's going to tell you a lot after I'm gone. So we hope to keep serving the public for a long time. Thank you.

>> Mayor Reed: Thank you. [applause]

>> Mayor Reed: Now I'd like to invite Councilmember Chu to stay And be joined by Russ Robinson Charles Taylor, Ray Hayes anding Craig Ferata at the podium as we commend the South Bay yacht club. For boating and boating related activities. Come on down folks.

>> Councilmember Chu: Thank you, mayor. I'd like to thank my colleagues and the mayor in joining me to commend the South Bay yacht club for continuing their historical tradition of commemorating among peoples who enjoy boating and boating related activities. In 1888, a group of boat being enthusiasts met and formed the South

Bay yacht club association. The association had later named the South Bay yacht club, in March of 1896. In their early years, they did not have a clubhouse, and met initially in the back room of a former Bank of America building in Alviso. The group became quite active in sailing the South Bay and based their new operation in the port of Alviso. The club began with 35 members, and a number of yards and lunch and the first fleet today, the South Bay yacht club grown to 55 members. In 1983, the clubhouse was destroyed by the severe flood in Alviso. The Santa Clara Valley Water District and the City of San José assisted the relocation of the yacht club to the corner of Katherine and hope street to an elevated site on the levee. The South Bay yacht club is active in the community and part of the Alviso task force. Partner with the South Bay salt pond restoration pond A-8 project wild land restoration effort. More than 15,000 acres of former industrial salt pond transformed into important wet land habitat enhancing the environmental -- enhancing the environment and the capacity of the Alviso slough. The South Bay Yacht Club's house continue to house the -- continue to stand as a permanent landmark in Alviso with her tall flagstaff and yard arms proudly displayed. Here to accept the commendation are Russ Ron innson, Charles Taylor, Roy Height and Craig Perata of South Bay yacht club. Mayor, could you please do the honor? [applause]

>> I think Councilmember Chu kind of told you everything I was going to say so there's not much to do except thank Councilmember Chu for the commendation. I appreciate being down here at the council office chambers. I must say at the outgoing commodore it has been an honor and a privilege to serve on one of the most historic yacht clubs in the Bay Area. As Councilmember Chu said, the club was established in 1888, so it is arguably the third oldest yacht club in the West Coast, I should say the Bay Area. Our structure was not destroyed in 1883, but it was flooded up to 6 feet and then had to be moved. But it was built in 1903, and it is the oldest structure, yacht club structure still in use in the Bay Area. Again, the yacht club, we invite everyone to come down and visit. We try to promote safe boating as much as possible. We have been promoting conservation of the bay as was mentioned, restoration of the bay, we are very highly involved in the community. Community support is the backbone of the club and of course the preservation of the history of Alviso and San José. Many of you may not know but the port of Alviso basically was the point of entry for most of the goods that helped build San José in early 1800s. So again, I just want to say thank you to Councilmember Chu, we're going to be working to rebuild our marina facilities. It's going to be a tough struggle. We hope that the citizens of San José and the

councilmembers and mayor will help us with that, with this effort. It will help put another feather in the cap of San José as a world class city. Thank you very much.

>> Mayor Reed: Now I'd like to invite Councilmember Herrera and San José marines to join us at the podium as we commend San José toys for tots program. Oops, I'm sorry, I'm ahead of myself one point here, sorry, false alarm, still need Councilmember Herrera. Matt Mahood, Pat Saucedo and Hal Hillman to join us at the podium as we commend the San José Silicon Valley chamber of commerce, 125 years promoting business prosperity in the San José region.

>> Councilmember Herrera: Thank you, mayor. I want to welcome Matt Mahood the chamber director and Pat Saucedo government affairs director. We are here today to commend the San José Silicon Valley Chamber of Commerce on their 125th anniversary, as they continue to cultivate and nurture a strong regional economy. The chamber's rich history and they have a lot of history here began in 1886. As the Santa Clara Valley board of trade where it addressed general community matters as well as commercial interests. In fact, one of their very first important successes was backing the paving of San José's muddy streets. So they were dealing with paving it back then. They also successfully backed the construction of a new city hall, circa 1889 to 1958, which is now plaza de Cesar Chavez in Downtown San José, and they helped complete a sewer system. They also helped fund the historic hotel Vendome. In 1900 the board was absorbed into a new organization called the Santa Clara Valley improvement association. Then in 1901 they merged with the San José merchants association to become the San José chamber of commerce. They've had a few name changes here. During the 1900s the chambers directed the building of a network of trolley lines to improve the transportation system in the city. It was during this promotion that the chamber coined the term, valley of heart's delight, in reference to the beautiful bounty of fruit and blossoming orchards. During the 1920s and 1930s the chamber backed the building of infrastructure, parking lots, the bay shore freeway, the civic auditorium and a new department of the chamber, the convention and visitors bureau. The 1940s through 1960s the chamber entered an era of city street building, highways, water and sewer systems and also an era promoting the city to attract businesses. They sent delegations to major industrial centers around the nation to entice industries to come to San José. By the 1970s there was a dawning of the era of limits. The chamber worked to resolve conflicts between economic progress and no growth philosophies. They

also worked to strike a balance between growth the need to plan ahead and quality of life. During the 1980s the establishment of Silicon Valley as a new world leader in innovation came about and the chamber served as a catalyst for progressive thinking linking private sector expertise and investment to public sector programs to form partnerships. One such partnership came about when amount of funeral home in Willow Glen the original home of Christmas in the park decorations by the way, donated a few of their animated displays to the City of San José. A chamber committee developed what is now the separately managed Christmas in the park. In the 1990s joint venture Silicon Valley was born out of the chamber conducting innovative programs aimed at strengthening the economy. In the late 1990s the name changed once again to San José Silicon Valley chamber of commerce to reflect the worldwide fame of the valley and its innovative industry. To reinforce the concept of jobs now, the chamber launched city trip, annual treks to other front-ranked cities to give San José business and political leaders exposure to new ideas and best practices. City Trip participants have gone to cities such as Chicago, Boston, Austin, Seattle, San Diego, and most recently Portland. The chamber also led on the political front identifying and supporting candidates for local and state offices as well as endorsing certain policy issues that grow the economic base and create jobs. As the region's leading voice of business since 1886, the San José Silicon Valley Chamber of Commerce speaks on issues of importance to businesses across the Santa Clara Valley. Their membership ranges from large fortune 500 firms to small family-owned businesses. They share a common understanding: Protecting and improving the Silicon Valley business climate is a key to our future economic prosperity. San José Silicon Valley chamber's annual program of work is led by a 70 member board that consists of business leaders from membership located across the entire Silicon Valley. Acting on behalf of nearly 1500 members the chamber creates nearly 100 programs and events for members that build a strong local economy and provide premier business connections and exposure to companies that represent nearly 250,000 employees throughout the region. Annually the chamber's resources make nearly 90,000 business referrals to their members. So today we congratulates them on 125 years and we support them in moving forward to achieve the goals. So now along with Mayor Reed and all my colleagues on the city council I commend the San José Silicon Valley chamber of commerce on their 125th anniversary and wish them many more years of success in one of the great cities of the world. I would like to invite Matt Mahood president and CEO of the chamber to say a few words.

>> Thank you, Councilmember Herrera. She did such a great job telling you all about the San José Silicon Valley chamber she pretty much stole my entire all my talking points. So you'll probably remember me most by not repeating all of those talking points. But I will tell you, I'm here to accept this award or this recognition on behalf of the chamber's board of directors, both past and present. And I'm honored to be here, as well as a former board chair of the chamber of commerce, your mayor Chuck Reed. This coming Thursday, the chamber will celebrate its 125th anniversary with a celebration. And during that celebration we're going to start our business hall of fame to actually honor and recognize those businesses that have been here in the San José Silicon Valley region for the longest period of time and have been chamber members and supporters. Our first four inductees are companies like Wells Fargo, established in 1852 and they have been a member since 1901. Norman Chrysler Jeep-Dodge, established in 1875, they were selling carriages here in San José. O'Connor hospital established in 1889, the first hospital in Santa Clara County and O.C. McDonald established in 1906 and been a member of the chamber since 1929. Over the course of the next year we'll recognize other businesses into the San José Silicon Valley chamber hall of fame trying to identify those businesses that have helped commerce grow, that have helped create jobs and make our economy vibrant in this region. So on behalf of the chamber and its board of directors thank you for this recognition. [applause]

>> Mayor Reed: Now it's time to bring in the marines, San José marines, please come on down, toys for tots program. We want to commend them for their efforts to help needy children during this Christmastime and to unite the entire community in a common cause for three months each year, during the annual toy collection and distribution campaign to contribute to better communities. Now we have the marine toys for tots foundation that also supports them and they collect new unwrapped toys or books during October through December that's a hint for all of you if you haven't helped them out and we help distribute them as Christmas presents to needy kids. Primary goal is to provide new eyes youth to grow in responsible patriotic citizens and community leaders. They've done a great job the 64th year of the program. In 2010 the means distributed gifts to 7.2 million children in more than 700 communities nationwide, and we're proud to have them active in San José and we're proud to help them out, and I want to encourage all the people in San José to donate to the San José toys for tots program. There are a lot of dropoff sites so please remember the other kids when you're buying some for your own. And Sergeant Daniel best will add some words here I think.

>> On behalf of the San José toys for tots program I'd like to thank the City of San José, our outstanding volunteer committee and mayor Chuck Reed for this award. As the mayor said we have drop sights all over the city and our unit's located on East Mission Street. If you have a toy you would like to donate, please stop by. We work seven days a week trying to provide toys to needy children in our community. Thank you very much. [applause]

>> Mayor Reed: Before we take up the consent calendar which is the next item on the agenda we need to go back to the orders of the day. City Attorney has just consulted the rules of conduct of meetings and we provide that if councilmembers object to a deferral under orders of the day, that that would be heard in its ordinary time and then we would vote on the deferral in the regular agenda order. So I need to revisit the orders of the day on item 3.3. Councilmember Pyle's and Councilmember Rocha's interest in having something to say on that item. So do I need a revised motion on orders of the day, City Attorney? Okay. So we would take up 3.3 in the ordinary order. All right. Next item on the agenda would be the -- I'm sorry, Councilmember Herrera.

>> Councilmember Herrera: I was caught off guard a bit by the orders of the day motion by Nancy but I want to understand something. Are we going to have any discussion of the fiscal emergency?

>> Mayor Reed: That would be item 3.3.

>> Councilmember Herrera: So we will be able to have some discussion on it?

>> Mayor Reed: Yes there is a recommendation from the manager to defer taking action --

>> Councilmember Herrera: But we can have discussion.

>> Mayor Reed: Before we vote on the deferral because it's on the agenda. We don't have to otherwise notice it.

>> Councilmember Herrera: Okay.

>> Mayor Reed: So that takes us to the consent calendar. Are there any requests to speak on the consent calendar?

>> Councilmember Constant: 2.6 please.

>> Mayor Reed: I'll pull 2.6 off which is the report from the retirement boards meeting. I have no others, is there a motion?

>> Councilmember Liccardo: 2.9 please. 2.9, any others? No, I need a motion. Motion to is to approve the balance of the consent calendar. All in favor, opposed, none opposed, that's approved. Item 2.6 then, report from our liaison to the retirement boards. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted to report out to the council some of the highlights from the December 1st Police and Fire retirement board meeting. There were basically three items that I will be highlighting. The first is a report from the investment consultant. The investment consultant provided a report for the investment returns for the period ending September 30th, 2011. I'll give a quick summary of those returns. The third quarter returns, third quarter of 2011 were minus 7.9% net of fees. The 2011 year-to-date returns were negative 4.6 net of fees. The one-year returns were 0.8% net of fees. The two-year returns were 5.2% net of fees. The five-year returns were 1.9% net of fees, and the ten-year returns were 5.9% net of fees. The investment consultant made comments that the board has successfully lowered the plan's volatility in investments but that this action in addition to reducing that volatility also lowered investment returns. They discussed that the plan's asset allocation as-is should yield an expected return of 7.25%. The next report was the report from the board's actuary Cheiron. As you know they presented part 2 of their experience study in the June 30th, 2011, actuarial valuation. We've had a lot of discussion about the contribution rates for 2012-13 and as we all know those contributions in relation to the Police and Fire plan will be lower than previously projected. The

actuarial value of the assets and the market value of the assets in the plan are now approximately even. Based on this evaluation, the plan's funding ratio is approximately 85%. The changes that have been experienced are due to lower demographic experiences which include less active participants in the plan and other factors. Cheiron made a statement and there was quite a bit of explanation of the fact that the plan is very highly leveraged. And that means that our plan is very sensitive to changes. In other words, as small changes are made, whether it be in investment experience or demographic experiences, it can cause large swings in the contribution rates. That leverage that they've pointed out is a leverage of a factor of 16X. And they were quite shocked at the significantly high leverage that is experienced in the plan and just for a comparison factor, the Federated plan is only at a leverage of about 8X. Cheiron recommends that due to this, that the board consider derisking the plan by derisking the plan that will help reduce the leverage and the effects of the leverage. Derisking the plan means lowering the investment risk which of course would lead to lower assumed rates of return. Cheiron made a recommendation to the board that they select an assumed rate of return for their projections of 7.25%. This recommendation would put the likelihood of achieving that rate of return at approximately 50%. In other words 50% of the time it's likely that they would achieve that return, 50% of the time it's just as likely that they would not achieve that rate of return. The retirement staff agreed with this recommendation by Cheiron. The board had considerable discussion about the 7.5 or 7.25% assumption rate. There was a lot of discussions on the long terminator. There was pretty much a, I believe it was unanimous or near unanimous consensus that the long term rate should be 7.25% however the board ultimately decided to make a selection of 7.5% assumed rate of return for this current valuation, and acknowledged that next year they should and would move down to 7.25%. This passed on a 6-5 vote as there was considerable disagreement amongst the board on which was the appropriate assumed rate of return to use. Now Cheiron did not present a table of future projections of contribution rates and I know that's been a subject of discussion since Thursday, when this report was made. However, they did show a PowerPoint slide show that had an analysis of different rates of return and different assumption rates. They presented two slides or two portions during that projection where they showed the effects of selecting 7.75 or 7.25 rates of return. In both cases, although the employers contributions did not reach the estimate that they had put in their previous report, that was presented to the boards and ultimately the council earlier in the year, they both showed considerably -- continually increasing contribution rates on the employer and, quite frankly, the employee side. Depending on which you look at that steady increase will raise the contribution rates on the City's part to

either \$178 million annually if the 7.75% rate of return was selected, up to \$199 million annually if the 7.25% assumed rate of return is selected. So we did not have one provided to us that was actually at the 7.5 although the boards expect to see the final evaluation in January that will take into account not only the experience study but all of the decisions that were made by the retirement board related to the assumptions in the valuation study. And we expect to see projections of future contribution rates both for the employee and the employer side when they make that presentation. Thank you, mayor.

>> Mayor Reed: Thank you. There's no action to take. There's just a report. 2.9, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I just wanted to give a shout out to the good folks who are managing our P bid. I know on the city team Jim Ortbal has been involved but Eric Han is the person who manages the day-to-day of the San José downtown association. Thanks to Scott Knies and the downtown association, for launching this effort four years ago. They recognize that the city needs attention, everything from cleaning to beautification to way finding. We didn't have that at the city to be able to provide that. They incredible team out there Groundworks just in the last year has removed 175,000 pounds of debris, and collected trash of almost 150,000 pounds. They've been sweeping scrubbing and washing for over 13,000 hours. And over 15,000 graffiti tags have been cleaned by Groundworks with 82 notifications of Police and Fire for various emergencies and accommodation directions have been given to over 27,000 visitors. Just extraordinary results for the investment, obviously that city and many property owners in the downtown contribute, and I'm just very grateful that they continue to plug ahead helping to keep our downtown safe and inviting for everyone. With that I'd like to make a motion to approve.

>> Mayor Reed: We have a motion to approve item 2.9. On the motion, all in favor? Opposed, none opposed, that's approved. Concluding our consent calendar. Next item is 3.1, report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor members of the council. I'm pleased to report that city employees raised nearly \$110,000 through the 2011 combined charitable giving campaign. Employees also donated 1452 hours to the social service and nonprofit agencies participating in this year's campaign by

dedicating their time to volunteerism. This is the first year that employees were able to pledge to volunteer their time, to local charitable organizations, in addition to making donations. More than 300 agencies participated in the 2011 campaign. They are under the umbrella of five federations, the arts council of Silicon Valley, community health charities, Earth Share of California, Local Independent Charities, and United way of Silicon Valley. My gratitude goes out to the Department of Transportation Director Hans Larsen and his staff who successfully led this year's campaign entitled paving the way for a better tomorrow. I also want to thank the department campaign coordinators for their efforts and most of all to the employees who made donations and commitments to volunteer. Begin the current economic conditions we did not want our employees to feel pressure to give dollars and so we also encouraged them to give volunteer hours. I'm extremely pleased to see how our employees did what they could to make a difference for those in need in San José. Again thanks to all of you for your part in this year's charitable giving campaign and for paving a way for a better tomorrow in our community. And that concludes my report.

>> Mayor Reed: Thank you, City Manager. We will now take item 3.3. We have a recommendation to defer taking action on that item. Couple of councilmembers have questions on that item. First I would like to defer to the City Manager and let her speak to that.

