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>> Mayor Reed: Good morning. Let's get going with our first item of the day which is as usual the labor update. Turn this over to the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor and members of the council. Although we generally have been trying to keep these presentations brief, at this stage of the closed session, the open stages of the closed session discussion. I have asked Alex to explain this morning in a little more detail where we're at in the negotiation process. I've asked him to do that because since the budget has been published this question of where we're at in negotiations has taken on a higher level of interest and importance especially given we've assumed a 10% ongoing total compensation reduction as per your direction. So that is why he will be taking you through a little bit more detail, and also, I just wanted to comment that this also means now that the budget is published and we've focused on tier 1 noticing of our employees that we will need to begin shifting gears and determining what we would do with tier 2 and begin to prepare for those budget proposals, as well as noticing of our employees. So I think it's important that we all understand the context that we're currently operating in. So with that Alex.

>> Alex Gurza: Good morning, Mr. Mayor, members of the city council, Alex Gurza, Director of Employee Relations. As we do every week, a reminder for people that may be listening, or watching on the Internet, that all of the proposals exchanged between the city and the bargaining units are available on the Internet at the Website that you see on the slide. We post proposals on the day that they are received and the proposals that we will be discussing today are all available for anyone to review online. So this slide is a one-page summary of where we are. Since last week, that we met with you, one very piece of did news that we would like to share, is that we reached a tentative agreement on a new two-year contract with the association of building, mechanical and electrical inspectors that was facilitated through mediation. So we are very happy to report that we now have a contract, a tentative contract with them. It is still subject to their ratification by their members and your approval at a future open session. ABMEI is one of the groups who feels the economy much quicker than other employees. They have gone from a high of 107 employees to the current 50. Which is a 53% decrease in the employees they represent. So they are ones who really have, early on, felt the impact of the economy when building activity drops, their workload drops. And they have stepped up yet again, this is a group as you might remember, all agreed a couple of years ago to work less hours to be able to save some their co-worker jobs for a

year, and they have stepped up again and agreed to the 10% ongoing reduction that the city council has asked of all of its employees. So is now the fifth bargaining unit and very happy to report that. With the rest of the groups on that you see on the slide, with the exception of the POA that I'll talk about last, we are engaged in mediation and have not yet reached agreement with any of those groups. So I want to briefly go over the ABMEI agreement. As I mentioned, it is a two-year agreement. It is a 5.45% ongoing reduction in base pay, which is in addition to the 4.65 ongoing reduction that they -- that was in effect last year. And also, the health care changes that were in effect last year. So when you combine the ongoing reductions from last year with the additional 5.45, that achieves the 10% ongoing total compensation reduction. And then there are other elements. I'm not going to go through all of them, but I want to point out a couple very significant. And that is the salary step structure. As you may know, all of our nonmanagement classifications have a step structure where people get 5% increases up until they get to the top of the scale simply by matter of time. ABMEI is one who actually also requires a performance appraisal to be able to move. But the significant change here is to reduce the increment between steps from 5 to 2.5%. So it increases the number of steps and slows down the pay growth. So we think that is a very significant reform that we achieve with the tentative agreement. Also includes the phasing out of disability supplement which we have achieved with the other groups that we've reached agreements with so far. Which in year 2 will eliminate the supplement. Doesn't mean that people will not have disability benefits for workers comp. Workers comp benefits will still continue to be provided. This is the additional supplement above and beyond workers comp. And lastly, but very significantly, we have agreed as we did with the other bargaining units that reached agreement so far, have side letters that allow the city and the bargaining units to meet and confer during the term of the contract on the very important issues of retirement reform, sick leave payouts, the supplemental program that we have otherwise called the bonus program for retirees, and the layoff process. So again, we did want to highlight that agreement and go over it. But again the full tentative agreement is available for anyone to review. Then would I like to talk about the POA, the status of the POA negotiations. Last week, which is a week ago yesterday, Monday, the POA provided the city with a package proposal that was a two-year contract. We then had a bargaining session set last Friday afternoon in which they submitted to us a new proposal which was now a one-year proposal. And it does offer a 10% reduction in pay, which clearly is significant. But a very, very key component of it, it is not ongoing. Meaning that it is only for one year. And so they -- so at July 1st of this year employees represented by the POA would receive a 10% pay decrease. But on June

30th of next year, of 2012, they would get a 10% increase. So it would automatically pop back up, unless in the subsequent negotiations there was an agreement to do something different. And as you know, we have binding arbitration with police. So if we were not able to reach an agreement next year, that pay increase would automatically kick in. Sick leave payout, they did modify their proposal, that they had made. They are one of the bargaining units that are making proposals to modify sick leave payout for current employees. Their proposal is a different one than the one they had proposed before. And it is to freeze current balances for payout purposes at whatever the levels are at the time. So from a very long-term perspective it will eventually eliminate the sick leave payouts. But initially the savings are small, to the extent that it really determines -- it depends on how many people actually leave in the first few years. Then I'm not going to go through the -- all of the items but they did propose on retirement a first-tier opt-in program where employees in the current level of benefit could choose to opt in to a lower level of benefit. And in addition to that, they proposed a second tier retirement for new employees. And the other part I want to highlight is they are agreeing to the city's proposal on civilianization which would take police officers that are -- positions that are current being performed by police officers and allow those positions to be eliminated and then replaced by a civilian employee and in addition agreeing to the outsourcing of airport police services. And lastly, one thing I did want to mention is they are proposing a change to their current zipper clause language and I'd like to briefly go over that. A zipper clause is a term used in labor contracts which essentially what it does is if you have a zipper clause, depending how it's phrased, once you reach agreement on a new contract, neither -- both parties are then -- can't be required to negotiate over anything that's partly of the terms of the contract. So it essentially zippers up the contract, that's why it's called a zipper clause. We do have one with the POA and they have proposed the added, which is underlined and italicized language. So it says it is understood and agreed that neither party may require the other party to meet and confer or negotiate on the subject matter covered herein, or matters raised during main table negotiations. I know George Beatty, the president, and John Tenant, the general counsel, are here today, but I'd like to at least let you know what they told us as to what that would mean. And they indicated if there was ever -- if there was a topic that we had raised and we had many, many topics that we had listed as a subject of negotiations that this would preclude the city council from putting a ballot measure on during the term of the contract that would touch any subject that we had discussed during the negotiations. And that is the -- that is what they describe to us as the main intent of that additional language. So I wanted to briefly let you know where we have been with the POA and where we're

now. We are coming off of only a one-year contract, as we did with a lot of our bargaining units. And that contract was again during the time the city council had asked for 10% reduction of all employees, but the council's direction was that half of that could be one-time, or expire at the end of the year and the other half would continue until it's negotiated. And in that one-year agreement 0.6% of that -- in the agreement that POA paid was ongoing, which was really the health care changes that we made. 3.35% of total compensation now, total compensation was one-time. And so that's the contract that we had. It was -- although it did not reach the council's direction last year it was an important agreement because it avoided the layoffs of police officers. And in the letter that we wrote to the POA when the city accepted that agreement, we referred to it as a stopgap measure and we said since the city would be entering into only a one-year contract with the POA the city considers the POA's proposal as a top gap measure to avoid police officer layoffs temporarily while providing the city and the POA the opportunity to negotiate a new contract that includes ongoing savings and reforms before additional permanent cuts become necessary next fiscal year. So clearly we went in with council direction to try to achieve ongoing changes to our expenses. And that is why the council, we have been following the council direction very closely and successfully with five groups so far to achieve a 10% ongoing reduction. I did want to take a moment, because I've received a lot of media inquiries about when I describe ongoing, a lot of questions about what really ongoing means, does it really mean forever? It doesn't mean forever. It really is the same as when we give pay increases. When we give a pay increase, the pay increase doesn't expire automatically where then the pay goes back down. That sets the new status quo and then it stays in effect until something else is negotiated. It's the same as the city council is asking for when it's done as a reduction. So it isn't ongoing meaning permanent, meaning it stays in effect until something else is negotiated. When a pay increase or decrease is one-time, it means that after a given period of time, it automatically reverts back, unless something is changed. So that's really the difference between ongoing and one-time. So the POA's current proposal is still the .6% ongoing so we're still in trying to calculate the 10% we still give credit for the ongoing portion that was agreed to last year. And then 9.4% of their proposal is all one time. So again it's almost all of it will expire next year. This is important for a variety of reasons. A is that it doesn't meet the change of reducing our expenditures on an ongoing basis. But we also have a me, too clause. The four bargaining units that were working in the coalition, we negotiated this language here with them. Part of it is, is that what we have been telling all of our employees is that we're asking the same of everyone. And this language is sort of a contractual commitment. It reflects in a contract

language that commitment that we would be asking everybody for is the same. So what it says essentially you can see the language there but that if we reach a settlement with any other employee units, absent an arbitrator's decision, that has an ongoing total compensation reduction of less than 10%, that in any form or manner, that it would reopen that contract so that they could get the same. The key issue here, is, is that although the POA is proposing the 10% which is very much appreciated and significant, it is not ongoing. And clearly we think that if employees had a choice they would prefer to have the reductions expire at a given period of time, so the key really issue here is the ongoing portion. It does say with any other employee covering the time period of this agreement. We did have some conversations with the POA about this, because they are proposing a one-year versus a two-year. We still believe that accepting a contract that covers the fiscal year 11-12 which is when the city is asking for the 10%, that doesn't achieve the ongoing, would trigger this me, too clause. So we did want to mention that's a significant issue about this -- their proposal. So in conclusion, I'd like to on the positive side where we have reached agreements and these are very significant now, we have the 10% ongoing total compensation reduction with the San José firefighters, the association of maintenance supervisory personnel, the association of engineers and architects, the city association of management personnel and as I mentioned most recently the tentative agreement with the building inspectors' union. So with that, that is the end of our presentation this morning. Thank you very much.