>> City Manager Figone: Thank you mayor, I do appreciate the opportunity to explain what has happened and what has led to my recommendation for deferral. The actions taken by the Police and Fire retirement board last Thursday which will be finalized early next year were very good news for next year's budget, that is, going into the 12-13 preparation. Although at this point in time it looks like we will still have a \$25 million shortfall, if the projections hold true, as I stated in my supplemental memo, which did recommend the deferral, we are very, very happy to not have to put the organization, our employees, and our residents, through the turmoil of extensive layoffs and service reductions to close what was looking to be an \$80 million shortfall. I think it's important to understand that the retirement projections that I, and the city administration, was using were first developed by the Department of Retirement services, who estimated that by fiscal year 15-16, that we would pay \$400 million in retirement costs. In order to validate these estimates we asked the board's actuary, Cheiron, who is the same actuary that has provided the most recent valuation, to validate the Department of Retirement services

estimates. It was Cheiron who estimated that, by fiscal year 15-16, our retirement cost would be \$430 million. These were not the City's projections. This was provided to the city in the form of a letter dated July 20th, 2011, which we're showing on the screen and which was distributed to the council by way of information memo in early August. As you can see from the highlighted number, it was Cheiron who estimate they'd our retirement contributions for next fiscal year would be \$166 million. Which was the basis for our budget projections. These projections were based on 2010 data but nobody predicted, including Cheiron, the huge swing that has occurred in those numbers. It is our current understanding that the bulk of the change was due to two factors: The reduction in the number of the police officers and firefighters and the cutting of their pay. That is not the way that we want to lower our retirement costs or to solve the retirement issues. It's also very important to note that the contribution rates are continuing to increase from 50.4% to over 60%, and that's just on the City's side, it is not including the employees' side which I understand is projected to go from about 10% to 12%. And this does show that the cost per employee is continuing to rise, although the City's overall bill for 12-13 is now projected to go down. Which again is a very good thing. The city council's own fiscal reform plan is not aimed to reduce retirement cost by cutting positions. In fact, the plan's goal is the opposite, to restore services by reducing cost. We're working towards a goal of being able to get capacity in our budget so that the city council can hire back employees, add back services, restore the services that have been reduced and eliminated, and hopefully some day, increase pay. What we didn't know, nor did our professional experts advise us that there was this level of volatility in the Police and Fire plan. One of the questions we have for the board is: How they will address this volatility that could have such a significant impact on our budget from one year to the next. While this turn of events again is very good news for the 12-13 budget, I do not believe it should be our goal to continue the status quo of reducing our police officers and firefighters and having to pursue pay cuts with our employees as a way to control retirement costs. We clearly need to continue on the path of a fiscal reform plan to restore services to our community by achieving long term pension reform. And do I commend those bargaining units who -- I do commend those bargaining units who have acknowledged that this good news from the 12-13 budget does not detract from the need for pension reform. Let me close of the council's consideration of this item by reading from the fiscal emergency plan that I put out which I think more important to me than the title "fiscal and service emergency level report ayes which I think is a very valid evaluation, at the end of page 6 in my recommendation it says, the administration believes that the next round of service cuts required to balance the budget in the face of

such a severe deficit will create a service level emergency. For that reason the administration recommends that the city council adopt a resolution of fiscal emergency based upon the need to find and implement solutions that may require the exercise of the city council's emergency powers. This report sets forth the basis for such an emergency. So mayor and council, my recommendation was based on the \$80 million projected shortfall. Again the good news is at least for 12-13, that looks like it's more in the range of \$25 million. I hope it sticks. There will be many other considerations that we will bring to you, when we do the next forecast in February. And those are my comments, mayor. Thank you very much for the opportunity.

>> Mayor Reed: Councilmember Constant you had earlier had a motion to defer that we moved on past so you restate your motion.

>> Councilmember Constant: Yes Mr. Mayor I'd like to make a motion that we drop this item and move it to a later time.

>> Mayor Reed: Okay we have a motion on the floor. Councilmember Rocha.

>> Councilmember Rocha: Thank you mayor. A question on the point that the numbers were based on the Cheiron. Did our retirement services director do an analysis of those projections or did we take those projections at face value?

>> City Manager Figone: I don't know what you mean by face value. The board's actuary does take the data from the city, and I'll turn to Alex for some of the technical explanation of that. But as I said the data was based on 2010 information. Alex.

>> Alex Gurza: Alex Gurza deputy City Manager. Good afternoon mayor and members of the city council. I think in this particular circumstance they worked in the reverse. Retirement staff now has the level of expertise that they do a lot of checks and balances for information between the consultants. What I mean this was in the reverse was in the initial projections that the city would reach a \$400 million contribution to the retirement systems was first

developed internally and then the check and balance was to have the independent actuary of the board to validate the internal staff's number. And at that time not only did they validate the \$400 million, they projected it to be \$430 million.

>> Councilmember Rocha: And then we had hired an actuary ourselves. Did that firm do an analysis of that projection as well, or --

>> Alex Gurza: I think you are referring to Mr. Bartel from Bartel and associates. We did have Mr. Bartel look at the numbers, and again, Mr. Bartel did not have all the data that would actually be required to run an evaluation. He did look at it. He understood that the 400 million could be within the range but his advice to us, rather than have him do it, have Cheiron do it, the very people who is the board's actuary do it, that's what we did and Cheiron again validated the retirement numbers and came up with the \$430 million number.

>> Councilmember Rocha: As far as best practices are we comfortable continuing this going forward in terms of how we do this? And if that is the case, these are all professionals and again these are all assumptions and projections I recognize that.

>> Alex Gurza: Sure.

>> Councilmember Rocha: I guess I'm looking forward that we're not maybe in this situation again, but it may be unavoidable, I don't know.

>> Alex Gurza: Because we have independent retirement boards and they are the ones that select the actuaries and do it, we rely on the board and their actuaries because that is what determines the bill the city receives. So in that sense we are deferring to the proper entity to make those decisions. They have fiduciary responsibilities and they are the ones responsible. Having said that, the city as the plan sponsor and -- we have had more involvement from an actuary and I think that we need to do that to better advise us. We have Mr. Bartel, continuing to engage him in advising us. As the City Manager indicated one of the things that we will seek to

understand better from our actuary and engage the board on is how to address this volatility that came up and was discussed at the board level last week. But bottom line the decisions on actuarial numbers and assumptions are all up to the independent retirement board.

>> City Manager Figone: Councilmember I would like to add to that. I think you raise a very important question, one that I've been mulling over in my own mind ever since Thursday. And I think where the city, the city should actually obviously continue to pay the bill that we're given by the boards. I think the boards are doing a fine job in trying to stabilize these plans. We do need to understand the volatility. I think where we need to do more work with the boards, quite frankly, is bridge between the actuarial work and then how we handle that on the budgetary side. We're using very complex methods now, new rules that have been quote unquote rules that have been put in place on the retirement board side where you've heard us talk about the floor versus the rates to ensure those plans are well funded. And so as we move into the budget process, understanding the relationship between rates and point in time and floor and all of that, and how that translates into the budget side is really where I think we need to do some more work.

>> Councilmember Rocha: Okay, thank you. I'm not suggesting more analysis and more study. I think there's plenty of that going on but I was really curious given that we were really on the precipice of making a decision today on a fiscal emergency, and this new information, and that's a built uncomfortable position to be in as you can imagine. If we had received this information after the fact, I'm also curious and I've been contemplating over the weekend that if we had moved forward on this decision let's just say hypothetically last week and we had declared that as a municipality, what that implication might have been if we had gotten that new information I think that question is more for the City Attorney. I know it's a hypothetical but honestly I was really thinking bit over the weekend what if we had done this prior would there have been any implication or would we have repealed that at the last council meeting?

>> City Attorney Doyle: I think you would have had the opportunity to revisit that.

>> Councilmember Rocha: Okay, thank you. To the document you mentioned the evaluation of conditions, I have a question. This was a very helpful document, very thorough, was this done in-house?

>> City Manager Figone: Yes, we have been working on this ever since the council asked us to bring forward a declaration or resolution for you to consider a fiscal emergency. The fact there were deferrals helped us to just continue to refine the work. There's really not a whole lot of new information in here. It's a compilation of the many years it feels like of analysis, and decisions that have gone into resolving the budget deficits at least over the last four years as well as the retirement story as it's unfolded. So to answer your question, yes, it was done in house.

>> Councilmember Rocha: So we didn't spend any dollars on this?

>> City Manager Figone: I can't say we didn't spend any dollars on it, no. We had outside actuary, Mr. Bartel's helping us as you know we have had Jonathan Holtzman helping us legally. But I can tell you that our staff put a heck of a lot of time into this.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I would just like to echo that notion that we really bought ourselves a reprieve at an extraordinary price. You know I think City Manager put it well. I think the people in this room know well the price that we paid to get from last year to this year. And came in the form of 10% cuts in compensation, it came in the form of hundreds of layoffs. Our residents now have 200 fewer police officers today than they had a year ago. That was an extraordinary price to pay for this one-year reprieve. And there's a lot of reason to believe that this reprieve is relatively short term. Alex, as I understand it, the numbers we're hearing in terms of plan performance maybe Pete can speak to this if he's more familiar, while we had great returns in fiscal year 10-11 the plan I any was somewhere north of our projection, somewhere around 12 or 14%, is that right?

>> Alex Gurza: Councilmember Constant.

>> Councilmember Constant: It was on a market base but not necessarily on a actuarial basis because of smoothing.

>> Councilmember Liccardo: Returns were somewhat north of the assumed rate of return. How is the Police and Fire plan for instance performed since July 1st?

>> Councilmember Constant: We don't have the exact numbers unfortunately. When I reviewed this with the director of retirement services and I asked him if he could opine whether the results for the year to date from July 1st how they differed from the third quarter returns which I mentioned were minus 7.9 net of fees, he said they were similar, most likely slightly better but not much.

>> Councilmember Liccardo: Okay, so we're clearly in negative return land, which, when you add to an assumed rate of return of 7.5%, that only amplifies the extent to which losses are going to be worked into the equation, when they redo the experience study next year as is done every year, we have to recalculate based on the experience of these funds. Next year they'll be doing it at a time when the planned boards, as I understand it, Police and Fire at least is planning to reduce the assumed rate of return even further to 7.25%, is that your understanding, Pete?

>> Councilmember Constant: Yes.

>> Councilmember Liccardo: So what we're looking at is a short term reprieve. We're undoubtedly current stock market and other market conditions hold, if it looks anything like it does today, we're going to have another hit next year. And because of the volatility that we know is already built into the plan, those numbers are going to look considerably worse than we'd like them to be today. We know that obviously retirement costs will continue to increase and I think many union leaders have acknowledged this very -- in a very forthright manner, admitting we need to have retirement reform. And certainly, we can continue to buy reprieves from these increased retirement

costs but I don't think anybody wants to continue to buy them at the price we've been paying. I think the one concern I have is the extent to which there is some perception somehow or another that the council or the City Manager's office is out there cooking up numbers. Because in case -- [Audience cheering and applause]

>> Councilmember Liccardo: And it's a fair concern, but fortunately it's all public information. The information that's available to you on the Website and if you go to any retirement board meetings, is that actuaries are hired by your retirement boards. And those retirement boards consist of your representatives from your unions as well as some outside citizens who have high degree of financial sophistication. And those actuaries, on contract with those retirement boards, those retirement boards can accept or reject the findings. And certainly, every year, we have a new experience study prepared by those consultants, and every year those numbers change. Why? Because there are changes obviously in the markets and there are changes in what we know about the demographics of the people that participate in the plan. And those consultants' reports are published every year and they're public information. And as I understand it in July, when we had last Cheiron report, Alex, we actually consulted actuaries for the POA, is that right?

>> Alex Gurza: Actually, we did not. The POA had hired their own actuary from the firm of Deloitte from the Chicago office who did look over all the actuarial reports and who did meet with retirement staff to go over, make sure that they understood the state of the Police and Fire pension plan.

>> Councilmember Liccardo: And what did we learn from the POA's actuary?

>> Alex Gurza: From what we understood, they concurred with the estimates that were available at that time.

>> Councilmember Liccardo: Right. So in other words these were validated essentially by the actuary that worked for the POA. Is that your understanding?

>> Alex Gurza: That is my understanding, correct.

>> Councilmember Liccardo: And certainly then we have our own internal folks at retirement services who also reviewed these findings.

>> Alex Gurza: Yes.

>> Councilmember Liccardo: So the reality is we're living in a world of extraordinary uncertainty and as a result of that uncertainty, the up and downs and we all know how challenging they are in the economy today, leave us having to struggle to be able to see clearly in the future. But one thing that is undoubtedly true is the only way we avoid the kinds of retirement continuing this dreadful pattern of layoffs and salary cuts that nobody wants to continue. And that is one thing we can all be certain of.

>> Mayor Reed: City Manager.

>> City Manager Figone: You know Alex one thing I didn't mention and I see you have another chart up here it might be helpful to talk about this right now, is could you just comment on what we received from the boards earlier, regarding the Federated plan, and the fact that we have not seen this kind of volatility? I think that's an important distinction and again, another major question mark.

>> Alex Gurza: Yes. As when the boards conduct valuations, they always look at what happened since the last valuation. There are gains and losses, things that are positive and negative, compared to what they projected. So same thing in Federated. We had the same 10% pay cut for every single city employee and official. Whereas that was a positive experience it didn't lead to the wild fluctuation that existed in the Police and Fire plan. So the slide I have up here today, I think it's very important to stress, this is a slide not produced by the city but produced by Cheiron. You see in the lower right-hand, Cheiron, the city's actuary for both Police and Fire and Federated. These are numbers created by them not by the city. So the thing what I think it's important to walk through, is if you go to the right most column where it says city number and it says 127.2. That is what the City's contribution was this current fiscal year for pension only in the Police and Fire plan. And then, if you go down, expected 2013 contribution, it said they expected it to go to 145. But now I'd like you to go to the note at the very

bottom which says note in our July 20th letter, when it says our it means Cheiron the retirement board's actuary that's where we get the 160 number again these are based on 2010 valuation numbers. So whether you look at they expected it to be 145 or 160 they expected it to go up. The retirement board's actuary went up. Now go tall the way to the bottom and after the valuation was done it was expected to be 118. So if you compare the top number to the bottom number, instead of going up at all it actually is going down. Now, the board did not adopt as Councilmember Constant said the lowering of the earnings assumption as the Cheiron, the actuary and the retirement staff recommended. So that 118 actually means it's going to be even less. So the -- we estimate now, although they haven't finalized it, it's going to be 105. So you'll see now that instead of thinking it was going to be 145 or 160, it actually was going to be 105 which is much less which is, again, based on Cheiron, the retirement board's consulting actuary estimates, not the City's estimates in any of these numbers. But as the City Manager pointed out, I also highlighted contribution rates. And as you'll see, the member rate which is employee rate, currently is 10.6 again for pension only, not including retiree health care go all the way down that column and you'll see that it's projected to go up by 12. Now these numbers are going to change by the way because the -- they didn't adopt the earnings assumption so they'll be slightly less than this. It shows that the employee contribution rates are going up. If you move to the city side it's highlighted 50.4. The contribution rate is expected to be to 62. Again it's going to be slightly less but a 60% contribution for just the city side not including the employee, not including the pension cost is a very important point. The last number and I'll stop there is another number highlighted which is 46.8. When you see it in brackets obviously that means it's a negative number, meaning it's a positive thing it went down by 46.8. If you see how did we end one a lesser contribution? The large hest number is that 46en 8 what is that 3C its changed due to demographic experience and what the board's actuary said to the retirement board is that 46.8 million dollar gain is due to two things. The 10% reduction in pay for police officer and firefighters and the fact that we have cut police officers and firefighters, so those are the two things that have been mentioned are the reasons why there has been a gain in terms of the total dollar bill but in terms of the rate per employee it is still rising. We hopes that I guess clarify what the city is using in terms of the projections.

>> City Manager Figone: And Alex in terms of the rates this does not include the cost of retiree health care correct?

>> Alex Gurza: It does not and we can't stress that enough because as we know both the city and employees know that the retiree health care costs are very expensive and so that is on top of that. This is pension only and we are already sharing 50% of the costs for retiree health care with our employees. We're ramping up to that. And so those numbers that 62% for example does not include the City's share of retiree health care nor does the member side include the cost of retiree health care for the employees.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Thank the City Manager very questionly for responding to the new numbers coming out and the recommendation to defer this item . I think it's certainly the right decision to make. You know, and just the fiscal and service level emergency is something that's been discussed for many, many months. It's been the topic of discussion both amongst us as well as many in the community, both residents employees and what have you. For good reason. I mean it's a very serious issue and something that's taking up considerable amount of time. Already before last Thursday's numbers came out it was emergency, we know the reservation of rights clause was very unlikely to be able to allow imparity of contract simply because of fiscal emergency. Based upon the numbers we had last week which were certainly more onerous in terms of our 12-13 budget, with the numbers released can 12 cooperative and work with our quawrging underecould potentialary have very little or no cuts at all. And so that's something for all of us to be happy about and I appreciate the City Manager for expressing the fact that there's good news there's still more work to do. Much of the concern over some of the offers that have come publicly from the bargaining units is it doesn't offer immediate savings. Now we have a little pressure relieved in terms of the 12-13 numbers are not opportunity to get savings that we know are real savings going forward that is something that we should absolutely consider and take and negotiate very earnestly and honestly about and in terms of some of the numbers look, you know we still don't know what the five year forecast is. To go forward with the fiscal emergency or even to go forward with a ballot measure frankly is something again will show the unreasonableness and the rational desire to have this done today when we still don't have this information revealed to us just two days ago that likely will have at least some impact on how we're going to approach the long term deficit. And yes the actuarial numbers they are volatile. The same POA actuary

that certainly vaimented to valuation from the spring also that same actuary was dismissed when he said that known gains were going to drop our pay, the payment we owe in 12-13. It was dismissed offhand and now we know he was actually accurate in his assumptions of what the short term deficit would be. And so I would appreciate at least for future reference I don't know if there's someone from retirement staff here. We pay a lot of money for retirement staff. I think questions regarding what returns have been and assumptions I think it's appropriate to have someone here rather than asking for one councilmember's understanding although I know he puts a lot of time into it. The reality is we have a staff for a reason so we can at least get exact answers for questions that come up while we're discussing this. I am somewhat disturbed by the continual drop and defer it. [applause]

>> Councilmember Kalra: Especially -- [applause]

>> Councilmember Kalra: Particularly because it is a term that has very specific legal ramifications and lofty legal thresholds and often it's used in a way to create hysteria ability for us to collaboratively tackle both short term deficits and pension reform in a manner that preserves services for our residents. The doshes know, I'm going to support dropping this right now and deferring it. I don't think there will be a need to come back to it. If there is, it would be shocking to me since it was a self lfs, and you know we still have a lot of pension terrorism do in the short term in our bargaining units, I hope we can focus on that rather than these terms of art that have impactful legal ramifications incredibly important issue. I want to thank Councilmember Pyle for asking that it be heard. I find it disturbing that a majority of our council voted to have this item dropped and deferred during orders of the day even though they new there were at least two councilmembers that had questions and concerns and we had to go to procedural trulls have these discussions even though we've been discussing for months a fiscal emergency. [applause]

>> Councilmember Kalra: In any case I'll support the deferral.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. I just think that it's important that we defer this and continue to analyze the situation. As we know, there has been not a lot of clarity in some of the areas. And I'm going to ask Alex if you could put that chart back up. Because the one that looks like this. Because there still are questions that need to be asked, and I think that we need to make sure that we're looking at the long term and not just continually taking different snapshots in time. And I want to direct everyone's attention to, I had questions and I spoke with the actuary, and still haven't been able to reconcile this myself. And I know I've spoken to Alex a little bit about it. And also our City Auditor. But when we see the area underneath member and city, those are all percentages. And those percentages are percentages of payroll. Contribution rates, that you take the gross payroll of the people in this unit which are police officers and firefighters, you multiply it by that percentage and you get the dollar amount. And that's a fairly simple mathematical equation to do. But as Alex alluded to, we have this floor concept where we pay the greater of the two so that we don't inadvertently underfund our plan. But if you look at line 3 B and you go under the total of the city contribution it's a negative 4.3% of pay. And 4.3% of our payroll is being portrayed here as being 46.8 million. If you then refer to line 4C, 4.1% of pay is equating to \$9 million. In mathematics that doesn't really add up correctly. I know there are underlying issues that are below these numbers but I think it's something we have to continue to flush out and have a more thorough explanation from our actuary, and any other outside actuary who comes up with the same conclusion. Because if we were to, say, go out and hire 100 people tomorrow, after we've committed that we're going to pay this, we're going to be paying a contribution rate of 62%. We need to have some confidence that that percentage equates to the dollar amount as a percentage of payroll. And I think we have to continue to have this analysis done. And that's why I support the deferral. I'm not saying that I feel we no longer have serious issues. ability to deliver services to our residents and I know we all want to be able to restore services. But we need to have the time to further analyze this, and as was mentioned by Ash, look at the five year projections. We have rough projections that I alluded to in my earlier comments. But we need to make sure that we're able to look at those and see what the long term trends are. Because quite frankly, we had a problem before the Cheiron memo came out in July of last year that shocked us. It made our problem worse and we knew we had to deal with pension reform at that time. So I hope all my colleagues agree and we defer this so that we can continue to analyze it and come back and see after the first of the year when we have more information.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a notion that somehow or another we should drop this completely and not defer it, I think really to say that we shouldn't be focusing with an incredible amount of concern on the numbers, particularly as Cheiron will produce five-year projections, I know, in January, and just assume that the emergency has passed and everything will be fine I think is really putting our heads in the sand. You know whether we declare a fiscal or service level emergency as an official proclamation or not our residents already know there's a fiscal and service level emergency in this city every time they show up at a library and they see the sign closed as it does four days a week on most of our libraries, every time they need to call a police because they've got an auto burglary and they're told we don't have the officers to respond, every time they drive down our many pothole riddled streets they know we've got a service and fiscal level emergency regardless what the council declares regardless what the lawyers say we know it's real, we know it's only going to get worse. We bought ourselves a one year reprieve. We should take advantage of the time as I think everyone agrees to go back to fool ourselves and put our heads in the sand and believe that somehow or another this emergency has passed. I think we all know the residents we served don't believe it has.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'm not sure whom you're directing that too Councilmember Liccardo.

>> Councilmember Liccardo: There was a direction by Councilmember Kalra that we ignore any notion of fiscal or service level emergency.

>> Councilmember Pyle: I didn't get that at all.

>> Mayor Reed: The motion on the floor is to defer.

>> Councilmember Pyle: Yes, I would agree with that and the main reason I wanted to bring this forward so we could discuss this, this is incredible important to verbalize and it's incredibly important for all the people out there that need to know what's happening and to just put it into a deferral with orders of the day and not have a healthy discussion I think limits understanding on both sides of the fence. Certainly I get more out of it. [applause]

>> Councilmember Pyle: Thanks.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm very glad that we've been able to have this discussion and talk about this. I think if we had not, I'd have concerns about this so I'm glad we opened this up and talked to some of the numbers. We certainly don't have all of the answers today but I think it's -- I like many others like many others up here am I have glad to see the numbers from last week because that gives us an opportunity, gives all of us an opportunity to come to some resolution and to hopefully come up with something that can move forward. And I heartily encouraged everyone, all of the employee groups to go to mediation. If that opportunity happens out of today. I think that's really important that we get back to the table, and work towards resolution. This fiscal level emergency has been staring in our face for quite some time. The numbers that I was given, and they came from the retirement board's actuary, they weren't created by our City Manager or any of us, I took those numbers very seriously. So I've used those numbers in talking with people. And in talking about the situation. So I am concerned about the numbers, and making sure we have the right numbers, and I will be looking forward in January to sees a confirmation of the numbers we have and also the five year projections which I think are really important to figure out where we're going forward over the next five years. But I think Councilmember Liccardo is right in his assessment that our residents are really concerned, in that the service levels that we've seen decrease hurt everybody. Especially when you all think about the situation that a lot of residents find themselves in right now, with a 10.7% unemployment rate, 30% of our youth out of work and oosmsz in San José, our numbers are much worse than if you look at county wide. So there's a lot of pape out there and I'm glad that we've had a chance emergency again but I think it's good to defer it because I want us to

come back and look at it. Just like Councilmember Pyle wanted to talk about it today, to make sure that we move forward and go not get ourselves in this situation again.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I'm going to support the motion but I too, also, agree with Councilmember Kalra that the proper thing is to drop this and not extremely high. I mean closing all libraries, having to contract out every position that we're so used to having a city employee provide that service, to me, that's a fiscal emergency. We're not there yet. We're not there. I don't even think we're -- you know I don't even think the "yet" part was appropriate for me to say. I believe that making such a declaration just puts us in a bad -- a bad position, even attracting businesses. I mean, think about what that has done to our credit ratings already. [applause] Kathy about what that's done to our credit ratings already. I mean, think about the small mom and pop businesses that are trying to set up. Banks won't even lend to them right now. No one's lending to small business owners. I just met with the opportunity fund. And you know, I was shocked to hear that they're the only ones that are providing micro-loans out there in our community. And if you look at the driving force of our economy, it's the small businesses. Declaring a fiscal emergency, what bank's going to want to invest in our community? You know, they already don't want to invest in our community. So I think the appropriate thing right now is to, you know, go along with the deferral. But I really believe that the right thing to do, is this should be dropped. I hope we don't see this come back, expecting for us to declare a fiscal emergency, there's still a lot of work to be done, a lot of negotiation, and I believe that we'll get to where we need to get to make this city what the city that we all grew up in, that we all remember. You know which is a great city. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I agree we have to get the numbers, I said that before, I'll say it again. To say my head is in the sands in the fact that we're in a fiscal emergency is so far from the truth. I want to get the pension reform right now so we can restore some of those services. The fact is -- [applause]

>> Councilmember Kalra: And this is -- this is the kind of confusion that we're putting out to our residents because fiscal and service level emergency does have a legal ramification to it. Of course, if I'm out in my neighborhood and I've seen there have been 40 homicides of course there is an emergency in our community regarding services. But that doesn't reach the legal definition of a fiscal emergency. There are two different things we need to focus on getting services back for our community and not the level -- not focusing on legal strategies that are extraordinarily up hill battles that are going to cause more issues in the courts and take us away from the focus focus and the focus needs to be on restoring services to say that not true there is a problem we need to work with our bargaining units to fix some of the long term pension issues. The good news is that we have more time do it now and I'll remind everyone that didn't vote to have any discussion on this I voted to have discussion on this because this needs to be discussed after months of discussion and argument over it. If we're going to defer it let's defer it but let's let the community understand why we're doing it. It's not because we're out of the woods, it's because we cannot legally claim a fiscal and service level emergency based on the 12-13 budget. [applause]

>> Mayor Reed: We have some requests to speak before we call on the speakers I'd just like to add that I wanted to vote on a service level emergency back in May. There's no doubt about that, there's a memo because I thought that what was going to happen to us on July 1st was an emergency. I believe that what did happen to us on July 1st was an emergency. When we laid off police officers and following the firefighters we laid off the previous year, when we have libraries that are closed, libraries that are four days a week or less, community centers that are closed, streets that are deteriorating and we can't afford to repair, that's an emergency. Whether we declare it, we're in it and I think the task is to figure out how to get out of it and that's what we're trying to do here today. I expect this discussion being taken place under item 3.4. I'm hopeful that 3.4 will be shorter don't hold your breath. We have a lot of people that want to speak on all these items. I'm going to limit comments to one minute for the rest of the afternoon. Well, public comments. I can't keep councilmember comments to one minute but I will -- there's some people that want to speak on this deferral issue, I'll take those now, come back to 3.4 and there are many other people that want to speak on the ballot measure. On the item 3.3 deferral issue Robert Lynn Li, Tom brim, come on down. so you're close to the microphone. And then Paula Martinez. And if you really wanted to speak on the blood mirror just wait, we'll be there in a few minutes.

>> Yes, Mr. Mayor, members of the council, I'm Robert Lindley, president of the Santa Clara County federation of retired union workers, I'm also a retiree and I receive my pension through the California public employee retirement system. Just want to say as far as the fiscal emergency is concerned, to the extent that it's based on pension concerns, the council does not need I think and the city does not need to have the same concern about an unfunded liability that a private business would. Because the city is not going to go out of business the day after tomorrow. Or even in the next several years. The other thing is, I, as a retiree, receive regular reports from Cal PERS. Cal PERS is also suffered some investment reverses, in the last several years.

>> Mayor Reed: I'm sorry sir your time is up. Tom brim. Paula Martinez, Robert Sapien.

>> Hello councilmembers my name is Tom brim and I represent the inspectors union for the City of San José. I've been here 28 years and I think the discussion is something that we should be having all the time. And to think that some of the councilmembers voted to not go ahead and have this open discussion is unbelievable to me. Anyway, you guys keep saying that you're out of money. Okay I see some of the numbers but I notice you went ahead and spent \$1 billion on the airport last year and you're going to be paying for that for 30 years and you've also encouraged to go ahead and give people land for ball parks and the earthquakes and stuff, shame on any of that plods.

>> All I can say you're in a hole, stop digging.

>> Mayor Reed: Paula Martinez. [applause]

>> Mayor Reed: Followed by Robert Sapien and Steve O'Steen.

>> If the earnings retirement and possibly forced me to leave the city. Obviously, there is no fiscal emergency. I'm positive you can find millions more if you could look hard enough. You sold a gold mine of land for a stadium at a wholesale price to a billionaire developer lost us billions on that deal. This is politics as usual lying to the public

that we the front line workers are to blame with our supposed high salaries and costly retirement benefits. You are mismanaging the city allowing in the past few years community centers libraries, fire departments to be built with no plan for operating or maintenancing them, no routine. City workers attorney Doyle's Mercury News article reiterated what the unions have been saying all along. MEF has brought forward a fair proposal but you don't want to even consider it. I think you just want to bust the unions, contract our jobs out and leave us to live in poverty when we retire and I say no way. Impose new pension changes on you employees only negotiate with our union.

>> Mayor Reed: Sorry your time is up. Robert Sapien. [cheering and applause]

>> Mayor Reed: Robert will be followed by Steve O'Steen and Robert field.

>> Sorry Robert.

>> Good afternoon, Robert Sapien, San José firefighters local 230. Welcome 55 million closer to the black doesn't quite match our political agenda. [applause] We've got two major hurdles to get through to solve this problem. One is this path to a fiscal emergency. Your job is very different than mine. My job I prepare to respond to an emergency. You've spent months even years now preparing to create an emergency. It's one of the hurdles I face as I try to negotiate to bring my members close to the city so that we can come to agreement and begin to resolve this problem. The second leg of this problem is that you're driven to a ballot initiative. So today, you're here to address two items. Today you're only deferring in an environment where clearly you should be dropping this piece of your political agenda. That has done nothing but --

>> Mayor Reed: Sorry your time is up.

>> -- terrorize workers. Thank you.

>> Mayor Reed: Steve O'Steen -- [applause]

>> Mayor Reed: Steve will be followed by Ben Field and David Wall.

>> Hello councilmembers I'm a lot happier that I've been hearing coming from that side of the table than I have in the past. Thank you all for taking a look at things. I have been taught a lot of things in my life, that is pay attention to the pennies and the dollars will take care of themselves. The stock markets 12,000 today. So you know, things keep going up. Plan for the up and downs, Mr. Liccardo, rather than worrying about this instant. Save the money that you can, when you can, put it in a protection fund for later on. Manage this money that you people are in charge of, as stewards, as though it was your mother's or yours or somebody's that you know it's not just there to spend. You know I know budgets work that way. Spend it or lose it. You got to create a fund where you can keep it for the down times. Change the way of thinking because it obviously hasn't worked. Thank you for your time.

>> Mayor Reed: Ben Field.

>> Mr. Mayor, members of the city council, my name is Ben Field. I work for the South Bay labor council. I was reading the business journal and came across organization, moving on up, selling their San José properties and moving further north. Asked why John Sobrato said with the center of Silicon Valley moving north it was time for us and I thought wait a minute? When did the center of Silicon Valley move out of San José? There is a growing perception that the City of San José is in decline and that perception has been fed by the prospect of this council declaring a fiscal state of emergency. Fortunately city workers have offered concessions which coupled with the reduced by for Police and Fire retirement will enable you to pass a no cuts budget in fiscal 12-13. Thanks in no small part to city workers there is no fiscal emergency but there is a so much that it December makes city services. Today you have an opportunity because there is no --

>> Mayor Reed: Sorry your time is up but we will come back to that ballot measure thing in just a few minutes. David Wall. [applause]

>> Good afternoon. When I look at the agenda, and how it's written, City of San José scam and service level emergency report, it fails materially to underscore why there is a fiscal and service level emergency. City workers when they're hired have a probationary period and if they don't perform, they are fired, period. What is needed is a way to get rid of all of you in such a way. [applause]

>> Now listen up. This whole structure has to change. You can't get elected for four years and muddle through like your brain trusts which you are not. We must as citizens find a way to put councilmembers and mayors who get out of control, and need to be ejected from service by the public. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor to defer, consideration of the declaration fiscal and service level emergency. Of course we still have much work in front of us. This was the easy one for today. On the motion, to defer, all in favor? Opposed? I count none opposed, that is deferred to be noticed if it comes back. All right. That concludes item 3.3. Let's take up item 3.4, which is our ballot measure item and on that, let me just start with a couple of comments if I could. Because I've been pushing for this ballot measure for some time. And whether or not we declare a fiscal emergency we are in an emergency as I said earlier. But I think it's important to remember that we have two objectives that we're trying to do here. The first objective is to make sure that our employees and retirees receive the benefits that they have earned and accrued to date. Second objective is to see that our residents and taxpayers receive the services that we're obligated to provide to them as their representatives. And the fact that there are two objectives makes this a much more complicated problem. But nevertheless there are two objectives and we are trying to do both of them. It doesn't make any easier but achieving both of those objectives are equally important to us. The second is, we're dealing with independent plans. As you've heard earlier in the conversation, the plans are independent, they have their trustees, they hire actuaries, they give us a bill. And we pay it. The other thing that was mentioned that I think is often underestimated is the importance of our charter. We're a charter city. The charter specifies minimum retirement benefits. We are way beyond the minimum, since the charter was put in place, the benefits have been modified probably a dozen times or so. But the charter reserves the right to roll back those benefits at least back to the charter minimums. And so that's a power that we have that many other cities don't have, and certainly cities in Cal PERS are all different than us. And then we don't have to deal with projections to know we're in emergency

as we've discussed earlier. We've gone from paying \$73 million a year for retirement costs ten years ago, to \$245 million a year for retirement costs in the year we're in. That's not a projection. And at the same time, during that time period, we've gone from 7400 employees to 5400 close. We've lost 2,000 people out of our workforce and that represents a huge loss in services being provided to our city. I've tried to capture this in a graph, I don't know if staff has a graph that it would like to put up. We struggle with ways to mistaken this so that people can understand it. we'll worry about that graph, it's eenl one graph, there's many ways tbraskly to explain this, if we get it we can come back to it. But the graphic that I wanted to put up shows the relationship between the number of employees per thousand and the increase in retirement costs. So as retirement costs have gone up, number of employees have gone down. Not only have we cut our workforce dramatically, we've had to lay people off in that process which is not something that anybody wants to do. But often, when you're in the middle of trying to solve a problem you can oftentimes forget what it is you're trying to do and where you started. I'd like to go back to March of 2011 when the council unanimously approved the Mayor's Budget Message. In that message the council adopted fiscal guiding principles. 13 or 14, I'm going to name the first three. The primary solvency of the retirement fund. Service levels for police fire libraries and the community centers should be restored to service levels much January of 2011. The city's retirement 2010-2011 cost even with the modified Cheiron projections we'll still be \$50 million above those cochts in the next year. In the budget message we directed the City Manager to present some recommendations to us in may that will allow us to restore services to the levels of January 2011 and to open the libraries, community centers and fire stations built during the construction and the police substation within five years. The City Manager brought us that plan, fiscal year reform plan in May and it was approved by the city council. So what we're doing today is one part of the implementation of the plan that will allow us to bring back the jobs and bring back the services that we've lost, and to avoid continuing to cut. What is before us today is a ballot measure that I've recommended we put in front of the voters in June, not in March, to put it in front of the voters in June in order to save money, to deal with some of the issues that are costing us money, as part of what we need to do in order to save jobs, restore jobs and provide services. Because even with the modified Cheiron numbers for next year, our retirement costs will still consume more than 20% of the General Fund. That is a huge number. City services will still be below the minimum levels necessary to provide essential services to our people. That's not acceptable. And it shouldn't be acceptable. And we're trying to fix that. That's why we're here. If we allow the voters a chance to decide on this in June, the voters will decide things that are

very important to the quality of life, and the services that they deliver. But people who have not read the latest version of the ballot measure should take a look at where we were five months, six months ago, and where we ended up. We've made substantial and significant changes. Even though we've not been able to come to agreement with any of our bargaining units, we have been listening and we have been engaged in serious negotiations that have made changes as a result. We are probably not done, and part of the recommendation from the council today is to approve this language, but not to submit it to the registrar of voters until after we've had an opportunity to go back into mediation with our bargaining units. We don't have to submit it to the registrar for a June election until I think 88 days before the election, which is probably about March 9th. So we have some time for mediation. And the council, if the council approves the recommendations, we'll have the languages in front of us, but we also have the opportunity to engage in mediation with our bargaining units. And with that I'd like to turn it over to the staff to talk about the contents of the ballot measure that the council is facing this afternoon. City Manager.