>> Mayor Reed: I have a couple of requests to speak, I'll take that now, George Beatty and John Tennant.

>> Good morning, Mayor Reed, members of the council, George Beatty representing the San José Police Officers Association. On Friday we did make a proposal to the city. I'm not quite sure the council's had the opportunity to take a look at it and I would urge you to do so. Our proposal includes a 10% cut in pay, that will save -- that will save the city \$15.5 million this year and help avoid the layoffs of more than 150 police officers. In addition to that, it has proposals for current-tier pension reform and the sick leave buyout. The current-tier pension reform, according to our actuarial expert out of the Deloitte accounting firm in Chicago in 16 years it will save well over \$100 million. We did a short survey at the police department, and we believe 40% of our members would opt out of that plan and go into the lower-course tier plan and that would save the city significant amount of money beginning next year. And if we act quickly on it we believe the city can save money this year. Our sick leave

buyout saves money as well, and eventually, ends it out. So -- and we've agreed to civilianization. So once again we're willing to work with the city. Last year we took a pay cut. I want to remind some of the newer folks on the council that we were the ones that stepped forth and did the GASB health care reform and paid an additional 5% of our wages into it. We're going to make our third installment this year. So we've taken a leadership position and I am confident that even if this is a one year deal we will be back at the table again next year and bargaining in good faith just like we always do. So ongoing, we took a cut last year. We're taking a cut this year. That's ongoing. So I really would appreciate your consideration in taking a look at our package. Thank you very much for your time. Have a good day.

>> Councilmember Liccardo: Mayor, at this point --

>> Mayor Reed: Sorry, Councilmember Liccardo.

>> Councilmember Liccardo: Yes, are we allowed to ask the speakers questions for clarification?

>> Mayor Reed: I prefer not. We ask the staff for clarification. Better do it in closed session but -- we're not supposed to get into a discussion here with the speakers.

>> Mr. Mayor, members of the council, John Tennant, counsel to the POA, and as always, honored to serve the rank and file officers of this great city. I wanted to address the me, too clause because I understand there's some concerns about that. First of all I think I'm one of the people who helped draft that clause under an entirely different set of circumstances so I wanted to address it because I do not believe the proposal before you violates that clause. That clause speaks to essentially a settlement with another employee unit covering the time period of this agreement. This is the one-year proposal. We are within the time constraints of this agreement and we are agreeing to precisely what the other employee units have agreed to. Have agreed to a 10% pay cut. The history of the POA has been to always work with the city. And it is entirely conceivable that should we be in this position next year, and I assume we will be, we are going to be back here working with you, rolling up our sleeves, trying to reach yet another settlement. So it is entirely conceivable that next year at this time we would agree to the

same pay cut or possibly even more. We have shown that willingness again and again to work with you over time. So there is no formal violation of the me, too clause. Because again it is conceivable that within the duration of the two-year terms you have with the other unions, we would agree to precisely the same thing or more. We are taking a one-shot at this right now, giving you the pay reductions you need right now, the cost savings to avoid the layoff of 110 police officers as I understand it though the significant savings. You might respond to me welcome on tenant, the point of this is to have ongoing reductions. Even though there's not a technical violation, come on, we have to remain faith with the other unions. You have to look at the history my client has over the years, working with the city time and again. We have not been to arbitration in over 15 years. Every year we have worked with you and we are committed to doing the same thing again and again. So I urge you not to turn this down simply because it doesn't achieve an op going savings going forward. We will be there, we have been there in the past and we will be there again. I would also point out that the Meyers Milius Brown Act the law that gives us the right to bargain in the first place talks about the meet and confer process and really contemplates an MOU that covers the coming fiscal year, it says, both sides, the employer and the union shall endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. That is precisely what we have done here. We have given you the savings, the cost savings you have needed, and we urge you to accept this proposal. Thank you for your time this morning.

>> Mayor Reed: That concludes the public testimony. Anything else Alex?

>> Alex Gurza: No, Mr. Mayor.

>> Mayor Reed: We're going to adjourn into closed session and we'll be back here at 1:30.

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for May 3rd, 2011. We will start with an invocation. Councilmember Campos will introduce our invocator.

>> Councilmember Campos: Thank you, Mayor. Jon Zamora will be our invocator today. Jon Zamora, who joins us here today, is a businessman and a former planning commissioner for the City of San José. As a matter of fact, I served with Jon on the planning commission. He was born in Sonora, Texas and has lived in San José for most of his life. The children's book that he will share with us is his very first published book that carries a very important message. If you try hard in life to make it a better place, then you are considered a hero. The story is a true testament to the story behind Cinco de Mayo. Jon was first inspired to create the characters in his book when he first visited Disneyland as a young man. His book represents the fulfillment of his dream and a tribute his philosophy of hard work, dedication, and perseverance. With that, I will turn it over to Jon.

>> Good afternoon. Mayor, members of the city council. Once upon a time, in a small village just north of the Mexican border, there lived a very happy family in a very large hacienda. In the hacienda lived Don Pedro, el Patron, the boss, and his lovely wife, Dona Maria, La patrona. They had a daughter named Rosita, but everybody called her la patroncita, the little boss. Many families worked at the hacienda for Don Pedro, and they all lived happily together in cottages on Don Pedro's land. The mariachis were one such lucky family. Juan, a handsome rooster, was strong and intelligent. He taught all of the children of the village reading, writing and music. His lovely wife, Lola, cooked for Don Pedro and dona Maria. Two children, daughter Tita and her older brother Pepe, were excellent musicians, and they loved to sing. Pepe was especially entertaining, and he proudly called himself Pepe el mariachi whenever people asked his name. The hacienda watchdogs were José Perro, family father José, his wife Sophia, and their son Panchito. One bright and sunny day, watchdog José saw in the distance a group of banditos, bandits, who were coming to the hacienda to steal the animals and other valuables. He quickly ran to warn everyone. Don Pedro, Don Pedro, he cried, the banditos are coming, and we must prepare to defend the hacienda. You have done good work, José, said Don Pedro. Help me get all the children to our underground hiding place, so they will be safe. There are comfortable beds and plenty of food there so they will be well cared for until the trouble passes. With the sound of galloping horses nearing the hacienda, the men left to protect their land and possessions from the invaders. Even from a distance, the villagers could see that the banditos were

mean, their rough unshaven faces were scary and unfeeling. When the banditos finally arrived, the men and women of the hacienda were ready to defend what they had worked so hard for. Armed with their wits and bravery, they engaged in a fierce battle. Clouds of dust hid the hacienda from view, and thunderous noises filled the air. Slowly, Pepe and his sister, Tita, Poquito, Burrito, Panchito, Perrito, Senorita Rosita and the rest of the children climbed out of their hiding places when they heard no more noises. When they emerged they were devastated about what the banditos had done to their homes. But worst of all, none of the children's parents were there. Papa, mama, cried Rosita, where are you? Pepe, in a voice softened by sorrow, said, I don't know where any of our parents are, but we must go look for them. Follow me, and don't worry. If we stick together, we'll make it. That's part of the Pepe, we tried to condense it. But there's a message here. And we'll be celebrating Cinco de Mayo, and it was a -- Cinco de Mayo is a fabulous story. It's also about a French invasion of 8,000, an army of 8,000, that had not lost a battle in 50 years, and they engaged a small army, ragtag army composed of farmers, boys and Indians. And they won that battle. Because there was one order given: The order was, there is no retreat. We must march together, forward, at all times, together. Unity, and I think that's what we have to do. We have a problem in our country today. And if everybody puts aside their differences, and in unison, walks together, forward, I think the best days are ahead for all of us. But it has to be united. Thank you.

>> Mayor Reed: Thank you Jon. The next item is the pledge of allegiance. Everybody please stand. [pledge of allegiance]

>> Mayor Reed: First item are the orders of the day. Are there any changes to the printed agenda? I have a request to defer item 2.8 for a week, that's the pay phone at the airport item. Motion is to approve the orders of the day as amended. All in favor? Opposed? None opposed, that's approved. We'll adjourn this meeting today in memory of Richard Rios, who passed away last Monday. Richard was a retired deputy director of San José Redevelopment Agency, had taught at de Anza college and served as a mentor to many community leaders. Councilmember Campos has some additional comments.

>> Councilmember Campos: Thank you, mayor. Richards Rios passed way on April 18th, 2011, after a battle with cancer. Richard will always be remembered for his lifelong commitment to public service. The work he

carried out touched the lives of so many around him and was greatly respected and appreciated by his family and friends. Richard had so many admirable accomplishments in his life that it would be impossible to name them off. Perhaps the most significant accomplishment include his term as deputy director of the San José redevelopment agency for nine years. He also served under President Carter. He served as U.S. Community Service Administration director, the highest ranking noncabinet member, official, under the Carter administration. Also while at de Anza college, Richard helped lead a project developing diversity on the college campus. There is no doubt that Richard gave his life to community service and his dedication is unmatched, a value that is truly admirable. Richard is survived by his devoted wife Susan, his sister Elaine Osborne, his daughter Desiree Fetterman, and his three young grandchildren, Estreya, Jave, and Amilana. Richard's passion will never be forgotten and his belief in hard work, loyalty and family will always be remembered. He will truly be missed by our community.

>> Mayor Reed: Thank you, Councilmember Campos. Next item is the closed session report. City Attorney.

>> City Attorney Doyle: Mayor, council, the city council met in closed session this morning. There's no report.

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to start by inviting Councilmember Chu, Councilmember Kalra, Vice Mayor Nguyen and Karl Feranos to join me at the podium. Today we're celebrating the month of may as Asian Pacific American heritage month in the City of San José. Councilmember Chu has some additional comments.

>> Councilmember Chu: Thank you very much. I'd like to thank my colleagues and the mayor in joining me to proclaim May as the Asian Pacific American heritage month. The month of May is celebrated throughout our nation to honor the innumerable contributions and cultural heritage of nearly 16 million Asian Pacific Americans who have helped build a strong and vibrant America. In San José there are over 300,000 Asian Pacific American residents, where many ethnicities and languages are spanned across generations. In June 1977 representative Norm Mineta, former mayor of this great City of San José, introduced a house resolution to proclaim the first ten days of may as Asian American heritage week. In 1990, Congress voted to expand the celebration to an entire

month. Since then, many organizations in the Bay Area and across the country celebrate and commemorate the collective employment of Asian Pacific Americans throughout a wide array of events. Asian Pacific Americans have achieved exceptional success in all aspect of our society. Including business, politics, education, community service, media, arts and science, just to name a few. Here today to accept the proclamation on behalf of Asian Pacific Americans in San José is Karl Hirano. Karl is a Vietnam war veteran, two time recipient of purple heart, business owner, neighborhood leader and community organizer. As a funder of Japantown lion's club which I'm proud to be one of the charter members, Karl has contributed his talent and time for the Asian Pacific American community. So I would ask the mayor to present the commendation to the one and only D-4 resident Karl Hirano. [applause]

>> I didn't know why I'm here for but for Kansen, he said something one wrong, I have three purple hearts, not two. He's wrong. Anyway, I'm very proud to be here, thank you very much, from Japan, got drafted in United States army when I was a Japanese citizen. So I'm proud of it. I still -- I'm proud to be here United States. Thank you very much. [applause]

>> Mayor Reed: Now I'd like to invite Councilmember Constant and teachers from Campbell and Moreland school districts to join me at the podium, as we recognize the May 2-6 as teacher appreciation week in our city. Councilmember Constant has some details.

>> Councilmember Constant: Thank you, mayor. As many of you know, I'm fond of props. So I brought a student with me as well today. This is my daughter Sydney. She is joining me along with Heather Folsick from Campbell Middle School, Veronica Florez from Monroe Middle School, Sara Day from Lynhaven Elementary School, Susie Morales from the Moreland Child Development Center, and Sima Solgoncar from Moreland Middle School. Also in the audience we have one of my favorite school board members, my wife Julie, who is here as well. As many of you know, teachers are an incredible force in our society. I think I'm very comfortable in saying that none of us would be where we are in life, without teachers. They have given us just an incredible foundation to grow. We know that we've learned from all levels in elementary school, preschool, middle school, high school, colleges, graduate school all because of the hard work and dedication of teachers. I thought it was very important

that we in the City of San José take time to stop, think about those teachers in our community, those teachers in our lives and to recognize them during teacher appreciation week that's going on all throughout the country, but we wanted to make it a special day here in San José. We know that without a foundation of the basic reading, writing and arithmetic which we used to be told when we were kids which is now changed to stem and other acronyms, without that sort of education the future is very bleak for individuals. So we take this time every year where we can gather as students, parents, members of the community and show our appreciation for everything that teachers do and that we can take time to learn more about the profession. I want to encourage everyone to take some time this week and reach out to a teacher. If it's a teacher at your kid's school, or a former teacher of yours in high school or elementary school or college, or wherever it may be and just take the time to say thank you. Because that's what I'm here to do today, say thank you on behalf of all the residents of San José. We have a commendation, proclamation for this week that we'll give and if any of you would like to make comments to the crowd, we'd love to have you.

>> Mayor Reed: One of you.

>> Councilmember Constant: One of you, not all of you. Shy group of teachers. Let's get a group picture. Get in real close. [applause]

>> Mayor Reed: All right, some of new this audience I know are old enough to -- as old as I am but I want to see how many of you can remember the name of one of your elementary school teachers. Okay, it's close to 100%. So we love our teachers, they do great work for us and our kids, so thank you very much. Now we'll turn to the relay for life. I'd like to invite Councilmember Pyle who is here and the relay for life of Almaden team to join us at the podium as we recognize Sunday, May 8th as paint your town purple day, Councilmember Pyle.

>> Councilmember Pyle: Please notice our mayor is wearing a purple tie.

>> Mayor Reed: But I'm on the wrong day!

>> Councilmember Pyle: Today's the day. We're proclaiming this coming Sunday, May 8th, as paint your town purple day. Why? Because the American cancer society is dedicated to eliminating cancer as a major health problem by preventing the disease, saving lives and diminishing suffering from cancer through research, education, advocacy and service. The American cancer society has more than 250,000 California volunteers, think of that! Nearly a quarter of a million volunteers, donating their time each year to help delivery programs and services, raise awareness and dollars, and provide hope in local communities throughout the state. In addition, to providing programs and services, the American cancer society also hosts relays such as relay for life, which gives local communities a chance to celebrate the lives of people who have battled cancer, remember loved ones lost and fight back against the disease. The color purple is the signature color of the American cancer society's relay for life event and those who wear the color show their support for all who have experienced this disease and their passion for finding a cure. So we therefore do hereby proclaim may 8th, 2011 as paint your town purple day, and recognizing the day by embellishing with purple ribbons and showing your support for those who have battled cancer. With us today, we have two survivors. Perhaps they would like to say a word or two. Patty Gahagan and Karen.

>> We just wanted to thank Mrs. Pyle for all her relay for life support. Relay four life is our chance to come out and celebrate survivorship and remember all who have died of cancer. Our luminaria event is such an inspiring event if you guys have time at our relay or another relay I encourage you to seek it out. We're also there to fight back, to see how we fight back against cancer. One of the reasons I fight back is I drive cancer patients to their treatment. Which is what I did this morning which is why I'm running late, I didn't have my purple. It's services of the American cancer society that are there to support people in our community. So again our relay is June 25th and 26th and we thank you very much. This is Tina. She's our American cancer society representative. And Marge Murkey is a past chair of relay for life. And Karen Zimmerman is a survivor and past chair of relay for life.