>> City Manager Figone: Yes mayor thank you. Actually you touched on many of the points hi in the setup. I'd like to tush it over to Alex Gurza to talk to you about the blood measure. He's going to do it in a very high level. Alex if you could take the council over the ballot measure.

>> Alex Gurza: Organic, council Alex Gurza. All the detail in the ballot measure but a comparison for the retirement benefits themselves for current employees those that opt in to what we are calling the voluntary election program and then what would a second tier look like. Two slides, one would be for Fred and the second one will be for Police and Fire. There is a lot of information, we will be posting this online after the meeting. What we mean for tier 1 is all employees that are currently in the Federated city employees retirement system and I'd like to walk through a little bit slowly but it will go faster in the second and third columns. The maximum benefit in the Federated system is 75%. 75% of what? It's 75% of salary I'll talk about that a little bit later and that is achieved after 30 years of service. Not everyone receives the maximum, only if you receive 30 years of service. The accrual rate is how much of your final salary do you get per every year, the accrual rate is 2.5 30 dwreers of service you'll get to that 75% maximum. Then when can you retire? That's the next row which is age and years of service. In the Federated system you have to be at leets 55 years old with at least five years of

service or if you have 30 years of service you can retire at any age. So clearly if you have to be 55 if you start young, then 25 or less, you'll -- you'll be able to hit retirement age even before the 55 year. Then the final average salary calculation you see highest one year that's what's your pension based on? If I work 30 years I get 75%. 75% of what? It's my highest single year so even though I may have started, early on in my career, gotten promoted many times when I retire it's the average highest year of salary which most often is your last year of service. But as the city's experiencing now with all the pay cuts, the highest year might not be the -- your final year if you're retiring soon. You go back for example the 10% pay cut, you go back the highest year might be the year or the year before. The cola not currently tied to consumer price index at all, it is a 3% fixed cost of living. You get 3% per year, compounded so it builds upon the new total. Then the last couple of rows are the cost split. How are the costs or the benefits split? We've been talking about actuarial terms of normal cost or normal cost is the actuary's estimate of what employees in the city have to put aside for every year of service going forward. All right? So if for every year of service in the future that's how much you have to put in. This cost sharing is in the city charter. And it's an 8-to-3 ratio which essentially are these percentages. So whatever the normal cost is, the city pays 73% of that cost, and the employee pays 27%. So again, that's for normal cost. Then we talk about the unfunded liability. Which essentially comes into play whenever the normal cost wasn't enough and that is whether or not there were investment losses or any of those things that, under tier 1 under the ballot measure that would be split, 50-50. Currently, city employees do not pay any of the unfunded liability. So really, the only change in the ballot measure on tier 1 is in that last box of the sharing of the unfunded liability. Going from zero percent to sharing 50% of the unfunded liability. But that is under the ballot measure phased in. So it wouldn't happen immediately, it could go up only by 5% per year with a maximum of 25%. So again, highlighting that for employees who choose in the -- under the ballot measure to stay under the current level of benefits nothing would change, not even the sharing of the normal cost would change, only the sharing of the unfunded liabilities. Now the ballot measure has an opt-in program also termed in the ballot measure as the voluntary election program. Essentially means the same thing which many of our bargaining units have proposed, not exactly the way that it is here but where there is a different program, a less expensive program where individual employees, it would be by individual choice could opt in to a less expensive level of benefit. So what this metal middle column allows you to compare between current benefits and cost sharing and then the opt-in program. So for Federated the 2.5% per year to 2%, as the mayor indicated the ballot measure has changed many times. That was

previously 1.5%. The age would increase to 62. In earlier versions of the ballot measure it was 65. But that increase in age since you're a current employee, so let's say for example if you were 55 today and this ballot measure were to pass there would be a lot of concern that well jeez now I have to be 62, I have to work seven extra years. This increase in age is phased in over a 14-year period so really it would take 14 years to get to the 62 age. The final average salary calculation would move from a single highest year to single highest three years, so you'd average out your single highest year. The cola would be 1.5% maximum but it would be based on CPI unlike it is now. The normal cost would be the same. Split under the 8 to 3 ratio. But the employees who opt in would not have to pay the unfunded liability as it is now. So in other words employees who opt in although the benefit would be less for future years of service, the cost sharing doesn't change for them. So in fact, we predict the cost for current employees who opt in to be less because the normal cost of a more expensive tier would be less. I also want to point out if this opt in plan if the employees vote to opt in, the 2.5 is only for future years only if the employee ten times 2.5, that would still be the accrual rate for those years of service. It would only be future years of service that would be 2%. So finally for new employees, the ballot measure does not itself define exactly what the second tier for new employees would be. Although it puts parameters around it. Actually says there are cost parameters and it allows it to be a hybrid program that could include a combination of a defined benefit program, a defined contribution program. We have actually made proposals to the bargaining unit for a tier for new employees that would fit within the parameters of the ballot measure. This is what you have here in the last column to the right. So the maximum benefit would be 60%, so it would be less than the current maximum 75. And the accrual rate would be 1.5%. Again so if you multiply 30 times 1.5 you get 60%. The retirement age, there would be no phasing in there because it would be for new employees. Final average salary would be 3, the cola would be 1% and the cost sharing would be split 50-50 on both normal cost and any unfunded liability that could accrue for the future for that tier. It would be a 50-50 cost share. On actually it applies to all, employees have the ability to supplement their defined benefit with a defined contribution in the private sector commonly known as a 401(k). The public sector is known as IRS limits, and that is pretax. The city currently does not contribute, we have discussed under the new employee tier, the potential for the city providing some match to supplement the defined contribution. I'm sorry the defined benefit with a defined contribution component. So the next slide is for Police and Fire, given my explanation on the first slide, this should go much quicker. There is a significant difference in benefits for our Federated employees and our sworn Police and Fire. This applies to only

sworn Police and Fire. The maximum benefit is 90%. Again not every police and firefighter can get 90%. You only get 90% of your salary when you work 30 years. If you work less you'll get some percentage less. varies between Police and Fire. They have different formulas although both get to 90% at 30 years. How they get there varies. And the accrual rate goes anywhere from 2.5% per year to 4% per year. In terms of age they can retire as -- well 30 years at any age but as early as 50 with 25 years of service, or 55 with 20. They have the single highest year the there's per cola the same cost sharing that I showed you in the last one. So the cost-sharing would stay the same in the ballot measure for 27%, and then the unfunded liability for those employees that choose to stay in tier 1 would be phased in as it was in the Federated side. The opt-in benefit you'll see that the maximum benefit is 90%. For the people who choose to opt in, why did we do that? There is a difference in the prior slide, we see 75, is because employees, we don't know exactly who is going to opt in. You may have employees who opt in with greater or lesser years of service and so we said the maximum benefit would remain as it is in the current plan so it's currently 90%. But all the elements of the accrual rate 2% per year that would be again for future years of service only. The age is different here in the opt-in plan in the ballot measure. It is instead of 60 it's 57. But it would also be phased in, this change would take 14 years to get to the point where all employees would have to be 57. The other elements are the same. The highest three years 1.5% cola based on CPI and then those employees who opt in would still pay only 27% of the normal cost and they would not have to pay any share of the unfunded liability if they opt-in. So again employees who opt in we anticipate their cost would go down all things being equal because the benefit is less. And then on the new employee side it is the same as in the other. If a 60% maximum benefit after 30 years of service, that could be supplemented by defined contribution components. So again that is all for the presentation. It's not that there aren't other items and significant items in the ballot measure but I just wanted to briefly have an ability to compare the primary benefits for a current employee and new employees.

>> Mayor Reed: Thank you. We have a lot of people who want to speak on this so I want to make sure that we hear from them so I'd like to take the testimony before we get into the council discussion again since there are a lot of people we're going to have our one minute rule as I announced earlier. Please come on down when I call your name so you're close to the microphone. Matt mahood, Jay Wendling, Elana backling.

>> Mr. Mayor, many of the financial troubles you have today are the results of the decisions that were made in the past. They have created unintended consequences. Every year to balance the budget you try one-time fixes or continue to lay off city staff. Well the laying off of city staff, a police officer, a firefighter, a closure of a library, a community center, well it all threads a negative impact on quality of life and ultimately our economy. In November 2010 the City of San José voters took a step in the right direction by passing measures V and W. But that only solved part of the problem and now the city continues to face significant financial challenges with retirement costs eating up to 20% of the annual operation budget. Obviously we must clearly understand the financial impact in the coming months but this city council cannot kick the can down the road any longer. You did not create this crisis. You inherited it oop courageous leadership to do what other city councils before you have failed to do and that is to address the problem head-on and protect city essential services. The San José Silicon Valley chamber strongly encourages you to place a pension and reform measure on the ballot and when you do the public and the chamber will be there to support you to pass this measure to protect the City's essentially service our City's quality of life and our economy.

>> Mayor Reed: Sorry your time is up. All right. [Boo]

>> Mayor Reed: I'm going to ask the audience to be polite and respectful of everybody. There are a lot of people who want to speak. If you can't hold your tongue you're going to be asked to leave. You please be respectful to Mr. Wendling thank you.

>> Honorable Measure and distinguished councilpeople Jay wend Ling. It's good press when you people talk about the retired police officers and firefighters bringing home a six figure retirement package. I'm here to talk about the other side of that coin. I'm here to talk about Roy Geringer. He worked for 25 years, as a police officer. He has been retired for over 25 years. His pension is \$1500 a month. And he's having a hard time living in this state, in this city, on \$1500 a month. We request that you adopt the Pyle Rocha memo as your guide through this abyss, and we would be more than happy to continue to work for you, to a satisfactory end. Thank you for your time.

>> Mayor Reed: ELANa Bachman we were rewarded with impasse being declared within less than 48 hours. We are certain the city team didn't have a chance to analyze our proposal in that short time period. We urge you to direct the city team back to the bargaining table and take a serious look at our proposal, which significantly reduces retirement cost by \$160 million during fiscal year 13 through fiscal year 16. Thank you. [applause]

>> Mayor Reed: Paula Martinez, Gloria Chun hoo and then Johnny Camas.

>> Good afternoon, my name is Gloria Chun Hu president of the San José Silicon Valley chamber of commerce merits of the City's proposed ballot measure on pension reform but rather to voice some concerns about the language in the proposal. In Mayor Reed's December 1 memo to the city council he recommended that the sample many voter information booklet not allow rebuttal arguments. We opposed this action. Ballot measures can mess the discussion on ballot measures can miss critical points and voters need to hear the rebuttal from the opposition. The league encourages public discourse, we join in with councilmembers Pyle and Rocha and others, who oppose a language which would voters to hear both sides of the issue and specifically to hear rebuttal comments and to have their points clarified. We urge removal of this language and we encourage the city to continue its work to negotiate with its employee groups and also, to continue to be both open and transparent. Thank you.

>> Mayor Reed: Sorry your time is up. Paula Martinez. [applause]

>> Mayor Reed: And thin Johnny Camas and Jerry Chipui.

>> I lost my aunt yesterday and just like that she was gone and we're left to grieve. You know, what you all have done in the past year is similar to us employees. meds to miss because they can't afford them all. You presented false numbers. You forced very skilled and experienced employees to retire early. You sold a gold mine of land for a stadium at a whole wholesale price to a billionaire developer gives e-give us back our 5% from July you illegally crippled plain to safety exhibiting loyalty and compassion. She didn't just ditch it. Why can't you exhibit the

same for your employees? Impose new pension changes on new employees only. Council please vote no for the June ballot. If not this city doesn't have a financial crisis. This city has a leadership crisis.

>> Mayor Reed: Johnny Camas, followed by Jerry Chipui and Robert Sapien.

>> Thank you, mayor and city council. I know this is a very tough issue to deal with. I speak to you as a financial advisor, I'm dealing a lot with the municipal bonds for the city and I tell you it's been a shameful ethnic say that the bond rating's dropped so far as it has. I think the city needs to get its financial house in order and I don't want to see us end up like Vallejo. I don't think the city can survive such a thing. So I -- although I agree we should you know I agree in negotiations, I also support the decision of the city council, in placing something on the blool if negotiations were to fail. So thank you.

>> Mayor Reed: Jerry chipui, Robert Sapien, Tim Callahan.

>> I'm Jerry chipui, I've been a city employee for 11 years. I'm on the negotiating team with AFSCME regarding the pension changes and we've worked incredibly hard to provide a grand proposal which addresses most of the issues regarding the current budget props. Your employees have done their part to help with the budget. AFSCME members took a 12% 85 million. We have also lost many co-workers to cuts and layoffs and now we have stepped up and offer changes to retirement that will save the city hundreds of millions of dollars. Your ballot measure is illegal, unnecessary and irresponsible and puts our city at great risk. You have another choice. Work with your employees through their union negotiations to find real solutions. We could have this issue resolved and cost saving proposals in place long before the June 12th date without millions of taxpayer dollars going to legal costs. If you'll just come to the table in good faith. Please vote no on the ballot measure. [applause]

>> Mayor Reed: Robert Sapien. [applause]

>> Mayor Reed: Followed by Tim Cal habe and Paul Prange.

>> Robert Sapien president of San José firefighters. Mayor and council I rise again to address you and local 230 members behind me. Local 230 initiative for a long time. Local 230 members, when you agreed to a 10% pay reduction you also agreed to come to the table to talk about peening reform, I can tell you you have not had that opportunity. Local 230 along with San José police officers came to the table to talk about pension reform. What we got was unlawful versions of your ballot initiative over and over an over and over again. Today you stand here mayor, and you say how critical it is for the preservation of city services that we get this ballot initiative moving forward. How many services have we lost because you failed to come to agreement on pension reform over the last two years? You've done a lot of talk, you've pushed a heavy agenda and we've gotten nowhere. [applause]

>> Mayor Reed: Tim Callahan. [applause]

>> Mayor Reed: .

>> Tim Callahan retired employee former trustee Federated retirement board. As a child I was taught a rule, do unto others as would you have others do unto you. I was raised as a Catholic. Our father who art in heaven you know that one. I'm not going to go any further. Do you remember the other one? Thou shalt not bare false witness, thou shalt not steal. If you get this an rate on the ballot and the voters all vote for it, I'll see you in court. Thank you.

>> Mayor Reed: Paul Prange, followed by Bob Leninger and Chris daily.

>> Moving forward with this illegal pension reform ballot measure will result in millions in court costs and yeast of entropy offered a legal alternative that will allow us to move forward as a city doing what we do best which is provide the needed services to the residents of San José. On another note: Please consider having these future discussions on this topic in the evening, so that more residents like myself can attend. Thank you.

>> Mayor Reed: Bob Leninger, followed by Chris Daly and Brian Doyle.

>> Thank you mayor, members of the council, Bob he Leninger president of the Federated retiree association. It's a rush to judgment you don't need to make, been a lot of progress made good faith with the employee groups continue that talk including the retiree associations, there are a lot of devastating impacts by this ballot measure even though there have been changes made and I don't think we need to rush into something that needs a lot more thought a lot more tweaking. I'll leave you with another thought, each and everyity employee be they Police and Fire and Federated has a contract with the City of San José, it is a contract they earned by paying into the city requirements for pension and medical, every year they work. And that is a contract implied or otherwise would rather sit down with you and work something out. But if we can't we can't, we'll go further. Let me suggest instead of a ballot measure on this why don't you get all of these huge concessions from the actives, put those numbers together and in that positive light go to the voters. Show them what these workers are giving up and conceding to and then ask for a comprehensive tax plan.

>> Mayor Reed: Sorry your time is up. Chris Daly, Brian Doyle. And after Brian Doyle, Glen Swartzburg. Go ahead.

>> Chris Daly. Go ahead.

>> Good afternoon, honorable mayor and councilmembers, I'd just like to give this group a brief history of our experience of retirement reform. First you had a ballot measure to make a new retirement program for new employees. Then you had a task force that never discussed changes for current employees. Then you started negotiations for a pay cut larger than any other public workforce has agreed to in this state. Since your March message you have made no effort whatsoever, to have retirement reform for current employees. After you got us to agree to a pay cut then you introduced this bogus cap ballot measure based on misleading financial projects and a shameful for the 10th large eves city in the United States to conduct us its affairs this way. We are ready willing and able we have been ready willing and able to discussion intelligence retirement reform with you and you have refused.

>> Mayor Reed: Glen Swartzbach. [applause]

>> Good afternoon my name is Glen Swartz brvegach I'm a member of the bargaining team for the association of legal professionals. We are requesting that you not move forward today for the ballot measure because the city has not met and conferred with ALP under the seal beach case regarding the ballot measure again despite an outstanding request from ALP to do so. The week following mediation the City Manager e-mailed all city employees update being then on retirement reform. In that e-mail the City Manager cautioned "the earlier version indeed the link in the City Manager's e-mail revealed a very dirchght ballot measure than the one previously provided to ALP supplemental memo there are also a number of new proposals regarding what the ballot measure should include. Meeting and conferring over one version of the ballot measure --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Vera Todorov and Chris Daly, I'm sorry go ahead.

>> Mayor, city council, mayor and Chris Daly, AEA and city employee and San José resident. The pair and some toinl members take it out on employees both financially and verbally. You want to take away something that was promised us, something that is backed by law as a vechted right. Yet this is not the first time the city has broken its promise to employees, to specifically AEA gross. Even when that promise was a legal council signed agreement. In 2003 the deliberately and voting to decrease our agreement and now we find ourselves in a situation where the city council is attempting to break another promise with an illegal action. Yet again like in 2003 your word means nothing. I urge all city council members to do the right thing and vote no to reject this illegal pension reform measure on the ballot. And also to the chamber of commerce person, I'd like to know what dog you have in this fight. Is the dog that you have done -- that you represent certain companies that want to take city jobs? I don't know I'm just asking.

>> Mayor Reed: Sorry your time is up. Vera Todorov followed by Roger stores and Robin Sam ray.