>> Mayor Reed: Thank you very much. [applause]

>> Mayor Reed: Like to invite Councilmember Kalra, Councilmember Chu and Dr. Kelly Browning executive director of the impact team drivers to join me at the podium as we recognize the month of May as safe teen driving month in the City of San José. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. We are joined with -- we are joined by police chief Moore along with Mayor Reed and Councilmember Chu. We also have Dr. Kelly Browning, the executive director of impacting drivers, as well as Martha Tesmer, who is joined by some of her relatives, Carol Johnson as well as Sergeant Johnson and Gina Johnson, the latter two part of our public safety family here in San José. And Ms. Tesmer unfortunately lost her son Donovan, who was killed in a distracted driving crash. I just want to thank her for being here and for her courage in helping get the word out in regards to why it is important for teens to drive safely and for all of us, frankly, to drive safely. Motor vehicle crashes are the leading cause of death for teens in the United States accounting for more than one in three deaths. This proclamation coincides with the national youth traffic safety month, a month in which we empower youth to develop and lead traffic safety education projects and support law enforcement and effect legislation to protect teen drivers. Since its creation in 2007, impact teen drivers have been planning, developing and delivering awareness and educational materials on teen safe driving. The proclamation that will be presented in a moment is only a prelude to a safe teen driving event that I'm hosting tomorrow, it's at 10:00 a.m., it's at the Oak Grove high school student parking lot. Under the San José police department and CHP supervision, students will navigate a cone course while texting to highlight the dangers of the potentially deadly behavior. I think that's one of the best ways to educate teens to educate, do it under supervision, show them why they should not do that under conditions they won't harm someone. And I think that oftentimes this is a lesson that many adults could learn, as well, and hopefully through this we will be teaching the entire community about it. And so with that, Mayor Reed, I would ask if you could present the proclamation to Dr. Browning, to recognize safe teen driver month in the City of San José.

>> Thank you, Mayor Reed, Councilmember Kalra, Councilmember Chu, and Chief of Police Moore. We can't thank you enough, the City of San José, for recognizing May as a teen safe driving week. This is the number one killer of young people in America and I'm proud to accept this proclamation from the City of San José for the impact teen drivers organization, as well as families such as the Tesmer family that join me behind that has lost

someone near and dear to their heart. When we lose someone in the community it affects many more people than the family. Our program is offered free to the champions in our society, that is the first responders, teachers educators and health professionals. I'd like to thank all of you on behalf of the impact teen drivers program for making a difference towards stopping the number one killer of teens in America. Thank you. [applause]

>> Mayor Reed: Next item is the consent calendar. Are there any public speakers on that, yes there are, Mr. Wall.

>> David Wall: It's always a pleasure to be in the presence of Your Honors. We started identity today with teachers and I just wanted to add to that. All of you as councilmembers and you Mr. Mayor represent teachers in your own respective ways. With reference to the budget situation, I think that you should teach the community you don't need two paid months of vacation, that two weeks should suffice. Now, talking about the disaster preparation meeting, I think that there were two items that came out that were very discomfoting. One Mr. Mayor, that your communication person and the person that communicates for the City Manager are to be the ones that give the bad news of whatever disaster befalls us. I think these positions could be eliminated because there is no other person I would like to see give me bad news than the chief of the San José police or the chief of the fire department. So we can transfer funding to those groups. The Patton Boggs contract, \$600,000 a year, year after year, for this Washington special interest lobbyist group, Mr. Mayor, is a waste of money, has always been a waste of money. Eliminate that and transfer that money to the office of the attorney. The elimination of the other five senior policy advisors within your office Mr. Mayor, also would represent a tremendous A money to be transferred to the office of the City Attorney because we need those services. The actual shutting down of the Mexican plaza, saving of \$1.8 million may have some security cost to guard the building but that money alone should be transferred to the San José police department. That is all for now.

>> Mayor Reed: That concludes the public testimony. Consent calendar.

>> Motion to approve.

>> Mayor Reed: Motion is to approve the consent calendar. All in favor, opposed, none opposed, that's approved. Item 3.1 is a report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council, very briefly I did want to take a moment to highlight two significant documents that I released yesterday. First of all, I released the 11-12 proposed operating budget, as the council knows and because we are facing a significant budget shortfall of \$115 million, this next year, the recommendations contained in this budget will have a significant impact on our community. We will be reducing resources, and affecting services throughout the city. And so I won't enumerate them at this time. But there is a link to the budget that is posted on the City's home page where these proposals can be reviewed by everyone who is interested. I must caution that as difficult as these recommendations are, if we are unable to achieve concessions from the remaining six bargaining groups that have yet to reach agreement with the city, that matches the City Council's direction we will need to reduce further to balance the budget. These are called our tier 2 proposals and they are also included in the budget message which is also posted online. The second document, one that is just as significant in my mind as the 11-12 budget recommendations, is the fiscal reform plan. This responds to the council's direction in approving the mayor's March budget message to create a plan to achieve \$216 million in cost reductions, and/or new revenues within five years. The fiscal reform plan contains a comprehensive set of recommendations for the city council to review and to provide direction on. And the most significant of these are recommendations for retirement reform. Clearly, these recommendations will not be easy to implement but I am confident that this plan offers the city council a path to fiscal stability. These are just one set of recommendations reflecting the administration's best professional judgment. Most of the recommendations in the plan are subject to the meet-and-confer process with our employee bargaining groups. I know that these recommendations will be the subject of much public debate as the city council considers these and other very, very difficult proposals. The fiscal reform plan is also available on the City's home page for public review and that concludes my report.

>> Mayor Reed: Our next item is item 3.3, settlement of licking enterprise, purchase of property at 1157 East Taylor Street. We have a motion to approve. All in favor, opposed, one opposed, Councilmember Liccardo

opposed, that motion passes. Taking us to item 3.4 the annual financial scan of city funded community based organizations. Our City Auditor's report.

>> Sharon Erickson: Sharon Erickson City Auditor. Just very briefly. The annual financial scan of city funded community based organizations is an informational tool in the City's oversight of its nonprofit partners. The document summarizes key financial information from 26 organizations that receive more than \$250,000 in annual financial assistance from the city. I'd like to take this opportunity to thank the community based organizations, their auditors and city staff for their time and cooperation in putting together this document. And with that I'd ask that you accept the report.

>> Mayor Reed: We have a motion to approve. I have one request to speak, I'll take that now, Mr. Wall.

>> David Wall: I too would like to thank the auditor, as a matter of fact for everybody here today. The auditor has been repeatedly thanked by every committee that she attends with every report. That is unparalleled because we do not see the same level of gratitude for any report tendered by the office of the City Manager. We wonder why that is so? It remains shrouded in mystery. I think the citizen or these community based organizations represent something you can no longer afford. Actually you could never afford them in the first place. So you wouldn't be in the budget situation you were in today had you not systematically, Mr. Mayor, over your tenure on council and other members of council who have been here for a year, given away taxpayer money. You've skipped your unfunded liabilities. From T&E, just yesterday, transportation and environment, you are looking at a wholesale review and rebuild of city streets, but you have no money. You're looking at parcel taxes or considering it to raise revenue for streets. That's not going to go over very well. But if you would save this community based organization money and put it where it's supposed to be in the community, versus third party entities and their corporate structures, their high salaries and of course the vote-buying that goes along with it. You're going to be laying off police officers. This is not acceptable in this day and age. Laying off firefighters is not acceptable. Neither is attorneys or code enforcement inspectors, either. So I think the days of the public troughs of the CBOs is over with, thank you.

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

>> Councilmember Constant: Thank you, mayor. Fortunately we have already had a chance to review this at the Public Safety committee. So I got most of my questions answered. I did want to thank the City Auditor for another well-done audit and especially my appreciation for the reception of the input that we gave at the committee for things we think might help paint a picture over the longer term. The thing that concerns me is, as we look through this, there's several organizations that appear to be in trouble over and over and over again. On my short time on the council it seems like a handful of organizations come up time and time and time again. So I think it's important that we have this scan every year, so it helps us keep an eye on things and so it will keep in a broader context of previous years' performance and the amount of money we're investing. The one area that really concerns me is given the significant reduction in services we've had now for ten years, we have ten straight years of budget deficits in front of us, I would like to really critically look at each one of these organizations and ask, really, one simple question: Is there something that this organization is doing that is relieving the city from doing that work? Because I think if we identify that, it's clear to see whether or not there's a clear public purpose in relation to the other important services that we're cutting. So we know that we have libraries that are still closed, all the time, we have libraries that are closed, coming up soon here, four days a week, a police substation that's not open, reduced services in almost every level yet we continue to fund organizations that struggle. Now I'm not saying that we shouldn't necessarily be funding some of them, but I think we really have to ask, which of those are serve as a city purpose? Because when we're making these hard decision necessary our budget process, which as the City Manager mentioned it's pretty brutal, looking at the impacts of our budget especially this year. I think we do a disservice to the taxpaying residents and businesses, if we don't look at those and say perhaps this money at this point would be better spent doing X, Y or Z. Now, if they happen to be providing a city service that would otherwise cost us two or three times as much doing that service, then it's a worthwhile investment of our tax money to do that but I think we have to have a much more critical review. So I'm looking for that. As we go forward I'll be asking a lot of questions during the budget process specifically about that and I know I've had my discussions with Sharon and her team about how we might be able to incorporate that into future audits. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I too would like to thank Sharon and her staff for their really good work. I think we need to make sure we have a very clear process to determine disability retirement and I think this report clearly shows that we have room for improvement and it gives us a good path to follow. And while some other --

>> Mayor Reed: That's the next report I think. We're going to do them separately, I think.