>> Gash, Vera Todorov on behalf of ALP. The way indecent. It is riddled with bad faith, bad information bad tactics and it's continued to insist that employees and retirees give away their vested rights. The city has absolutely no credibility. It cannot even provide the dollar members that are supposed to to be savings that you claim you may have we haven't seen them. We've been asking for them we still haven't seen them. This is by far the most ill conceived and botched negotiations 25 years in dealing with labor negotiations in various California cities. The city has no credibility. The only way for the city to begin restoring its credibility is to drop this ballot measure. [applause]

>> Mayor Reed: Roger stores. [applause]

>> Mayor Reed: Roger stores and then Robin Zamora and Tom Cochran.

>> Good afternoon honorable mayor, city council, my name is Roger stores, I'm a city engineer a resident taxpayer all that good stuff. The \$55 million correction to the pension fund should be seen as an incredible blessing instead it seems like people are minimumming and not recognizing it for the guest that it is. We all have a second chance to do the right thing here and I would ask that you direct your staff to go back to the negotiating table, meet with city staff, work with us because we are here to do the right thing. We recognize that there's a problem and we've been stepping up. But the negotiations need to be meaningful and they can't -- there's no more -- we can't be calling this in. Let's not phone it in. Let's not run out the clock. Let's do the right thing by our employees and by the residents. Because ultimately, if you think rewriting the rules is going to save money the next budget cycle it's not. The retirement board has a fiduciary responsibility to the plan to ensure that they get enough money. And until all this makes its way through the courts over the next three or four years I anticipate they're going to collect the same amount of money and you won't save any.

>> Mayor Reed: Sorry your time is up. Robin Zamora is the next speaker, she'll be followed by Tom Cochran and Mike ender bi.

>> pensions but nothing can be further from the truth. Here are the facts. City workers have changes for new hires, current workers, and retiree health care. These solutions are legal, meet IRS requirements, and will save the city hundreds of millions of dollars. Unfortunately the city never really intended to negotiate with us. They made it clear, that there was a meetable deadline and just enough to pave the way for a March now June election. City management at your direction also declared impasse during these negotiations despite continued promotes from workers. As Pete Constant has said to fail to act now is to doom our city to an irreversible cycle of decline that begins with rising crime and ends with residents fleeing for other communities. So don't let that happen. Go back to the table. Now you need to do what's right for the residents of San José. Work with employees to reach an agreement and stop these political games. It's called negotiation not mediation.

>> Mayor Reed: Sorry your time is up. Tom Cochran. Followed by -- Tom will be followed by Mike enderby and Mike.

>> I'm the political director of the democratic party in Santa Clara County. I have been for a while. I've helped a majority of you get elected. I'm also vice president in the financial industry, don't hold that against me. I'm also past chair of the salary setting commission. So collective bargaining in good faith is a fundamental right in the United States. Collective bargaining in good faith is a key stone of the democratic party. Collective bargaining in good faith is the way compromise and solutions are reached on complex issues. Pain, fear, ugliness continue to divide our community. Putting forth this ballot measure tells me you're okay with that, you like that. It's a bully pulpit. You've already -- the leadership here has already demonized the Police and Fire department now you're going after librarians and janitors. What is wrong with y'all? [applause]

>> Mayor Reed: Go ahead Mr. Enderby, peter van deer pay, Ruben gons.

>> Thank you, Mr. Mayor, members of the council. Mayor Reed, you served six years as representative of district 6 plier to your election as mayor. So you therefore are if longest serving member of this council. You've had an opportunity to review and ratify all of the employee agreements that have been made during this time. I dare say,

they're all of the current agreements unless there's one that is extremely long standing. Therefore, you are in this ballot proposal, renegeing on contractual promises. This is possibly illegal, probably unconstitutional and certainly immoral.

>> Councilmember Liccardo: Peter Van der pay, Mike enderby, followed by Peter van deer pay and Ruben Gonzales.

>> Good afternoon, mayor and council, I appreciate fiscal emergency given the most current information about the pension testimony. In this contest it seems highly, in this context it seems highly inappropriate to move forward at this time with essentially unchanged ballot language measures, for severe pension reform without taking yet another shot at trying to work cooperatively with unions and/or reevaluate being the language. In the actions taken by the toinl city council which have degraded the morale of hardworking employees who provide the service to this community and are the daily face of this-o. I urk you to rethink the timing and content of the ballot measure and take measures to ensure that San José can recruit and retain good talent in years to come. Thank you.

>> Mayor Reed: Peter van der pay, Rubin Gonzales,ed from Hirsh, Kevin fish.

>> I'm Rubin Gonzalez, MEF Public Works, been an employee for ten years, every year you've had a deficit. Couple of problems 98 see with this because it's going to affect me. With the opting in you haven't cleared it with the IRS, that's a major problem. The second problem is this rebuttal argument that isn't going to be allowed, as a voter, I think that's wrong, you should have rebuttals. We are in the United States of America this is a democracy and a republic. I hope the attorney general, the federal bureau of vehicles and the united States of America. Thank you. [applause]

>> Mayor Reed: Fred Hirsh followed by kevin fish and Nancy Ostrowsky.

>> Hello all. this mayor's no foot, he'd get all As in the coke busters, ballot, then millions more for lawyers, cash, drained from the City's wallet. He'd invest in an election, then horrific legal fees with funds we need for public safety, neighborhoods and libraries. It's workers didn't make this crisis. No, not at all. It was city government decisions heeding Wall Street's call. It is from the Wisconsin Scott walker's union busting bag of tricks. Pension and health care are wage allocations, it's what we all need. Don't pick workers pockets, don't do this dirty deed, Charlie Reed.

>> Mayor Reed: Ken phish.

>> Ken H. fish.

>> Mayor Reed: I'm sorry let me call the names.

>> This proposed ballot measure violates the United States labor code and stabs the workers in the back. What we have today is one battle in a quote unquote war. This is not going to end today. We're going to continue with the war tomorrow. We must get politically involved. We have votes, and you need our votes. And this also goes for the occupy movement. We're going to have to do the same thing. Get politically involved. And we should not fear as we go forth in this so-called war. Just remember, what adds Miller David G. ferry gut said, dam the torpedoes full speed ahead.

>> Mayor Reed: Nancy Ostrowsky. Phyllis Dawkins Thames, and Kay Denise McKenzie.

>> Nancy strack, local universe, where up is down, lice are considered truth and better, to the tune of \$55 million this year alone and the sky is not falling. This would be welcome news in other cities. But in San José, the City Manager and our mayor greet this news with disdain. We offer to roll back pensions in a legal and thoughtful manner. This would be welcome news in other cities. But in San José, some on the council want more. The city ballot measure will ensure that everyone that retires in San José after a full career will be given a fake gold watch and a application for food stamps and affordable housing. We say no to this assault on city employees in our

families. The city created its phone 80 fiscal emergency by using made up pension cost projections that we said were wrong and now have been proven to be wrong. We support pension reform. That is fair and legal.

>> Mayor Reed: Sorry your time is up. Phyllis Dawkins Thames. Kay Denise McKenzie. Dale Depp, George McKaron.

>> Honorable mayor and council, my name is Kay Denise McKenzie, president of CAMP IFPTE just been deferred. A ballot measure that will surely result in litigation. Haste makes waste. If you hasten moving the blood measure today, you are closer to laying waste to the future financial stability of the city because of the millions of dollars it will take to deal with the litigation and its results. Do the right thing today, support the recommendations and that's plural made by councilmembers Rocha and Pyle. Thank you.

>> Mayor Reed: Dale dep. George McCarin, Russell Baker.

>> Good afternoon, mayor and council I'm Dale depp, president of AMF IFPTE local one. The union proposals have been validated by their own actuary and now independent retirement board actuary as well. It takes leaders with courage and morals to on unlawful pension reform now. Thank you.

>> Mayor Reed: George McCarren, Russell Baker, Steve O'Steen.

>> My name is George McCaren, San José love the department love the officers I serve with and I know we talk about these 90% plans but as Councilmember Constant can attest very few of us make it for a whole 25 or 30 years. We've talked about actuarial studies and we've talked about numbers but something that's been completely left out of the conversation is morale. I'm watching brother and sister officers flee our department like rats from a sinking ship. I've seen my brothers fight for their very lives within just the last few months as criminals try to take their weapons from them and kill them. We expect this from the criminal element but when we look up the chain of command and we see our city council and our mayor we want to know that we are valued and we know that you

value the sacrifice we make sometimes the ultimate sacrifice and our employees don't feel valued at the moment. As city leaders prior service, the employment of the mission while considering the welfare of the troops.

>> Mayor Reed: Sorry your time is up. Russell Baker. [applause]

>> Mayor Reed: Followed by Steve O'Stein and Rocky.

>> Mayor Reed and councilmembers I'm a citizen of San José, district 9. I'm also a city employee. Things have been pretty disturbing as I watched over the last 11 years as every year we go red and every year we spend more money. We built City Halls we built police stations we don't use and those things are never under consideration when we talk about the problems. We say oh it's the retirement, retirement is a big stumbling block here. What happened to what put us here? Why didn't we save for a rainy day? We know the cycles go up and down. instead of building places we don't need things we could have fixed and kept going and done things gradual Li. I think one of the things Mayor Reed said when he was campaigning, no lying, no cheating and no stealing.

>> Mayor Reed: Steve O'Steen. And then Rocky and Rick Wardall and Carol Garvey.

>> Hello again, Steve O'Steen. I agree with all this about voting against the ballot measure. All makes absolute sense to me. You all probably received the Moscone letter showing you all the reasons why. I like to bring up a couple of other points that I haven't heard of today. I've been told that it would take about \$150 per year, per person, to fund the fire service. About the same for the police department. \$300 per per, per year, is pretty cheap insurance, 24/7, 911. Moving on. 600 on the Dow Jones in '66 or 12,000 or thereabouts today. Unfunded liability, Mr. Alex, anyway I didn't remember that part. Sorry Alex what's your last name? Gurza. I'd like to see more about the unfunded liability. We asked for the city to save the excess that they got from the unfunded liability in those high-growth years which is how we got here.

>> Mayor Reed: Sorry your time is up.

>> Make a new plan. Stan.

>> Mayor Reed: Carol Garvey. [applause]

>> Mayor Reed: Followed by Rick wardall, Steven McMann.

>> Hi, I'm Carol Garvey, citizen of San José, tweerd public sector worker union steward with many years of experience negotiations for the county of Santa Clara. I'm personally offended by the egregious way the mayor's pension reform ballot measure is being used as leverage to undermine the good faith bargaining process. How can anyone be expected to bargain in good faith with a hypothetical loaded gun on the table? I urge you to negotiate in good faith with our city workers without the swoffered Damoclese hanging over their head to give way more than their fair share. Thank you.

>> Mayor Reed: Rick wardell, Steven McMann Sergio Jimenez.

>> Good afternoon, I'm Steve McMann educators of San José's largest school district. Done a lot of research on this issue. And I don't think the facts match the ballot measure. I'm actually pretty shocked when I read the words of the ballot measure. It doesn't seem to address the actual issue. Our previous speaker said you natured this issue. The responsibility as elected officials to address this issue head on, go to the bargaining table and resolve it. I've negotiated three contracts with our district, the small -- we are on a smaller scale but we always bargain in good faith and we do it face to face at the table. Going to the voters is a very different approach you have the power to solve this on your own and I encourage for the benefit of these 1700 teachers to do just that.

>> Mayor Reed: Sernlg Joe yow Jimenez Dan tony leam please come on down. I see some of you here. LaVerne Washington.

>> Mr. Mayor, members of the city council, my name is Dan Rodriguez. I'm a business rep for local 332 IBEW and I've lived in San José for over 43 years in District 8. As I look around here I can't help but feel someone's lying to

me. I really don't understand it's either a lie or a \$55 million mistake. Either one doesn't make me feel that good. I would like to know why the city is willing to gamble with the City's money when we have so little of it. This proposed ballot measure is illegal in all counts i don't understand why you would be willing to gamble our money on a losing cause. If this was your personal money would you be as free with it? Would you be so willing to put up your own money under the same risk? What I would like is for the city council and the mayor to start treating taxpayer money like it came out of their own pocket not like the pocket of city employees. If you want to save money why not a ballot measure that would restrict the city council from spending money that they don't have. As I said earlier I've been a citizen for over 45 years.

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

>> Thank you.

>> Mayor Reed: Keith Keyes Ling is our next speaker. laVerne Washington then Tony Alexander. Intermayor and city council, my name is Keith Kiesling, I've had the honor of being in the fire service, the last 25 years I've worked for the City of San José. The issue that sis before you is to move forward with a ballot measure. I'm here to speak against that and ask you to have the courage as a earlier today that they there no longer exists a scam emergency. It also steeples me that this ballot measure was a genesis of the concern that there was a fiscal emergency. What you have is another opportunity to solve this. Coming forth with the ballot measure has been for the attorney general and the distinguished Joan Gallo to say it's wrong, that speaks volumes as leaders you can't ask the citizens to vote something that's illegal it doesn't make it right. It's not the right way to do it --

>> Mayor Reed: Sorry your time is up. LaVerne Washington, followed by David Wall and Emily Gatfield.

>> Good afternoon, LaVerne Washington, president of AFSCME CEO. retirement solutions compensation and benefits for City of San José employees. AFSCME passed a new second a new hire second tier retirement proposal and opt in proposal for current employees and a grand bargain proposal which addresses new hires current employees and retirees oop hundreds of millions of dollars in the long term. Unfortunately the city never

really intended to negotiate except within the confines of the mayor's ballot reform measure. They made it clear that there was an immutable deadline and as such had the proverbial eyes on the prize and seal beach case and now will have to spend city funds defending unfair labor practices needs instead the city continue it its meamp forward and summarily and continually declared impasse later declared we waived our rights to mediation.

>> Mayor Reed: Sorry your time is up. David Wall followed by Emily Gatfield and Linda Didis.

>> I'm a city parishioner, yes a parishioner and a pensioner. What gets me is I don't understand how the congenital incompetence and or arrogance that has caused this problem can be put forth by the same people with the formulation for solution that doesn't make sense. communication experts were funded by their taxpayer dollars to create the refined language in here that is bogus. The Mercury News didn't do their job at all. In reporting these facts that I've just mentioned. And there's as 1 million excess in the parking fund that Mr. Liccardo wants to give in part to the downtown business association, tomorrow at Rules. I don't think these people know about that.

>> Mayor Reed: Emily Gatfield Linda Didis, Bob Brownstein.

>> My name is Emily Gatfield I'm a resident of District 3. Are neither I nor any member of my family are employed by the City of San José but this matter concerns me very greatly because as a homeowner and a resident of this city this affects all of us. It is something that is very serious. Really, the voters don't have access to all the information you have. We've hired you and put you in those chairs. To do a job and not to kick it back onto us. I think it's very important that this not go onto the ballot at all for any reason and in the meantime, I'm hearing it doesn't even need to be voted on until March to get on a June ballot. I see no compelling reason, I've heard no compelling reason today that a vote needs to be taken today. This should never go onto the ballot. If you are going to put it onto the ballot I think you should defer it until March. Thank you very much for the opportunity to speak.

>> Mayor Reed: Linda Didis, followed by Bob Brownstein and that O'Connell.

>> Hi my name is Linda Didis and I'm a resident of District 6, and I am a retired union rep for the city, City's AFSCME unit. The unions have agreed to to concessions and negotiations. Before I retired last year we had already tarted agreeing to those. These are not the severe cuts that are being called for by the city but they are enough to stave off more layoffs and save money. Benefits that were negotiated with the unions were not all given in one year and they were not all given by the city council but over many years. If the city were shrewd gloarntor they next year. To find out there was more solutions if necessary. Taking away everything by declaring a state of an emergency and feeding the press with stories of going bankrupt is a desperate measure that's not only harming the employees who work here but the neighborhoods who trust those employees to do the best that they can. In the end if this ballot measure passes do we know how much this lawsuit is going to cost? I would like.

>> City Attorney Doyle: The council to explain if you believe the cost that taxpayers will be paying if we lose our case.

>> Mayor Reed: Sorry your time is up. Bob Brownstein is our next speaker. Martha O'Connell. I'm sorry, Martha, Bob Brownstein is the next speaker, Bob Brownstein, and then .

>> Mayor Reed and members of the council in 2008, we saw what happened when Wall Street firms took wild risks with other people's money. We witnessed economic disaster. Today Mayor Reed and his four followers seem determined to turn San José into Lehman brothers. When this unlawful measure is rejected to courts the city will have to pay damages to thousands of employees plus interest plus court costs influences potential punitive dpadges. Last week I submitted a public records request asking for the documents showing exactly thatch city will lose, when the ballot measure is invalidated. I got my answer. No such records exist. The mayor and his four followers are proposing a ballot measure which asked what will be the consequences to the taxpayers if their gamble loses. I thought nobody could be more irresponsible than Wall Street. I was wrong.

>> Mayor Reed: Sorry your time is up. [applause]

>> Mayor Reed: After Martha O'Connell we'll have Pancho Guevara and Omar tore easy.

>> Martha O'Connell. I support the retirement proax I don't know if it's appropriate in June but in concept I support it. This is very troubling to me as a citizen of the city. As usual when we talk about this thing this chamber is packed with city workers and union representatives. The pensions that many city employees receive are obscenely high and those who bear the cost buy and large are not here. monthly income is not even \$1,000 a month to pay for the obscene pensions of many city employees seniors are looking at having a senior nutrition cut and the community centers closed. Those who oppose letting us vote on this it seems to me appear to be concerned only about their individual economic welfare instead of being concerned with the city as a whole. I also would like to say I favor rebuttal arguments because that is a fair thing to do. [applause]

>> Mayor Reed: Pancho Guevara, Omar Torrez, Randy kinman. Jeff Welch. Looks like Randy kinman and then Jeff Welch and then Conrad M.

>> Thank you. As one of the few people here who is attending strickly as a resident, I have to say that this ballot proposal has been thrown at us as a resolution for an immediate problem. A problem that you state no longer exists. So to me an emergency is, the house is on fire, call the fire department, throw water on it, put it out. The after effects of a fire are always a lot of cleanup. You've already stated we're not at that stage. We're at the oh my goodness, we almost plugged in lights that were defective and almost set the house on fire. Isn't it a good thing that we have some time to deal with it. So what I want from each of you today is a statement as to why you are voting for or against this. You owe it to the employees and you owe it to the residents. [applause]

>> Mayor Reed: Jeff Welch Conrad M or Conrad can go first, I don't really care, it's okay. Conrad M. Jeff whrep and then Ross Signorino.