>> Councilmember Pyle: Oh, separately.

>> Mayor Reed: She's going to make separate comments. Two reports together but we'll separate them for these purposes. I'll come back to you.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: The community based organization scan, I just want to sort of add to Councilmember Constant's comments. All of the funding to all of these organizations should be carrying out a city purpose, and if they're not, then we don't need to be funding them. But I'm looking through the list, and most of them I know what city purpose they're carrying out, and many of them are mayor's gang prevention task force, community based organizations, nevertheless we have to scrutinize how we spend the money, and this is an area that we do spend a lot of money, with nonprofit organizations, and we'll be looking at that in the budget process. I do note that the city manager's proposed budget includes reductions in funding for many community based organizations, and we'll go into daytime on that as we go through the budget hearings. We have a motion on the floor. On this item, any further discussion? All in favor, opposed, none opposed, that's approved. Now, back to the next report from the City Auditor, I assume you'll have additional comments. Sharon.

>> Sharon Erickson: Yes. So you have before you the audit of disability retirement. In summary, San José's rate of disability retirement especially among our sworn personnel is much higher than other cities. We call it in our

report unacceptably high. In a snapshot of retirement payroll we saw that two out of three firefighters and more than one out of three police officers are going out on a disability retirement, compared to about 6% in Federated. This means that a high number of our sworn employees are retiring permanently disabled from performing the duties of their job. When we saw these numbers the first question we asked ourselves was whether or not San José was a safe place to work. But our audit did not uncover evidence that San José was an especially unsafe place to work. The question has been raised whether the workload is too high and this is leading to a high number of workplace injuries. Again in 2007 the city's risk managers studied this issue and found that our sworn employees do not have a higher workload than in other cities. As a result of our review we concluded that the key factor driving San José's high rate of disability retirements is actually the economic incentive associated with retiring on a disability retirement. Disability retirements for both sworn and unsworn employees are partially exempt from federal and state tax. In fact during this audit we found that many of our sworn employees who took a disability retirement were also eligible to retire on a regular service retirement but opted for the disability retirement instead. We feel the economic incentives have something to do with this choice. Furthermore during our 2009 audit of the City's workers compensation program, we learned that in the years leading up to their retirement, employees file multiple workers compensation claims, potentially leading to the disability retirement, but possibly to increase their chances of a disability retirement. While as a city there's not much that we can do to change the federal or state tax laws there are a few changes that the city can make that we believe will moderate the high rate of disability retirements. We recommend that the city reconfigure the City's process for reviewing disability retirement applications, to move the process to a disability committee made up of a panel of experts with medical expertise and/or experience in workplace injury. And that the employer as well as the applicant be represented by an attorney at those proceedings. Another change that we recommend is for the city to tighten up on eligibility requirements for a disability retirement. During the audit we found that retiring employees had sometimes worked right up until the day they retired in either their own job or in a modified duty job. This raises the obvious question of how these employees could be considered eligible for a disability retirement when they were still working in their jobs when they retired from the city. So we recommend the council consider taking steps to amend the charter and the municipal code to clarify that the purpose of the disability retirement is to provide a stable source of income for employees who are incapable of engaging in any gainful employment and are not yet eligible to retire and to consider limiting disability retirement benefits to those

employees who are incapable of engaging in gainful employment. Otherwise the decision will continue to be made as the charter now reads which is based on whether or not the employee is incapable of performing duties and functions in the same classification. We also recommend that council takes steps to amend the Muni code to require employees to declare their intentions to apply for a disability retirement at the same time as they file for a service retirement. This is actually required under the charter, and would help address what we called in the report the empty exercise of trying to find suitable employment for an employee who is already retired but now requesting a retroactive change in status to a disability retirement. Finally because many of our disabled employees are being paid by the city for their workers compensation injuries at the same time as they are receiving a disability retirement, we recommend that the city council take steps to amend the Muni code to impose a retirement benefit offset for sworn employees receiving disability retirement payments that would replicate the offset for retired non-sworn employees. There's also an issue we addressed in the report regarding sick leave overpayments that needs to be addressed. And although this audit focused on the City's disability retirement program we would have been remiss not to stress the importance of ongoing efforts to address employee safety, health and wellness. That's why the very first recommendation in our report is to support the fire department's pilot wellness program. And that's why in collaboration with the fire department and San José firefighters I will be proposing that next year's audit work plan include a review of fire department injury pattern, potentially by station and/or time of day and the timeliness of treatment for workmen's compensation workplace injuries. Our report includes a total of six recommendations, they're listed on page 33 of your report. We did present the audit to the Federated board on April 21st, and I plan to -- I will present the report to the Police and Fire board this Thursday. I'd like to thank the retirement staff and especially the board's medical director and the city administration for their time and cooperation during this audit. As you well know it's a very difficult and complex subject. The city administration's response to the audit is included in the yellow pages in the back of the report. I believe we're in general agreement.

>> Mayor Reed: Thank you, City Auditor. Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, mayor. Sharon, thank you very much for the great work with the audit and of course thank you to your staff. I'm in complete agreement with all your recommendations. So I co-authored

a memorandum dated April 8th, 2011 along with Mayor Reed and Councilmember Liccardo. And at this time I'd like to move the memorandum with a slight modification. I would like to amend recommendation B in the memo to read as follows. Direct the City Manager, City Auditor and City Attorney to research, conduct outreach and prepare ballot language for a ballot measure allowing the residents of San José to vote on changing the city charter by amending section 1504 and section 1505 to clarify the purpose of the disability retirement benefits as outlined in the City Auditor's report.

>> Second.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: All right we have a motion on the floor. Anything further, Vice Mayor? Do you have any comments on your motion?

>> Councilmember Nguyen: I do have comments.

>> Mayor Reed: Does the City Attorney have comments?

>> City Attorney Doyle: Mayor, city council, there's a couple of things I want to touch upon and I think it's important to give guidance and I understand that the ideas for the manager, the auditor and my office to work together to try to come back with something. But the first issue is you need to know that there are meet-and-confer issues involved, I think that was discussed at the committee. Also at the Federated board meeting, the conflicts council for the retirement boards raised the vested rights issue and that is something we're also going to have to research. I don't know if the case cited by the counsel is really on point, but I've just been made aware of that and that's just something I would at least let the council know. The most important thing though is coming back with language specifically addressing the what is substantially gainful employment. Social Security is raised as a model in or a possibility in the audit. I know Sharon did a lot of analysis, looked at some other plans, some other cities. But right now, the charter talks about as Sharon mentioned, that if you're unable to perform functions

of his or her office or position or of any other office or position in the same classification as opposed to substantially gainful employment. I just throw out a hypothetical, a police officer is shot and suffers a brain injury or a lawyer suffers a brain injury or an accountant suffers a brain injury and is unable to really do that type of work or really any other work other than bag groceries at Safeway. Is that gainful employment or is that a disability? And those are the types of things that I sort of want to get a sense of the council, what you're looking at, what you want us to do, clearly the government code has some definitions. In the 1937 act, which applies to counties, its retirement plan. We can look at that. But I think that may be something that we are going to need to work with both the Auditor's and the Manager's office. But if the council could give us some guidance, I would appreciate that.

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Thank you, and thank you, Rick, for the clarifications. Obviously, I think we can hash some of those issues out as we discuss this issue. But I wanted us to focus on creating a more sustainable retirement system, and that's the intent of the memo. Obviously, we -- in agreement with the City Auditor, we are proposing significant changes that will help bring our City's fiscal system back on track and which I hope will become more sustainable in the near future. The recommendations in this memo clearly do not intend to alienate or point fingers at individuals who are currently receiving disability pensions. As updated at the Public Safety meeting, it's really not the individual's fault for reaping the benefits from our current system. It is because our current system allows for retirees to obtain multiple benefits. So I believe that a change in the charter if approved by the voters will seek to create a more accountable and responsible disability retirement system that is effective, fair, and again, more sustainable. We have had a structural deficit for the last ten years. I think due primarily to the rising retirement cost for city employees, you know to pay this benefits the city has nearly tripled its contribution to the system therefore lessening the dollars contributed to essential services such as safety, reducing hours at the library, community centers. So I think at this time we really need to take control of our structural deficit by enacting measures that will help curb these costs. So the modification that I made earlier which I hope the City Auditor, City Attorney and City Manager will collaborate with all the stakeholders, particularly local 230 and the POA, local 230 was the first bargaining unit to recognize the city's difficult fiscal reality. We thank them for being the fishes to

provide the 10% ongoing concession. So I was hoping that we can reach out to them, to come up with the appropriate ballot language so that we can work together collectively to send a clear ballot language to the voters. Either early on this year or sometime in the near future. So I'm hoping that my colleagues will be able to support this. Again, we need to create a more sustainable fiscal system and I think this is one of the ways to do it. Thank you.