>> Yes, my name is Conrad M. And I'm a resident, I'm a property owner in district 1. I consider myself a nerd, a geek, a progressive part of the 1% who supports the 99%. I think the ballot measure is premature. I think you should not be pushing it for June. You should be having it in November. For one thing you get much better turnout

in November. For another, November turnout is more liberal, that's a probably good reason to do it for June if you want the results of the conservatives supporting it and winning. Also want to say as capital of Silicon Valley a lot of this debate should be online. You know when I looked this up on the web and tried to get information on the pros and cons of the ballot measure it should be tagged, it should be in a Wiki, it should have the pros and cons of each item. Thank you.

>> Mayor Reed: Jeff Welch, Ross Signorino Ben Field.

>> Good afternoon, council mayor, Jeff Welch local 230 president. I rise to speak against this item for a number of reasons. It's unlawful, it flies in the face of over 70 years of case law on vested benefits and implied contracts and it's not necessary at this time. You have in front of you you should have in front of you a chart that was sent to you today that represents the savings of our offer. Hundreds of millions of dollars right in line with the mid 1990 levels that the mayor was talking about and it addresses all the issues on pension reform. They're available, we need to negotiate over them the ballot measure is premature and unnecessary and my unit is willing to do so but not with a gun to our head. We need to go to the table with clear partners in searching for solutions. I ask that you drop this ballot measure and move forward on bargaining. Thank you. [applause]

>> Mayor Reed: Ross Signorino, Ben Field, Jim unland.

>> Thank you, Mr. Mayor, members of the council. It doesn't matter when you put this on the ballot. Whether it's March or June. Even a year later. The air is so poisoned right now, the way the -- with the way the pension people have been advertised in the Mercury News, that it would be an unfair vote really to put this on the ballot. You have to find another way. This is another case of weapons of mass destruction. Here you have in the Mercury News it points out the greatest ones who get the most six-figure pension and here we have a lot of people who are here that are not in that category. We lose respect for people when we lump it all together. Again, the air, you poison the air so much that there isn't a chance that you could lose.

>> Mayor Reed: Ben Field.

>> Mr. Mayor, members of the city council my name is Ben Field. I work for the South Bay labor council. I would like to address the idea that you can put to a vote the ballot measure and at the same time, encourage negotiations. Some pay think that the mayor's ballot measure will intimidate city workers into compromise but this would be a misreading of your workforce. City workers are twoiblg compromise but not because of any threat. They are confident in their legal case against the ballot measure. Putting the measure on the ballot is an incentive to litigate not negotiate. One thing on which everyone agrees is that the litigation that you may cause today will be bad for the entire city. You have not disclosed the potential judgment, the size of potential judgment against the city but it will be enormous and that is the real threat of a fiscal and service level state of emergency. Thank you.

>> Mayor Reed: Jim unland. [applause]

>> Mayor Councilmembers, good afternoon, Jim unland, San José POA. We've been given time and we need to use that time. This man and POA have worked out difficult problems before. I'm confident we can work through these difficult problems that are ahead of us. But we need to have a little time to do it. This message you're trying to send today is a wrong message. By putting it on the ballot three months before you need to demonstrates to us it is a message to us that the talk is all for nought, that will be the waist waste of time. Please reconsider this give us the time we need to work through this. I think we're closer than a lot of people believe. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have, undoubtedly a great deal of council discussion and debate on this so we'll get into that now. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to start out by thanking all the employees and the leaders of the bargaining units for coming out to speak with us today. And thank you for your outstanding service with the City of San José. I can't speak for my colleagues but for me this is going to be a very difficult vote and I'm sure they all feel the same way. As many people have said already, last Thursday we received news that the city Police and Fire pension rates will be significantly lower than previously estimated. We have that number. We saw

that full. We don't know what the actual number is going to be like until January so we will be waiting for that. While that was really good and welcoming news, unfortunately, to me, we still have long term budget and pension problems that are looming over our head and that's one of the reasons why we're having this discussion today. For the past ten years we have been struggling with a deficit that seems to be putting San José in darker and darker situations. I never felt I would be coming out here to vote to contract out general services or janitorial services or to have shorter library hours and community centers and other city facilities. But that's what we had to do last year. And that's probably something that we have to do next year. And so to me, sometimes I wonder if there's really indeed light at the end of this tunnel. So the recommendation before us today is really, it's an objective and a goal to put this city at a more sustainable level than has been traditionally in the past decade or so. Somebody said that we didn't inherit this problem. This council did not bring this financial fiasco to the level that it is today. But we do have a responsibility to fix it. And to fix it right. The ballot measure language before us has been revised many, many times and that has a lot to do with the ongoing communication and dialogue that we have with our bargaining units. And I hope that communication or that dialogue continues as we move forward to June, if this action is taken today. Somebody also mentioned that this is a political agenda. This is a political issue. I don't think it is a political issue. This is a fiscal issue. A fiscal issue that we have to resolve together in a very collaborative manner. While there's a perception that the June ballot measure is going to cut off any communications between the city and the bargaining units, that is simply not true. I hope that the bargaining units continue to engage or reengage mediation so that by the time that we get this ballot before the voters, that we actually have a collaborative ballot and not a divisive one like Jim unland mentioned which I heard in the media which is a good statement to make. We cannot turn blindly towards what our real problem is and we all acknowledge that there is a fiscal problem. We just need to find solutions how to solve it. And I think that what we have in front of us gives us that flexibility and that objective to solve the issue that we all can agree upon. And to so for that and all the things that I've heard so far I'd like to make a motion to approve the memorandum dated December 1st, 2011, co-signed by mayor Chuck Reed myself councilmembers constant Herrera and Liccardo and also the supplemental memo dated December 5th, 2011, authored by Mayor Reed, that would be the motion.

>> Mayor Reed: All right we have a motion on the floor, as outlined in the two memoranda. Vice Mayor, I'd like to request a friendly amendment in the language of the ballot measure, because I've been informed that the title has to be included in the word count. And so we need to add pension reform as a title and take out a couple of words so that we stay within the 75 words. I think staff has a -- a revision version. If we add pension reform as the title we still can have our 75 word count by deleting maintenance, and an article, an, as noted in there, parks would be plural and emergencies would be plural instead of singular. That leaves us with 75. I ask that as a friendly amendment.

>> Councilmember Nguyen: That is accepted.

>> Mayor Reed: Okay, seconder accepts it.

>> Councilmember Nguyen: I was going to have delete or eliminate the last bullet in the memorandum dated December 1st, 2011, decline to voters sample many ballot I'd like to remove the whole section.

>> Mayor Reed: Okay with the seconder? Okay. So rebuttal arguments would be allowed is that the city attorney's interpretation?

>> City Attorney Doyle: I just want to make sure that's part of your motion. If you are deleting it, you're slug including it. The decision has to be made one way or the other.

>> Mayor Reed: So rebuttal arguments would be loud in sample ballot. Is that all Vice Mayor?

>> Councilmember Nguyen: No that's all, mayor.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you mayor. A lot of the discussion has centered around the Cheiron estimate and the Cheiron valuation report. I just wanted to remind everybody that we have been talking about the pension and the issue of our pension system on sustainability far before that letter or memorandum from Cheiron came to us back in I brief it was July of this year. We know that left unchecked, we will continue to see rising pension costs, particularly on the employee -- employer's contribution end, and we know that that will continue for quite a number of years before we hit a fully-funded status once again. When we were talking earlier in the fiscal reform section we talked a lot about the Cheiron memo and the pension board. I just wanted to go over a few more things just to illustrate a point. As I mentioned, we knew that the costs were rising. The new report was surprising to everyone including Cheiron who told us very clearly, at the meeting, that they were surprised by the effects of the leverage and surprised by the extreme swing. We know that due to this leveraging that we're experiencing particularly in the Police and Fire plan and to the extent about 50% as strong in the Federated plan puts us at a point where we have a very highly leveraged, high-risk situation in a time when we're continuing to experience low returns. Even if we were to achieve either the 7.5 or the 7.25 assumed rate of return, we know that our pension costs will escalate and nearly double the City's contribution in the next 12 or so years. We also know that based on the board's action that we have significantly less than a 50% chance of achieving the 7.5 assumed rate of return. I mentioned earlier the investment consultant's report, on the returns that we've had. And it demonstrates that we haven't achieved those rates of return for the past ten years. Which means as we move forward we're most likely to continue to contribute to the unfunded liability in our plans. We know that even if we do achieve those returns, that the leveraging effect, one or two bad years could swing significantly back in the other direction. We know that the Cheiron estimate doesn't change significantly the long term trend that are not really optimistic. They show that the pension costs continuing to go up. As I said it before, we had a pension contribution problem before the Cheiron memo and we still have that now. We can continue to act like thermometers, just taking the temperature of the plan every couple of weeks and reacting trying to figure out what to do or we can act like a thermostat and set the temperature, set parameters moving forward trying to set the cost of pension, I think that's important for us to do today. We have the opportunity to make structural you changes so that we have savings that we can count on in the future. There's a lot of talk about how we got here. Whether it's been this council or previous councils and all the different things that got us here. But what we do know is that for years our pension boards used rates of returns that made decisions to select those assumed

rate of returns, against the advice of the professionals that made recommendations to them. In fact, just recently, we had our professional staff at the City of San José and our consultants from the actuary tell us that we should be selecting a 7.25 rate of return, and the selection was made at 7.5. Those are things that continue to add to the issue of the unfunded liability. We've heard a lot today from city employees but I want to state publicly how loud and clearly I've heard from the businesses and the residents not only in my district but throughout the City of San José and the surrounding region, that are demanding pension reform. They know that as has been alluded here many times today, is we're continuing to fail at our primary purpose of delivering services to our residents because of the pension issues that we face here in the City of San José. I think that today, it's very important that we, as a council, take this vote, and we clearly make the statement that we are moving towards this ballot measure in June. I'm very thankful for the change in conditions that allows us to have a temporary reprieve but I must stress it's a temporary reprieve. We have a little bit more time. Instead of a March ballot, we can go in the June ballot. That leaves us about 91 days before we have to transmit the ballot measure to the registrar of voters. I hope that there is an effort from our unions to continue in mediation to look for alternative solutions. I do want to say that we have received the one offer from Nancy Ostrowsky to continue in mediation. I think that's very important that we do so, and I hope others consider that as well. I wanted to clear up a little bit of confusion about the rebuttal statements versus the opposition statements. There was a lot of conversation, and I know that the Vice Mayor changed it in her motion, and I agree that it's something that we should do in this particular instance. But at no time did we suggest there should be no opposition statements in the voter guide. It was rebuttal arguments, and this council, for the time I've been here, we've had several ballot measures, and I don't believe in any of them we have had rebuttal statements. Now I may be wrong. We may have had one or two where we did but I know, I remember voting here to exclude rebuttal statements in the past. So it's not a new procedure and even if we weren't having this amendment we would still have the opportunity in the ballot measure to have the pro and con statement in there. I'm very comfortable that we can have the rebuttal statements, and I thank the Vice Mayor not only for her entire motion but for adding that change in there. Because I think we do -- we should afford the ability for the public to hear from both sides. And that both sides should have the ability to rebut the others. So in closing, I just want to state it again very clearly: The Cheiron news in July was bad. And in December was good. But before that, we had a problem. And we still have a problem. And we owe it not only to our residents, because I think we do have that obligation that we've been failing to fulfill in providing our services

to our residents. But we also owe it to our employees. Because we know if we do nothing, and the system -- the system itself, the pension system and/or the city fail, it will do nobody any good. And I know you've heard me say this before but the last thing I want to see is the City of San José go down the same path that the city of Detroit and some other formerly great cities did that have become uninhabited, terrible places to live with a very low quality of life because their governments failed them. And I think that we are taking the action to ensure that doesn't happen. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to say that I agree with so much that's been said today. First of all, we do now have time to work out a more pleasant and more meaningful gathering. Councilmember Rocha and myself also put out a memo but I would be willing to forfeit that for one thing: I don't think we're ready to do much of anything. We don't have much of the information we've requested. We have so many questions that haven't been answered. We haven't had chance to allow participation at all on the part of bargaining groups. And I think it's always better, when everybody can be brought forward, we can talk to all people, and get some involvement, get some good substantive conversations going on. So that everyone feels some involvement in this. And I'll tell you why I think it's so important to put something out before the voters. They've asked for it. The voters out there have said: We need to know that you're serious about pension reform. This would show it. But to put something out there that's strictly coming from administration and from the council would not, from my perspective, be as strong as one in which everyone was more involved. Secondly, we cannot continue, year after year after year, to say, oh, well, let's see, we've got this number of expenses this year and that number next year. We have never looked into the next room to see what can we do in order to get more income, coming into the city? We have -- [applause]

>> Councilmember Pyle: This is another point that I think is something that needs to be discussed and it needs to be discussed as quickly as possible and I'll tell you why. If the City of San José gets a -- gets a tax measure going for a half-cent sales tax, we would keep all of that sales tax money. If it's imposed upon us by the state, the state gets a certain percentage. The county gets some. If we were the instigators of the sale tax we would keep

all of it. That would be a substantial money, somewhere in the \$78 million range. For us to take advantage of this time to find ways to bring more income into the city, makes sense to me. And to take the time to include more people, bring more people under the umbrella, to come up with solutions that are a meanable, I don't believe we should have to have people 100% involved, it is the spirit of the thing, the spirit that we can all work together. I think too, going for a sales tax measure is going to take a lot of help from everybody. It's going to take help from you and us and anybody that's willing to go out and talk to people and push the idea. If we can get both of those things going, and then look for other forms of income, as well, I think we might be able to do much more for the city than to continue on the path that we've been on. Thank you. [applause]

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'm going to -- didn't expect to be speaking so soon. I'm going to try and see if I can put this up on the display, if you don't mind. Well, I don't think the debate is any longer the need for pension reform. As I said before, pension reform stands alone we'll without the need for the fiscal emergency. And from all the discussion I've heard on this council, is I haven't seen anybody say otherwise. I think it's a matter and a debate now about the benefit levels and the process and now the time. What I put up there is a table that shows kind of where it started back six months ago and where we are today. Really not going to get into the details of that but for me it really reminded me of where this started and at least where I was at and where we are at today. Seems a little bit of a bus ride for me. And as a passenger I wasn't driving. I'm looking forward to this bus ride. I feel like we've had numerous accidents and collisions, the fiscal emergency, started. But no one likes to be a back seat driver and no one likes one but I appreciate the input that my colleagues have taken and the mayor's taken from some of the direction that I've offered. Now this bus ride isn't over. We have until March to make a decision. As I understand it. But we've been drying with the pedal to the metal for quite some time and I understand why we did initially, we've had looming deficit and cost pre i'd really prefer to see us slow down a bit take a deep breath and see where we can come together on some issues. Not only have we made significant movement but the bargaining units have made significant movement. Now let me state before and preach to by some of my colleagues I recognize we have a deficit still and I recognize that we have high retirement cost but I

don't understand and I haven't heard from my colleagues why we need to make the decision to adopt the ballot measure today as it stands. it is your motion and you're on the memo can I understand why the need for this?

>> Councilmember Nguyen: Absolutely. I believe that some of the bargaining units are currently in mediations, others are not. And I think that if we have a ballot measure language, it realize gives an opportunity for these bargaining units to engage or reengage in mediation. And in mediations both the city and the bargaining units have the opportunity to modify the ballot language so that, you know, if a solution is achieved we probably would have a more collaborative ballot rather than a divisive one, like I said earlier.

>> Councilmember Rocha: Well, I don't think it's any secret where our position is and I guess that's what's confusing me because the suggestions we're suggesting I think are good changes. But again it goes back to the fact that I don't think the need for that exists and it's a person opinion. I understand you have a position of that as well. I truly believe it to be a smart move on our part to show a gesture of good faith to the folks who have stepped up. We've seen proposals talk about rolling back benefits -- [cheering and applause]

>> Councilmember Rocha: Why have seen proposals that have offered to roll back benefits to 1996 levels. That is a gesture made that we should honor honestly. There's the letter that was mentioned from Nancy strophic. I'm going to read one desire to place a pension measure before the voters in June and not have any undue delay in that respective time line. To ensure that does not happen we are providing you with the following commitment. We are waiving additional work towards, this language to me is screaming out, for sit down with us, continue to work with us, this is a major statement and our statement today is going to be we're not going to defer we're going to adopt it for the reasons you just spoke to. So I'm not comfortable making that decision. I've been following along on pension reform for six months now and where we are today is pretty darn close to where I started six months ago and I've been along for this wild bus ride and honestly I'm getting quite tired of the Chris civil we have been getting for not lining. I will say and make the statement we have made movement and I appreciate the movement and I think it's great improvement from where we started but I just can't support the direction we have do. I would start with a friendly amendment request and that would modify the adoption language today as it stands only.

>> Councilmember Nguyen: Councilmember Rocha I really appreciate your comments but at this point I'm going to stick with the current motion on the table.

>> Councilmember Rocha: Then I'll make a substitute motion to move my memo that I co-signed with councilmember Nancy Pyle.

>> Mayor Reed: Councilmember Rocha could you get the date on that.

>> Councilmember Rocha: December 2nd.

>> Mayor Reed: Was that a second Councilmember Pyle?

>> Councilmember Pyle: Yes.

>> Mayor Reed: We have a motion and second for adoption based on Councilmember Rocha's and Pyle's motion.

>> Mayor Reed: Anything further Councilmember Rocha?

>> Councilmember Rocha: I'll pass it off. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Just for clarification. Councilmember Rocha, on December 7th memo, could you just summarize it quickly?