>> Mayor Reed: I had a question or two for our City Auditor. One of the things that's not covered in your report is how we got to where we are today. Because the way I thought the disability retirement system was supposed to work was the way you described is what the purpose should be, which is to take care of people who are hurt on the job and can't work. But we see from your report that well, we may be doing that. We also are providing disability retirements for people who were perfectly capable of working, worked up until the day they retired and that's not what I'm trying to do with the disability retirement. So I don't know how we got from the language in the charter to where we are today. And that's probably beyond the scope of your report but if you have that information, I'd like to have you share it.

>> Sharon Erickson: No, we didn't really research the history but we were startled to see the difference between what's in the charter and what's actually in practice.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Again, thanks to the auditor for another very thorough report. You know, I look at this obviously from multiple perspectives as someone who's been through the process, as somebody who's sat on the retirement board trying to make the evaluations of disability retirements, and as well as a councilmember. There are a few things that I think that we need to address. I agree exactly with what the mayor said. I think we do have a system that does have areas where people are able to gain the system. But we have to make sure that we, whatever changes we do that they recognize that there are people who do very dangerous jobs, and get significantly injured, and can be out of work for years. And we need to make sure that we provide those protections. On item B, I appreciate the change in language compared to what's on the memo. I

think that's important. I think it's important that we're not too prescriptive to staff and we give them an opportunity to look at those other definitions like the 37 act counties, I know Cal PERS has one. There are several different variations of definitions and I know that the City Attorney, Mollie Dent, who represents -- is on both retirement boards providing counsel, provided quite an in-depth presentation to the boards on disabilities, the process, and the different retirements, and I was able to share some of those with the mayor the other day. I think it's important that we look at all of those not only to see how other agencies have done it, but really to look at the implications of each of those differing definitions. I'm a little concerned with item C. And not concerned that I don't think it should be in the motion, but just concerned how we get from where we are to where we feel we need to be. I know that on the Federated board they have already instituted a subcommittee to look at the disability process and try and fix the internal working from a board perspective. You about we know how the boards operate within the box that the charter and the Muni code creates for them, is one thing. But we also need to make sure that we fix the box so that they have the right parameters in which to develop their policies and processes. So my question for Rick is, Rick, in item C, and you may not have the answer now but I think it's important that we address it, is how does the retirement board's plenary authority that's granted in the constitution of the State of California, to be the exclusive administrators of the plan, how does that limit or not, what we do in order to create the year of arching guidelines or definitions or processes? And I'm particularly talking about can we, where do we have our power to say, you must use this independent committee, or this, or that? And if we haven't thought about it, how do we get there?

>> City Attorney Doyle: Well you clearly you the council you had the authority to establish the plan, modify the plan. There are meet-and-confer issues, there are ordinance drafting issues. There are review, the boards are entitled to review and comment prior to your adoption. But ultimately, the council adopts the plan. The boards are charged and have to have plenary authority to administer the plan as adopted by council. And I think that's how what approach, how I interpret it. This is merely going forward with proposed recommendations along those lines.

>> Councilmember Constant: Okay, I think that's really important that we're really conscious of that going forward. Because I want to make sure we fix the framework and that each of the boards fixes the internal processes that they use to get to a determination of whether somebody is disabled or not in granting retirements. I

would like to ask for an addition to the memorandum, and that is, to take recommendation 6, which, by accepting the report, is merely a recommendation. And I'd like to convert that to a clear and definite direction that the city administration take aggressive steps to collect the outstanding balances that are owed from those retirees who have still not fully repaid the city amounts that they were overpaid in relation to their unused sick leave. Because I think it's important in those cases that we have people who clearly went through a process and were very aware of the process and we have 100 -- how much is it here? \$150,000 that is sitting out there with people, some people who have, for a number of months, one person three years, has not made one payment. And I think those are issues that we need to be a lot more aggressive and not just recommend but really be aggressive. So that's a request for a friendly amendment.

>> Councilmember Nguyen: That's fine, Councilmember Constant.

>> Councilmember Constant: Thank you.

>> Mayor Reed: And the seconder? Okay. So the motion is amended by friendly amendment.

>> Councilmember Constant: And then the other area of concern that I have is we have a conflict between our charter and our municipal code. And the process for somebody to request a change in status, from a service retirement to a disability retirement. We have a charter that says, you must make that application while you're employed. We have a Municipal Code and a practice that allows people to come back, later, and apply. So my question is, one, how did we get to a point the Muni code to supersede the charter. And -- that's the first part of my question.

>> City Attorney Doyle: Well I think this has evolved as Sharon indicated and this, our view of the charter is that it sets forth a floor or minimum, and as the program was whether through negotiation or amendments, the Municipal Code gave broader authority. But that is something that I haven't focused on. I've looked at the audit, I've looked at the charter. That's really the only explanation is the charter sets forth minimums and you can go above the minimums. But we'll want to do additional research on it.

>> Councilmember Constant: I think we should and I'm going to ask that that be amended in the motion as well because I read the minimums exactly opposite. The minimum being the minimum you must do, is file no later than the day you are last employed. And you could apply sooner, I think it is beyond that. I think we've exceeded the minimum language if we let the person do it the day after, two days after or a year after. So that's my second request for friendly amendment to specifically look at that issue.

>> Councilmember Nguyen: That's fine.

>> Mayor Reed: And the seconder?

>> Councilmember Liccardo: Yes, I'll be speaking on that issue shortly.

>> Mayor Reed: That's amended by friendly amendment.

>> Councilmember Constant: I've expressed this here and multiple times on the dais and in the Public Safety, Finance and Strategic Support committee. No matter what we do in relation to the disability retirement process, we will achieve virtually little if anything if we don't address the significant problems we have in our workmen's compensation administration. We had an audit recently of workmen's compensation where we found that our claims adjustor were carrying caseloads greater than double of that average. We know that we have a significant number of people that don't get their treatment in a reasonable amount of time. And what happens especially when you have traumatic injuries that are orthopedic in nature, we can look at professional sports athletes and see that people can have very severe injuries and come back 100 or 110% if they get timely diagnosis and treatment. We have a system where people can go months and months just waiting for the initial diagnostic tests, to then wait months and months more to get the treatment they're required to correct those injuries. And as I mentioned specifically the orthopedic injuries. And what we find then a number of those people cannot recover and have long lasting disabilities and limitations on what they can do, because we have a system that does not encourage rapid identification, treatment, and returning to work of the employees. And I mentioned it before when

we were talking about the workmen's comp audit. One of the things that disturbed me the most as we went through long discussions about workmen's compensation and never once did the topic of treating the employee or treating the injuries come up. It was only discussions in the vein of handling the claim. And there's huge difference between the two. And I brought it up a number of times, in how there are some other agencies that take a completely different approach to it. They look at their employees as people that they've invested a lot of money in, and that when they get injured, they provide intense diagnosis and treatment up front and manage treatment to get people back to work quickly. I think if we were to put as much time and effort into that as we have been in retirement issues, we would find that we would probably solve a significant portion of the disability retirement issues. It benefits the employee to get quick treatment. And it benefits the city. We see how much our workmen's compensation program costs us just in the claims process. And we haven't really looked at how much it cost us in work that is missed from people not being at their jobs for months and months on end. So I know I've said this a dozen times before and I'm not looking for an answer. I'm just making a clear definitive statement that this, without addressing completely the workmen's comp issues, I think will be fruitless. I'm very thankful to the City Manager for the changes we've seen recently in the leadership assignments in the workmen's comp division. I have every confidence that Alex is going to bring about some significant change in a pretty timely manner. But I think it's something we need to do and we need to keep focused on it. I know I said it was my last comment but I'll make one last comment. I know as we go forward with potential ballot language, I want to make sure that we don't take so many bites at the reform apple that there's nothing left when we get to some of the big issues. I would really hope that we could take this piece that we're doing research on and marry it up and take a comprehensive retirement reform ballot measure or a set of companion ballot measures to the voters as soon as possible. Thank you.