>> The December 2nd memo recommends adopting the memo from my colleagues Mayor Reed, Vice Mayor Nguyen, councilmembers Herrera, constant with minor amendments and defer ballot until March 6th, at that point when the council does decide to put the measure on the ballot oop louse the arguments in opposition to the measure for the sample ballot amend the discrimination of the ballot measure contained in paragraph 4 memo to read as follows in requiring voter proorvel for firsts or decreases in pension benefits I truly believe that if we feel tweer wisest groups that should make decisions on whether or not pension benefits or retirement benefits should be increased and we're going to trust the voters to do that we should also include decreases in that so we don't have any undue impacts. Direct staff to review the recent proposal reach out to the bargain units in order to determine whether they would be willing to waive impasse procedures in order to allow the resumption of retirement reform negotiation and section 3 I'm not going to read in its entirety, this is modifying the ballot measure with reservation of 6 D, the voluntary election program 7BI tier I, and modify the retiree cola which I think the current direction is from the mayor and his colleagues.

>> Councilmember Chu: I do support deferring this to June. I don't see an urgent need to pass the ballot language today. But what I really like to do is that we should move forward with -- before inviting all bargaining units back to the table. So I would like to add a friendly amendment to get the support from the bargaining unit, prior to the approval of ballot measure language.

>> Councilmember Rocha: Can you restate that again please?

>> Councilmember Chu: Support from the bargaining unit prior to the approval of the final language.

>> Councilmember Rocha: In what form would that support be?

>> Councilmember Chu: I'm sorry?

>> Councilmember Rocha: What form would that be? I'm sorry I didn't understand it.

>> Councilmember Chu: To defer it but put an effort to get approval of the ballot language from the bargaining unit.

>> Councilmember Rocha: I support the effort to get approval from the bargaining unit on the ballot language.

>> Councilmember Chu: Great so that would be my friendly amendment. [applause]

>> Mayor Reed: I assume the seconder is okay with that?

>> Councilmember Pyle: Yes, and this does give us three --

>> Mayor Reed: I'm sorry was that friendly amendment accepted?

>> Councilmember Rocha: Yes.

>> Mayor Reed: I think that is was included in the.

>> Councilmember Pyle: Yes I agree with that two and it does give us three months from today to get things worked out a little more meaningfully.

>> Mayor Reed: Okay, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And I have a memo that -- in speaking with Rick can, that I'd like to tea take up separately after and if there's a vote that that places the ballot measure on the ballot. So I'm just going to set that one aside for now and then again, if necessary, come back to that after a vote's been taken on the ballot measure issue. And the current language, and I'm going to ask questions to both because I know that if this doesn't succeed it goes back to the initial motion and I don't want to have to keep on pushing my button for all

these questions. So the original motion Alex that Vice Mayor Nguyen put forward, that contemplates the changes reflected from yesterday, that -- in termination of the ballot language the mayor had in his memo yesterday?

>> Alex Gurza: Yes in the mayor's memo the motion includes those changes.

>> Councilmember Kalra: And it also reflects changes that were part of a memo Thursday evening I think by the mayor and four councilmembers signed onto?

>> Mayor Reed: That's correct.

>> Councilmember Kalra: So the -- and mayor as you said this process started months ago. The entire landscape certainly changed just five days ago. The ballot measure being rebilled a couple of times before today. And so you know, now we're being asked to vote and we're being asked to vote as to whether to place it on the ballot today or wait until March, that's the matter before us. What Councilmember Rocha brought up, the pension for the need for pension reform we all agree is there, the need to negotiate is there. There is no legal or other reason as to why we we had a conflict going in March. And how many days would it have to be before the election that we actually vote on it?

>> City Attorney Doyle: 88 days.

>> Councilmember Kalra: 88 days, that's the reason.

>> City Manager Figone: You have until Friday to get it to the registrar for the March election.

>> Councilmember Kalra: Exactly. That was the reasoning as to why it had to be done today. Anybody watching, the community today, as to whether we have pension reform or not. Everybody make today. It's a decision that for reasons other than necessity, we're being asked to make today. Common sense dictates that having more time to work on ballot measure language can improve upon it and can allow for a compromise through negotiations with

our employees. A few of us have already mentioned that it's good to have employees come forward with the willingness to work on pension reform. As fiscal emergency being delayed still many questions are still left unanswered, important to defer fiscal that apply to this as well. There's nothing about that statement that does not apply also to whether we put this matter on the ballot or not. The fiscal emergency was a primary justification for the legal argument to impair contracts and without it it makes the case to go to the ballot even worse. There was already a horrible case legally, we really don't have cases to back up our position and now we don't even have the fiscal emergency argument. So what we have is -- [applause]

>> Councilmember Kalra: What we have is, and I see in the memo from Thursday from December 1st with the five signatories it bolds the reservation of rights clause held up as the reasoning as to how they can go forward with imparity of contract. We know that's not true. And so it behooves us now more than ever because we don't have the immediate danger that we did have in the few weeks preceding today of the enormous loss of city services come July 1st. That is a gift to all of us. That's a gift that we should be cherishing. And the reality is we may still have to go to the ballot. Hopefully the ideal situation is to go to the ballot with our employee bargain units like have done I appreciate the fact that there's a sense that if we go to the ballot it will pass and representatives from the chamber of commerce indicates he's probably right the reality is that pension reform is something we all can agree needs to be done. The problem is misinformation out there and we're asking our residents to vote on something that has great legal risk, I think that's irresponsible thing to do I hope the chamber would volunteer to pair for legal fees if we did lose in court because that's the real risk the goal should not be to win the ballot at all cost. The goal is to receive financial stability for our residents while ensuring we have highly qualified employees serving our neighborhoods that are fairly compensated given what our financial situation is. If that's not the goal we don't achieve it councilmember Rocha already put up proposals that he's put forward the City's put forward we know there have been proposals put forth by the bargain units. Although residents don't realize that somehow they haven't been working with us. It's just not true. I'm glad that the no rebuttal argument section got clarified. And, you know, and so Rick you talk about the timing of it. We know we don't have to do it today. I appreciate Vice Mayor Nguyen indicating this should not be a decision it absolutely should not be, it should be based on the fiscal health of our city. If this is a fiscal issue that we need to resolve together, we should not vote

to place it on the ballot now, by have already stated without having negotiations played out over the next three months it's hard to see this decision as anything but political. So I would just implore -- [applause]

>> Councilmember Kalra: As I mentioned mayor I'll reserve my memo until and after a vote. However I would implore the council to at least support the motion on the table because again, it doesn't say we're not going to go to the ballot. It says we're going to defer that decision, allow time for negotiations to occur. I think that's what the residents would want. It gives us an opportunity to go to the ballot together so we don't have the risk of legal challenges. Right now all we're doing is asking for legal challenges and that's a risk that our residents cannot afford to make.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I'm going to support the substitute motion put forth by Councilmember Pyle and Rocha. The reason why I can't support the initial motion, I think Councilmember Kalra summed it up but I'll put it in my own words is exactly -- why would we put something -- why would we decide something now that's not what we want and it's actually going to cause us to spend more money defending ourselves in court when we have the opportunity at least three months to continue negotiating. And we've heard that our bargaining units want to negotiate, they want to get back and figure out a solution that, if it has to go to the ballot then we're all going to be able to go to the ballot together. And ensure that we're not on the hook for who knows what types of legal liabilities that are in front of us. And we still haven't heard what -- you know what that's going to be. You know I think that if there's anything that's fiscally irresponsible it would be doing that, not knowing what's in front of us in terms of litigation and what's going to cost us, that's irresponsible. So for those -- [applause] Although still some of the language in the substitute motion still needs to be worked out I'm not completely comfortable with it but what it does is puts forth a good faith effort to bring the two sides together and continue to negotiate. It restores -- it starts the path of restoring confidence that we really want to work together. And you know over the -- Councilmember Rocha and I are new to the council and this last year we were seeing the snowball grow and grow and grow, and all of a sudden last week different information that caught

everyone by surprise. I think the right thing to do is to support Councilmember Rocha's and Pyle's memo. [applause]

>> Mayor Reed: I'm not going to support the substitute motion for a couple of reasons. I agree with the substance of the original motion from ballot measure in June. It certainly would be difficult to meet that time line and the changes proposed in the substitute motion would essentially mean we'd get no savings. Which ultimately takes me back to what we're trying to accomplish. Remember, we're trying to control cost to save some money so we don't lose the jobs so we can provide services to our people. So I don't think the substitute motion solves the problem and it won't get us there so I can't support it. One other thing I wanted to point out was Councilmember Rocha did mention it when he discussed the substitute motion and that was the changes in the language in the ballot measure regarding cost of living allowances for retirees. It now I just want to read it because I doubt if people have had a chance to see it. A lot of people talk about this stuff but not everybody reads it. The way we're proposing it in the main motion in the language on section 10, you can all look it up, emergency measures to contain twieshee cost of livings adjustments. If the city council adopts the resolution dlierg a fiscal and service level emergency William cost of living payments to retirees the city may adopt the following emergency mushes applicable to retirees. Cost of living adjustments shall be temporarily adjusted for retirees in whole or in part for five years. City council shall restore colas prospectively to permit the city to provide essential services to protect the health and well-being of city ballot measure does not change the coal as for the retirees unless we are in a service -- a fiscal emergency, and if the council adopts the declaration. So that's a modification I think people are perhaps unaware of. I just wanted to point out. So I'm going to support the underlying motion and not the substitute motion for the reasons I stated. We have the motion on the floor. Councilmember Kalra you wanted to talk about something else deposit.

>> Councilmember Kalra: Thank you.

>> Ross Signorino: Councilmember Rocha's motion, not the Kalra motion the Rocha motion on that, as he stated it. On the substitute motion, all in favor? Opposed? I count six opposed, that would be Oil, constant, Reed,

Nguyen, and Liccardo. Six opposed, the motion fails on a five-six vote. Taking us back to the motion in chief which was made earlier by Vice Mayor Nguyen. Councilmember Liccardo on that motion.

>> Councilmember Liccardo: I just wanted to offer you know obviously folks can sort of see where the wind is blowing in terms of the votes. But it seems to me what we need to think about is how we move forward from today. And I know there's been extraordinary amount of frustration that's been expressed and a sense that somehow or another the city's not interested in bargaining fairly, or engaging in mediation fairly. But Alex I just wanted to ask, since we first came out with a ballot proposal since May a ballot proposal we've been involved in negotiation. Can you tell me how many times we have altered that ballot proposal through negotiation?

>> Alex Gurza: Jennifer look it up but I think there's approximately five different ballot measures and the idea of each ballot measure was to make changes and as Councilmember Rocha pointed out it has changed significantly from the first to the last, approximately five -- six with the one with the mayor -- seven with the one the mayor produced.

>> Councilmember Liccardo: So seven different changes and each one of those cases, didn't the city agree to reduce the severity of cuts and benefits?

>> Alex Gurza: Yes, absolutely. The level of savings that would be achieved from the first version to the current version has dropped considerably. In other words the version of the brute measure now will save significantly less money because the changes to the optional benefit program and all of that and even the current employees has significantly changed from the first version to the current version.

>> Councilmember Liccardo: Okay, and we're voting even today to make another step in that direction which is making the reductions in the coal as, conditional rather than mandatory, based on some future declaration of emergency if that comes to pass.

>> Alex Gurza: So if the council never declares a fiscal emergency osh a resolution cola change for current retirees.

>> Councilmember Liccardo: Okay I just wanted to clarify that because it's important for people to understand when we say that we're interested in going back to mediation we mean we're interested in going back to mediation and we expect that if we can get to a point where we're comfortable we've got a package that's going to enable us to save services. I'm confident we'll see changes in this ballot proposal. If we don't we need to go forward with what we have. I think it's important to go forward now. I've certainly heard ample legal advice indicating we need to go forward now or we'll have very difficult time making this deadline. It's certainly good news. Believe it or not we all celebrated last week when we heard the news baysed on the wind fail the bad news is we still have a \$25 million deficit this year with certainly no light anywhere at the end of the tunnel yet in terms of how we're going to get out of what we expect to be significantly climbing retirement cost in the coming year. So we've got to move forward and that's why I support this motion.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I again, I want to echo my colleagues who have thanked everyone who have come here to speak today on this issue whatever your position is. For meses these decisions here the decisions we face are stuff and for me they are always based on facts not politics, facts. My deep concern to make sure that the city can provide services, our employees can be employed, and that our retirement system can be project protected weigh open me every time I think about these issues. I think that I've heard from pretty much everybody up here and most of you out there that pension vorm serious and we need to move forward on pension reform. I don't think we're in disagreement about that. I welcome the positive news that we've had. I wish it was bigger news, I wish it was so big that we didn't have fob here talking about this. But over the short term that gives us some improvement some space to try to come together. I do also believe and I've said it to -- I've been very candid about this that I think we will need a ballot measure. I'm glad the ballot measure doesn't have to happen in March for none the \$3 million. Having it in June I think is the right thing to do but that means then we have to move forward with that idea that we're going to be going to a June ballot. So we move to the

decision we have today which is to approve ballot language. But not submit it to the registrar of voters. And some might think that's, you know, that's just a technicality. But for me that's important. Because what that means to me is that there's still time for employee groups to be involved in mediation and we can still see further changes in that ballot language. And I will expect that if people are going into mediation there will be some changes. I hope and from my perspective and I say this with all respect and in earnest that I do hope that employee groups will go back into negotiation. There have been changes, we have already seen many changes on this ballot language. It's very, very different than when it first started and those changes have been in response to our employee groups in negotiations. And there has been a lot of implement and I think there probably can be more. But I think we have to -- we have to move forward because we have a problem to solve and I am really concerned that if we don't move forward in terms of meeting the deadlines that we won't, we won't be able to and so I will be supporting the motion.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Two comments and one question so I'll be brief. I want to, since we're allowing rebuttals now I kind of want to rebut two points you made if you don't mind. I don't believe the recommendation I made would delay the election beyond June. I believe that on the letter we received from IFPTE. Again we're entitled on our own opinion on that. I also don't agree that it gets us no savings. The proposal I put forward has been costed out by staff and it does show savings fairly significant savings. I don't agree that fixing our ballot measure language the number of times we have and unfair illegal or fatal flaws is something we should be bragging about. [applause]

>> Councilmember Rocha: That's not to suggest that we haven't made movement and I pointed that out intentionally to show that we have made movement because I truly believe we have made significant improvements in this. I do have a question I guess for Rick or the maker of the motion, really, given what we were doing today and if we do adopt this direction we are not going to return to council unless and only if we have changes to the ballot measure language.

>> City Attorney Doyle: I think that's the intent of the motion. Just reading the mayor's memo of December 5th so yes, if the idea would be that if there are mediation sessions and there are -- discussions are fruitful staff would come back and it could be reagentized to revisit the language. But a lot of those discussions would be closed session so you'll be regularly kept involved.

>> Councilmember Rocha: Okay, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I will not be supporting the motion. Because I heard loud and clear that our employees recognize the severity of the problem at hand and are willing to help out. I think the best way to move forward is to move forward with a clean slate. We need to continue our constructive dialogue with our employees instead of further damaging our relationship with our employees. I'm very, very concerned, if there's any hell battle, that the party that benefit is not the citizens of the people in San José. It's not the council here. But a couple of lawyers that are representing both sides of the lawsuit. So I will not be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. [applause]

>> Councilmember Kalra: I'd like to point out that I've suggested moving the election to June a long time ago to save those \$3 million so we can put that to our employees and towards the deficit and I'm glad that we can do that now. So that's another good thing that's come out of this. However you know I still haven't heard the -- if it's based on facts I haven't heard them as to why it necessitates us to move today. Other than opinion, there are no facts to support it, there certainly isn't ample legal advice to march, now we don't, we have legally until March to pit on the ballot and still allows for negotiation and still allows us to improve on the language. Imagine if we were stuck with this language months ago before we even improved on it and we're stuck with this language before we negotiated it it would be a nightmare and we would most certainly regret it. Even sow and work with our bargaining units

instead we're just here frozen in time and trust me the language frozen in time will put us in litigation for many years.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I just want to ask Alex a question. If we stuck fixed immutable, can we change this ballot language based on results of mediation?

>> Alex Gurza: Yes, absolutely. Part of the direction is to include the mayor's memo in which it would direct us to mediation and we have the letter from Nancy Ostrowsky from IFPTE that specifically is mindful of the 88 days before June. And so what we plan to do is by tomorrow morning at the latest invite all of the Federated bargaining units to join together in mediation. You know hopefully, again, under the same spirit of letter from Nancy Ostrowsky and the AEA AMSP and CAMP and separately we'd obviously continue with Police and Fire. And through that process, there could be changes made to that ballot measure, and as the City Attorney indicated we'd continue to have discussions with you in closed session about those changes. So there is still that possibility that changes would take place. But the way that this is structured, and again in the spirit that IFPTE has offered it it would not impair the ability for the council to still put the measure on the ballot in June. All of that would have to work together. So again I think we're heart.ed by the spirit of this letter and hopefully all the Federated unions and I know Police and Fire have already expressed their willingness to get back to the table and potentially changes could be made.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, sorry county resist following up on this the letter you are referring to from IFPTE refers to the direction from spirit of their willingness. We don't know, the memo doesn't state the mayor, Vice Mayor and colleagues memo were supportive of that and we'll continue in this spirit so we don't have any guarantees that they're going to continue in the spirit. [applause]

>> Alex Gurza: Yeah, that -- [applause]

>> Alex Gurza: That's correct and even if you proceeded you have no guarantee of the other bargaining units. Again we have 11 bargaining units in the city, nine in the Federated system. So even if you were to accept the letter the way it was no assurance that the other bargaining units would agree to that issue. So again if this motion passes, we would immediately invite all bargaining units and see what again, what their interest is in reengaging in mediation. As well as discussing the issues of how it would work, to ensure that the council would still have the ability to place something on the ballot 88 days before the June election. So we don't know the answer to that either way other than we're going to per the direction if it passes invite all bargaining units right away, and start that discussion to see if there's interest.

>> Mayor Reed: Thank you. City Attorney has win more little tweak I think to the motion that we need to clarify that's since we changed the thing on the rebuttals.

>> City Attorney Doyle: Right you've changed the motion changes the rebuttals. The elections code allows the council to designate, the mayor a councilmember to rare and submit arguments in favor in opposition, or in rebuttal. And so if you want to include all those, that then gives the council the authority to write those arguments.

>> Councilmember Nguyen: That would be fine, yes.

>> Mayor Reed: Okay will setter? So that's a modification to add the councilmembers for the authorization to sign onto the --

>> Councilmember Rocha: Do I understand are we talking only in favor? What about against?