>> Mayor Reed: One thing to add, you didn't mention it so I will, the workers compensation cost to us compared to other cities, as compared to Santa Clara County is probably ten or \$12 million more as if we had their same record. So it's a very significant number, ten or \$12 million would be very nice to not have people injured or paid, but to have them working so we could pay other people with that. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I want to say thanks again. You've done a terrific job. I had a question, if the bargaining groups do agree on the changes to be put in place, does that still require a trip to the ballot?

>> City Attorney Doyle: Yes, assuming you're going to get it changed to the definition of -- that was -- of a disability yes, it would.

>> Councilmember Pyle: Okay. And then the other thing was, since so many of these dollars are coming from Sacramento as well, do we need to have a bill, or something of that sort, introduced in Sacramento? In other words how do you stem the problem there, as well.

>> City Attorney Doyle: This is a charter city issue. This is our issue. We would address it through the charter and the municipal code. We're not preempted under state law on this issue. And so we wouldn't need to worry at this time about legislation. Now if something were to come down the road and the state tried to preempt us then we'd have to worry about it.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to thank the auditor for the report, again another good report, lot of good work on here. And I'm supportive of the motion. I just want to make sure I think what I was concerned about is included in the motion. I just want to confirm that with Vice Mayor. So I think that we need to, you know obviously we've made tremendous progress with our bargaining units. And I feel there's an opportunity to work with them for change and include them in these recommendations. And so I think that's what we're doing in this, is making sure that we include the employees, and we focus in on, when we meet with the bargaining units focusing in on how to save the city money, providing the proper care for injured employees as has been discussed and getting the employees back to work as soon as possible. I think that we're all in agreement on

this. And I sat on the Police and Fire retirement board and was very frustrated on other things. Clearly, nub of us were experts in being able to assess medical conditions and having to make those determinations and having literally a file full of medical forms and documentation that we had to look through and then make a determination whether or not someone had a service connected disability, whether they should be allowed that. And then ultimately, usually getting down to trying to understand whether or not there was a job in their field, an exact duplicate available for them, a job that would -- a desk job, basically, or a job they could have within the police department or the fire department that would be available. If it was not, then the disability was granted. It seemed like a lot of times we really didn't, A, have the knowledge to figure out whether it was service connected, to understand those medical records and B, it seemed to sort of slot everyone to go through and be approved, because of the way it was set up. So I definitely appreciate what the auditor was saying with these recommendations because I've sat on that side and tried to make those decisions. On the other hand, I'm also very concerned about how we treat and deal with injured employees. Injured firefighters and police officers. And I think Councilmember Constant spoke to it eloquently and he's been on many sides of that issue. Because indeed if we can get people treatment, if we can create a system where people get treatment right away, I think that sends a message that we care about making sure that their injuries are taken care of and gets them back to work sooner. So I had a question I guess it's for the auditor. In terms of your first recommendation, because you talk about wellness in recommendation number 1, how do you reconcile that with the issues with workers comp? And getting diagnosis and treatment more quickly? Because there's wellness and then there's addressing those injuries right you know when they happen and making sure people get treated. Because I've heard a lot, I've heard complaints from lots of people who have gone through the system saying that they're not treated on a timely base that things don't get treated. So I think these go together and if you could comment on that.

>> Sharon Erickson: Yeah, one of the things -- when we audited workers compensation before we were really focused on allegations that workers comp itself the program wasn't living up to its end of the bargain. And what we found was that the system had changed, that the city was complying with state law, utilization review and those kinds of things are now required under state law and the city was upholding its part of the bargain. In discussions since then and what I'm hearing loud and clear from employees is, what people want us to look at or we need to look at more, is a more in-depth review of how quickly we're treating individual employees. So it's not

just are we meeting the letter of the law but it's exactly what Councilmember Constant said. It's you know even if it's not the City's fault, it's a physician's fault because they can't get access to the machine or get you in for two months. What is the city doing about that? Is there something we can work cooperatively on? That's exactly why, in my opening comments, I said one of the things I've been talking to firefighters and the fire department about, is what kind of additional analytical support my office could provide in the form of an independent audit. You don't necessarily need another audit to tell you the system is broken. But if we could help in a targeted fashion to develop the analytical support that we need to craft recommendations to get this situation under control, the thing we all agree on is the \$32 million a year we spend on workers comp with all of its spillover effects into disability retirement, is money that is wasted in the sense of it's not something any of us want to spend money on. We want our employees healthy and safe.

>> Councilmember Herrera: And I know when I had -- I once had a company, and I had people working in a manufacturing environment. And we very aggressively made sure that if anybody had an injury they were seeing a doctor that same day, they were getting treated, and we substantially reduced our workers compensation cost. And I think people felt cared for, they were very motivated to get back to work, and they could tell that the company was really trying to address that. So I know firsthand from that perspective, that that sort of focus does work in getting the cost down. So I really want to strongly support changing the -- getting a board or a subcommittee or getting some kind of board together that really has the expertise in analyzing this. How we go about that, I suppose we're going to have to go out and get experts, or maybe there's groups already out there that do that. I'm sure that we can look at other models out there, but that's a very important part of these recommendations and I look forward to what the bargaining units and city will come back with, in terms of how we would move forward with a ballot measure and/or other purse that will help us correct the situation.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. So if I may ask, how would this report have been presented absent the memo from my colleagues? Would we have just heard the audit report and accepted the recommendations within it, without any implementation, staff report?

>> City Attorney Doyle: Typically when the auditor presents her report it's a follow-up from the committee. And the recommendations are generally accepted, and then, she reports back on a regular basis to the public finance and safety committee on the status of those recommendations, that the administration is following through on those, and those are regularly checked and Sharon can probably address it better than I do, because she does it on a regular basis. But normally it's just accept the report and all the recommendations are either implemented or they're on a list of things to do.

>> City Manager Figone: And to councilmember if I could jump in.

>> Councilmember Rocha: Expand on that.

>> City Manager Figone: Typically we would take the council's approval as a referral to the city administration and begin working on these items. Sometimes items -- and I'm not seeing any of these fall in that category -- have a budgetary impact, and so they might need to come through the budget process. And there might be priority 1's versus a lower priority, so there's a lower prioritization. I'd say in this case we would have taken the audit and developed a work plan and begin to work on these items.

>> Councilmember Rocha: Can you point to an example of that recently? That I could go back and look at?

>> City Manager Figone: I would have to ask Sharon to comment on that.

>> Sharon Erickson: Nadine just raised take-home vehicles. So in that case we came forward with an audit record you accepted the audit report and staff began to implement some of the recommendations. Others were subject of discussions. Typically there's a response to the report in the back of the report and this report it's shown on the yellow page.

>> Councilmember Rocha: Uh-huh.

>> Sharon Erickson: The response to this report is pretty general and I think I read it as fully supporting the recommendations, but wrapping into a whole retirement reform pang. So that's where this report is a little more complicated in that sense. But typically, there is a response here. And then, as the City Attorney said, we do follow up every six months on open audit recommendations, the next time we'll do that would be June 30th where we would come back to you with an updated status on what progress had been made towards these six recommendations, as of that date. And then we do it every six months after that. Some things are relatively easy to implement. Some things are subject to meet and confer and can take years to implement. Others like I hope the \$150,000 we can resolve pretty quickly.

>> Mayor Reed: Councilmember Rocha, City Attorney.

>> Councilmember Rocha: City Attorney had something to say, go ahead.

>> City Attorney Doyle: I was going to suggest that most of these recommendations aren't budgetary however there is a specific recommendation seeking attorney services to represent the employers interest or the City's interest at these hearings. They are not usually adversarial, but in that case, given the fact that I'm eliminating ten attorney positions in my staffing representations, it's a serious staffing issue and whether I have to do that in house or outside, it may be a budget issue.

>> Mayor Reed: City Attorney.

>> City Manager Figone: Just a custom examples. When Sharon audited health benefits, for example, many of the recommendations found they're way into recommendations thereof meet-and-confer and have been unfolding incrementally. Another along those lines would be police-related audits which led to civilianization recommendations which again made their way --

>> Councilmember Rocha: Had their controls.

>> City Manager Figone: Yes, yes. So some are very straightforward, might be more linear, and others might find their way into other processes.

>> Councilmember Rocha: Okay, and you did mention there's a complex here and a charter amendment and an election is a little bit more than take home vehicle or health benefits, so thank you. I'll follow up with you later to get one of those reports that I can use as an example. Thank you. I noticed that this item was added late to the agenda as part of the amended agenda. Is that -- did I miss something? Is that true?