>> City Attorney Doyle: I said in favor in opposition.

>> Councilmember Rocha: You did say in opposition. So the council would designate who writes for and who writes in opposition?

>> City Attorney Doyle: I think the motion authorizes the mayor to write in favor and in opposition it's up to the council.

>> Councilmember Rocha: Interesting. Thank you.

>> Mayor Reed: There's five signature spots on --

>> Councilmember Rocha: I'm not -- no.

>> Mayor Reed: All right so we have slightly amended motion based on that. So we have a motion on the floor, on that motion all in favor? Opposed? I count one two three four five opposed, Kalra, Chu, Campos Pyle and Rocha, so that motion passes on a six-5 vote. Councilmember Kalra back to you.

>> Councilmember Kalra: Thank you, mayor. And so now that we have -- the underlying motion has been passed I'd like to put forward the memo that I submitted yesterday which directs the city attorney's to provide the city council with an estimate of potential costs fees and damages in the event the ballot reform measure is successfully challenged in court and if I have a second I'd like to speak on it.

>> Mayor Reed: We have a second, Councilmember Pyle has a second.

>> Councilmember Kalra: Again there are a lot of factors to take into account as stated before legal costless and fees itself should not be enough ballot however particularly now that our short term deficit is so short, it has been shrunk dramatically I think it's more relevant than ever what the potential cost, legal cost what the possibly fees are and damages are in the event that the blood bhoot measure is specially challenged and also as indicated in the analysts this one case that is referred to as the association of Orange County deputy sheriffs in which case

the cost savings they sought all along were not realized. That's the greatest fear that we are not going to realize any of the pension cost savings that we would like to achieve. Keep in mind also that one case in the county of orange versus the deputy shares, one bargaining unit they had to pay \$1.3 million to the bargaining unit for their attorneys fees other staff costs as well as what would we be legally obligated to do if at some point in the future we're ruled against and there's an injunction in place what I think a lot of it is going to be really difficult to quantify whatever extent we're able to quantify it or at least give estimates those are facts information, not only us the council needs to know but the public should know as well.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to comment you know a number of times it's been discussed or claimed that we've had no discussion about the legal risks and the cost of and the liabilities and stuff like that and I just wanted to make sure everybody know we've had those discussions multiple times and that's what we do in closed session. Not only on this issue but on many issues that we're faced with as a council and that's specifically the purpose of closed session and quite frank reply that's where this discussion belongs. We've had that discussion we'll continue to have that discussion. As we go along, at each point along the way so I do not support the motion.

>> Mayor Reed: I'd like to hear from the City Attorney whether or not it's possible to do that kind of a memo without attorney-client privilege disclosure et cetera issues.

>> City Attorney Doyle: The short answer is yes. I can put something together. It may be that we -- as Councilmember Constant indicated a lot of discussion has taken place in closed session, there would probably be further discussion and there may even be more detail in a closed session but we can prepare a public memo which addresses this. I take this as direction to get back with information.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Yeah, I certainly appreciate Pete Constant's point here. I continue to hear things that we either haven't discussed, let me just say that without getting into substance of closed session discussions, either there's enormous amount of amnesia on this dais or we're dilutional, that is I'm dilutional about what I think I've heard in closed session because there's been a lot of discussion about things that allegedly there's been no discussion of. I am very concerned about the fact that we are trying to protect a General Fund that serves our residents and nobody would believe in any other kind of litigation that we should be handing over information about estimates of risk or cost. Begin the fact that this is a concern of great public interest I can understand if Rick's able to find a way to do it, that's right. But I would warn that whatever numbers we're like lly to get are going to be very wide ranges because we have no -- you would have to be able to anticipate exactly what a judge is thrieblg find legal and what a judge is not thrieblg find illegal and with that remarkable amount of foresight you would then go about estimating the total cost to the city after the fact. I happen to believe what we're putting forward today is legal, I think it will survive judicial scrutiny but we can certainly engage in endless speculation about what might be deemed to be illegal and come out with very large noms will tell us nothing about the real risk because they will be based on speculation. I understand if Rick can find a way to do it then let's do it but I don't think we'ring good to be generating much light, we'll be generating a lot of heat.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I think when I heard Rick's answer that he can put something together I'd be supportive of this. I probably -- sounds like it's going to be more of a summary than everything, I don't see the harm in that, we should be able to provide that information.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Well I think if that's the direction the council is going to go we should have the discussion in closed session first. Look at what there is, and then since it's our privilege as a council woo should decide what gets released not the attorney and nothing against Rick but I think it's our privilege, we should do that in closed session, and review it and then decide if and what becomes public.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I trust Rick's ability to be able to shield what he may consider attorney client privilege or strategic in terms of moving forward. It is our privilege, we hold that privilege at the mercy of voters. We're elected officials. I would say if we withhold that that information we don't. We have been given a very general estimate and we really don't know what the costs are going forward and losing. Now I would like to have that information, I think public should have the information. However if we're still in the process of litigation or at any given point at which Rick feels or that we collectively feel that it would be in some danger then whatever information or data or cost that Rick that you feel is subject to attorney client flai_flg we hold onto those documents and at which time that privilege no longer exists it can be revealed to the public so the public knows exactly the information that we have because my fear is that as an entire dhienl we're not taking litigation risk seriously yes there is speculation but we know what case law is. We know what the legal risks are against us and you can never guarantee anything whether winning or losing but we know what battles are more uphill battles than others. And in we know what money amount is associated with those uphill battles we are better informed going forward whatever we can't reveal on the short term we can reveal on the long term after that privilege has expired.

>> Mayor Reed: Rick.

>> City Attorney Doyle: That's okay tell us in public what everything is going to be. Or potentially be. The fees issue and the cost issue are fairly easy and I think that's -- you can be dealt with in a fairly nonsecrettive way. It's really getting into any time you're talking damages or theories of the case without exposing your hand and I think that is probably a conversation I'd want to have in closed session first.

>> Councilmember Kalra: Again for the portions you feel are items of information that are you know more appropriately reserved for a closed session then I would still like to have the information to the council and would be happy to rather than have it written the way it is, with the impression that it all be made public that allow you

the ability to come to council if you feel any of the information is privileged, but in amending my own motion but 20th information is no longer privileged or it doesn't serve the purpose of remaining privilege that it be disclosed publicly.

>> City Attorney Doyle: We'll work with you.

>> Councilmember Kalra: To get the information correct so it is appropriately done.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I'm still uncomfortable because as Pete noted it's not the attorney's privilege to waive. It's the council's and I think the best course for us would be to decide exactly what language gets waived in closed session. I would appreciate Pete's maker of the motion is willing to amend it.

>> Councilmember Kalra: No, advice of council that it goes to closed session on any item that Rick feels is clearly one that needs to be discussed in closed session.

>> Councilmember Liccardo: So I'll make a substitute motion at this time if there's a second I'll explain. I appreciate Councilmember Kalra's view that we hold the privilege. Really I'm just --

>> Mayor Reed: Wait a minute I'm not doing my job here. We got a second, we got a substitute motion but I'm not sure what the substitute motion is.

>> Councilmember Liccardo: Substitute motion is that whatever information that's released subsequently about cost is discussed in closed session first and that disseminated milkily.

>> City Attorney Doyle: When you mean costs, fees, costs damages?

>> Councilmember Liccardo: Any potential cost from litigation.

>> Mayor Reed: It's still the intention to release --

>> Councilmember Liccardo: Something.

>> Mayor Reed: Some of this information.

>> Councilmember Liccardo: Absolutely. This may be splitting hairs --

>> Mayor Reed: So council is going to decide not the lawyers?

>> Councilmember Liccardo: That's correct. Council will decide since council holds privilege and you know Councilmember Kalra served that the council holds the privilege on behalf of the public perhaps so but the public isn't the party I'm worried about suing us, it's the labor unions and frankly I haven't gotten a lot of requests from the members of the public to know all about our legal strategy. Frankly most members of the public who have talked with me really want their libraries open and want more officers on the street and they would really like some retirement reform.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Just to follow up I actually have been inputting -- I agree that most of the legal advice that's directly specifically towards us you know should be shielded, up until which point we're in a position to reveal it but you know I've certainly been put in a position by a lot of residents because I make the claim that we have a lot of legal hurdles and I can't go into the detail I would like to because I'm cost and the potential cost. Now understanding that some of that does deal with legal strategy certainly in terms of whether certain legal claims and what the potential risks are in terms of costs as well as the legal hurdles presented as to whether we can win those challenges or not, but -- and so I see it differently. I think that as Rick said, he can decipher what was more

easily determined and what or at some point and you can correct me so I don't want to assume. I'm -- does your motion contemplate that at which point the privileges no longer exist if a case is resolved whatever that at that point it can be revealed?

>> Councilmember Liccardo: Well, if the privilege doesn't exist then there's really nothing for us to talk about here at the council. That is, if there's no privilege then --

>> City Attorney Doyle: If can I chime in, I mean we have had an experience in the past unfortunately. The issue gets down to what's privileged and when is it privileged and when is it a public record. To the extent that active litigation is over and there are bills that have been paid, invoices, excluding what people actually worked on, the dollar amounts in other words, become public records. So I mean, there's ways to address that and that's well after the litigation. To the extent you're getting into strategy in terms of what people actually worked on, what research and all that, that privilege still exists, and without the council waiving it, then it stays that way. But I think what you're interested is a dollar amount.

>> Councilmember Kalra: I'm actually interested in both. The people enormous amount of money after the fact after we don't -- we're not revealing legal strategy and what have you. If we're all wholly or individually can be held responsible for consequences we make at councilmembers, that --

>> City Attorney Doyle: The privilege exists and the privilege is there and I think you know as a lawyer is a reason for that is because you want your attorneys and the clients to be as candid as possible in that confidentiality. Setting very candid.

>> So I guess that's kind of being sprung on you right now, at some point redone that can be achieved and so I would -- and so I won't support the substitute motion, I think that the underlying premise of this should be to make the committee numbers as much as possible and to also reveal what information the council had regarding cost at some point as soon as we possibly can after the close of litigation.

>> Mayor Reed: Let me say I'm going to support the substitute motion but I'm not interested in making it easy for people to sue us and get a lot of money from us. That's not my objective. I think the substitute motion dwells that. All in favor, opposed, I count one two three four opposed, Pyle Campos, Chu and Kalra, the motion passessen-4, the substitute motion. I think we're done with item 3.4 I think that was the last thing on it. We do have a couple more items on the agenda and some people have been here to layer the long debate just so we can take up a couple of matters which we will do how, as soon as I figure out where we are. 3.8, would be the next matter, ordinance amending title 16 gaming control.

>> City Attorney Doyle: Mr. Mayor, a memo is in your packet, we have been ordered on title 16 changes to come back with proposed changes. That has gone to the Public Safety, finance and strategic support committee. It has been deferred except for a change title 16 to have the police chief review and permit permit the gaming above or beyond one floor or a single level. Currently that process belongs with the administrator and we think it's probably better to have it part of the card room permitting process that the police chief following criteria and a certain process, make that determination, no different than he would the card room permit on the ground level.

>> Mayor Reed: Thank you, as I understand the rest of the matters are still at the Public Safety committee may take them up sometime soon. Councilmember Constant can speak to that I guess.

>> Councilmember Constant: Thank you, mayor. I'd like to make a motion to approve and then comments.

>> Mayor Reed: Motion is to approve the recommendations. Councilmember Constant.

>> Councilmember Constant: Thank you. I think it's important that we pass this today. The public safety committee has been working on issues related to title 16 for quite some time. As the mayor mentioned we still have a liberty of work to do which hopefully will get done soon and then we'll bring the entire package back to the city council. I did have a question for you, chief. As we make the change to title 16, how do you determine the criteria for approval and where will that criteria lie and is it something that you'll be able to share with, because we have the one applicant right away. How will we deal with that issue to get to resolution fairly quickly?

>> Councilmember Constant, thank you very much for the question. It's a pretty straightforward process stloongs applicant can demonstrate a number of issues and it's stated forth in the 16.3.0.233. If I may cite from it. the subsection B the Chief of Police shall permit the amendment if the chief determines the proposed amendment will not have an have an adverse effect ton ability of the administrator and the Chief of Police to effectively administer and force the requirements of the policies of the time or 3 result in violation of any city state or federal law. Or be inconsistent with the policies purposes and provisions of this title or contrary to the public interest. Straightforward, as long as that -- those issues are met with the amendment application, then I shall approve it.

>> Councilmember Constant: Okay, I understand obviously what's in there. But it's not really well defined. It's pretty broad and subject to interpretation. So is the burden of proof to find that there is a determination in the negative for you to deny on you, or is it the burden of proof in the affirmative that they've met the requirements to surpass that hurdle on them?

>> I'd refer that to the City Attorney, either --

>> City Attorney Doyle: Well I just and I'm going to ask Carl Mitchell to comment. I want to note though that this is not something that's new. Prior chiefs approved, we worked with chief Coborubias with respect to Bay 101, Garden City as well, whereon if it was chief Coboru birvetionias as well. in burdens how does it work?

>> Generally if the burden is on the applicant but it's only to show buy preponderance of the evidence that these findings can be made. Pretty straightforward. Is that different from what we have by other administrative proceedings at all.

>> Councilmember Constant: I just public safety finance and strategic support committee by approving this.

>> Mayor Reed: No cards from the public to speak to this? On the motion, all in favor, opposed, none opposed, that's approved. Thank you completes our work on 3.8. We'll move to 4.one, conduct an administrative hearing and consider an appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the off sale of alcohol of a full service grocery store.

>> Councilmember Constant: If I could jump in, I don't think staff has a presentation, do you? In that case my motion would be to approve that memorandum.

>> Mayor Reed: All right, that's to approve the staff recommendations and adopt the appropriate resolutions. I have one request to speak on this.

>> Councilmember Constant: I forgot my disclosure Mr. Mayor. My office met with Steve Corian from sunflower market a representative of theirs.

>> Mayor Reed: Who perhaps is still here. Mr. Corian if you want to speak now is the time.

>> Good evening, Honorable mayor, councilmembers, thank you so much for hearing United States. I'll be very brief. I know it's been a very long evening. This will be the second sunflower farmers market that we're seeking approval on. The previous one at the time corner of Almaden and Brannan was approved by the council back in the summer. As you recall sunflower farmers market has about 35 stores and growing throughout the sun belt states this is their second in San José and fourth in the Silicon Valley area. This store will be about 32,800 square feet and they will be -- it is a full service grocery or the with a full service Deli counter meat area. They will specialize in natural organic foods with an emphasis on affordable pricing so they can be kind of within reach. They're very competitive that way. One of their primary focuses with requesting the conditional use permit is to get approval to sell beer and wine only. This will be an accessory sale and kind of complements the way they do business. They have some offerings such as unique organic wines that only they carry and a lot of other similar stores or grocery stores would not. They also have special recommendations on pairings of certain foods and certain wines, also. And they also carry a certain line of specialty wines that other stores wouldn't. So we

believe that it will add kind of more depth and more selection to the consumers in the area. And also, it's kind of hand in hand complement with a full service grocery store. For these reasons, we hope that you'll look at the C.U.P. for approval. Sunflower farmers market is very excited to go into the neighborhood and they really look forward to moving forward. I'll leave my comments at that and happy to answer any questions.

>> Mayor Reed: Okay. Thank you. I see no questions. And I have no other requests from the public to speak. So thank you. We have a motion on the floor. Councilmember Campos. Go ahead and have a seat sir. Okay. We'll get to Councilmember Campos in a minute. We have a motion on this one. Nothing to add to staff, no cards, all right, on the motion, all in favor, opposed, none opposed. That's approved. Next item is 4.2. Another administrative hearing around considering an appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the offsale of beer and wine at a full service grocery. Which I think is across the street.

>> Councilmember Liccardo: It is. I'll make a motion to approve as 90thed in my December 2nd memorandum.

>> Mayor Reed: We have a motion to approve. Councilmember Campos do you want to speak on this one?

>> Councilmember Campos: No.

>> Mayor Reed: All right, Mr. Corian.

>> A few words about fresh and easy also, I know most of you are familiar with fresh and easy. This will be their fourth grocery store in the San José, in the City of San José. And what they're looking at doing is, their traditional 16,000 square foot grocery store, mostly natural foods, high emphasis on no artificial colorings and preservatives in their food. And doing it in a quick and easy to shop format and really, in this case being a neighborhood that's traditionally been underserved we we have been in touch with the councilmembers office and also the police department. They expressed some concerns initially on potential policing issues. And we have worked with them, I was very happy to talk to Sergeant Randall this morning and we have -- we've agreed on providing security

services, a security guard, fresh and easy has after 10:00 p.m. Currently their hours are 8:00 a.m. to 10:00 p.m, should it extend beyond 10:00 p.m. should the business grow and be established they would have to have security services there. Their current securities up to 32 closed circuit cameras that are monitored 24 hours a day, their staff has full training on checking I.D.s of course there's a system where they have to input the person's age and date of birth into the computer. They can't check out without that. Also, wanted to state that fresh and easy does their own security analysis on all these stores too. They rank them on kind of risk. So they're also making a determination as far as kind of where the risk lies and they assess it themselves every year so should things change they would also look to make some changes there. That's really it. Open to any questions and I'd like to thank the councilmember and the police department for working with us on this one.

>> Mayor Reed: Thank you. We have no questions I believe but we do have a motion to approve with a slight modification Councilmember Liccardo open the motion. All in favor, opposed, none opposed, that's approved. Taking us to open forum the last item on our agenda, David Wall.

>> First off, I'd like to know the status of the are procedure to appoint the five members for the qualified active low income community business board of directors. For the environmental innovation center. I believe it should some form of formal structure should come to the Rules Committee. I would say hopefully in January. The other issue that's on Rules tomorrow, it's kind of a concern to me. Is that \$1 million increase in the parking fund. Honorable and learned Councilmember Liccardo wants to give a portion of this to the downtown association. I think this should have gone to the CED committee and prior to, to ferret this out if you have a benefit of all this money plus saving it. Downtown business association has had a long time and has been funded for quite a while from the public. I just think this surplus at this time should be assessed at committee level versus going to Rules tomorrow. Thank you.

>> Mayor Reed: That concludes the open forum, concludes our meeting, we're adjourned.