>> Sharon Erickson: If I could jump in here, that's just the normal cross-referencing out of the committee. So it went to the committee and the report from the committee is on today's agenda. You already approved that as part of consent. And then items are cross referenced by the committee out for the hearing by the council.

>> Councilmember Rocha: Well, then we didn't know that prior to Wednesday's Rules action that we were going to cross-reference this, or am I missing the process? Because we would have probably known that ahead of time, I would say.

>> City Manager Figone: Nadine, can you please respond.

>> Sure, sure. So usually, and Dennis can chime in, but usually the cross references appear two weeks after each committee meeting. We know at the rules committee that it's going to appear on the agenda. So it's been sunshined for two or three weeks but --

>> Councilmember Rocha: Okay.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Rocha: No, I think I'm more to that point but I think I'm going to leave it alone. In the introduction of the report I noticed that you had some acknowledgment of staff that worked with this and the department but I didn't see the departments that are directly impacted such as police department and fire department. So I think that was page 6 in the introduction.

>> Sharon Erickson: So I'm not sure what the question is.

>> Councilmember Rocha: Why wouldn't you include those departments as part of working with them on this report?

>> Sharon Erickson: You know, I -- let me say in -- as a course of doing anything audit, I'm blanking on who exactly we talk to at this point. We focus on a particular department. In this case, we were really auditing the disability retirement system. Not -- and it really is outside the control of the police chief or the fire chief, whether or not the boards grant somebody a disability retirement. At that point it really is up to the boards, in that case. So that's where we focused most of our effort.

>> Councilmember Rocha: Well the scope of your audit goes beyond that in my opinion. Maybe we disagree on that.

>> Sharon Erickson: I'm sorry?

>> Councilmember Rocha: Seems like the scope of your audit goes beyond the point you just made though. Wellness issues other issues that --

>> Sharon Erickson: Yes, and we did have conversations with police department personnel and fire department personnel. It's just I didn't feel they were the subject of the audit, if that makes sense.

>> Councilmember Rocha: Understand.

>> Sharon Erickson: I see the world through an auditor's perspective.

>> Councilmember Rocha: Very narrow. I guess assuming that staff didn't know that my colleagues were going to put forward a memo we would have heard this item and accepted these recommendations. So did city staff meet with any of the stakeholders previously to talk about I guess accepting some of these recommendations or working with them on this? Let me jump ahead here. I've got a lot of comments but in the old days, and shouldn't say that, we often had task forces. And the mayor was here for a number of those whether it was just cause. And we sat down with a number of these stakeholders prior to moving on some recommendations and significant policy changes and ballot measures and talked to them ahead of time in order to work together going forward, as opposed to working against each other after the fact. And to me, I feel personally, my opinion, that some of the direction here today is absent that. And I know my colleague mentioned a change, research and conduct outreach. But I'm not sure if that meets the spirit of what I'm concerned about. I mean, I have other questions, I guess, and now I'll jump backwards. Recommendation 3 and I was curious how staff sees gainful employment and the definition of that and the City Attorney mentioned that. What -- how do we see comparable salary benefits, comparable salary benefits, similar profession, given that some of these folks have invested in a career in this, how do we see that picture playing out given the direction we're going? Again I don't know if City Auditor, City Manager, City Attorney or even my colleagues I guess because the direction in the memo kind of has some impact on that.

>> City Attorney Doyle: That's why I raised the question. I think the auditor raises some good cases, different cities do different things. Or different plans. And in the case of Social Security, it's probably one extreme, and we're maybe at the other extreme. And somewhere in between may be the perfect answer. But that's why I asked the question, because I think we're looking for some guidance.

>> Councilmember Rocha: And where are we going to get that?

>> City Attorney Doyle: From the discussion.

>> Councilmember Rocha: Okay.

>> City Attorney Doyle: I think the council -- you're asking us, if this motion is adopted to come back with a proposed blood measure. I think part of that is to get some guidance from the council what they're interested in to have outreach with the necessary parties, to sort of get you know, the discussion going with them as to -- and then come back with some kind of proposal. I think -- I don't know if there's one definition that is out there, that satisfies everyone. But I think we would try to get some kind of -- knowing that the current definition is too broad or narrow, depending on your perspective and that the Social Security limits, as I raise the question about I can be a bag checker but I can't be a lawyer, is that really apples to apples, no pun intended.

>> Councilmember Rocha: How we define that whether that's salary levels or particular positions. I wouldn't consider being a city council member being gainful employment but some people might.

>> City Attorney Doyle: A lot of this will depend on outreach efforts.

>> Mayor Reed: City Attorney. From my perspective what we would do basically what's already alluded to we would do research, we would -- out of that research we would develop criteria and standards. We would test that thinking against the thinking of others through the outreach process. Try to make you a professional recommendation, clearly there's going to be some values issues and some political considerations in that but we would try to identify the issues in a way that could lead to a recommendation and some alternatives perhaps.

>> Councilmember Rocha: Okay. So I feel like the cart's before the horse and we're catching up to it now slowly but surely. But looking at the memo I have a June 14th date. To me, that suggests that we're going to the ballot soon. We're looking at a month and two weeks. And I'm not sure -- is that the intent here, to come back at that point to move to an election soon, November or a certain date, as far as the folks who submitted the memo, is there a certain time line that you have in mind?

>> Mayor Reed: Vice Mayor?

>> Councilmember Nguyen: Thank you. Councilmember Rocha yes, that's the intent but again we're looking for staff to come back with a proposed draft language. I think sometime probably the first week of August when we come back after the break that's when we would probably be presented with the ordinance with the ballot language. And at that point we have a full council discussion whether or not we agree with the ballot language or not. That's why in this memo we didn't really specifically specify the election date for which we would put this on the ballot. It could be in November, it could be next year, that's something that we have an opportunity to discuss at a later, future meeting.

>> Councilmember Rocha: So there isn't any particular urgency but just moving forward given need for reform, that is the urgency.

>> Councilmember Nguyen: That is correct.

>> Councilmember Rocha: Okay. Well given the cost that I got from the City Clerk's office, clearly I think waiting for an election that might be a scheduled one is in our best interest given our budget situation. Because the money we're going to save that theoretically we're going to spend on an election. So we might want to consider waiting for that date which to me points to a little bit longer of a time line. So let me ask, I guess, Vice Mayor, for the research and conduct outreach, do you in your mind envision and I don't like to use the word task force because it's been played out quite a bit over the years but do you envision our staff sitting down with stakeholders involved? Because I'm looking at two letters from local 230 and in my mind they've gone farther in terms of summary reforms and cost savings that are not here. So that to me points back to the original issue that I raised and we can get a lot of agreement on this stuff and not going through this exercise really precludes that. I'm sorry that was a long question. So do you see this kinds of stakeholder group sitting down, you don't have to call it stakeholder, just sitting down and talking about this? I'm sorry.

>> Councilmember Nguyen: Absolutely. That was the amendment that I'd made earlier, and we have said the new amendment to recommendation B. And I did mention that in my comments earlier, that we should reach out to key stakeholders, such as a representative from Local 230 and the POA and other bargaining units for us to come back with the appropriate language that hopefully we all can agree upon.

>> Mayor Reed: City Manager will add to that.

>> City Manager Figone: If I could just add my thoughts. Clearly the council direction is important but I will tell you it is our style to sit down. We don't need direction, necessarily, I think having direction like this to endorse that is a good thing. But as recently as yesterday, we sat down, Alex and I, with Robert Sapien and Jeff Welch, we talked about this report, our commitment to collaborate. I got an e-mail today. Chief McDonald isn't here, but our assistant chief, Teresa Reid, is. They have since sat down with the auditor, and Robert was there and Juan Diaz, and everybody is committed to rolling up their sleeves to solve this problem. Now, it will be the council's decision where it ends up, but we are committed to working on this situation together, I can assure you that.

>> Councilmember Rocha: I'm going to stop there. But thank you, everyone, for answering my questions.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all, thanks Sharon, and your team, for another wonderful work. I also want to thank Vice Mayor Nguyen, Councilmember Liccardo, and mayor Chuck Reed for putting together this memo. Throughout the discussion, the deliberation this afternoon, I think it's very clear that there is definitely room for improvement in our workmen's compensation program, as well as our disability process. I just don't believe that we need to rush into a charter change at this time this afternoon. There's some cooperation that the City Manager brought up, that talking with the chief, the fire chief, the local 230, and there's a lot of -- I also heard there's a lot of municipal code and the charter language are not really in the greatest alignment. I guess the points, there are so many things that we can do before we spend probably roughly \$400,000 taxpayers' money to put it on the ballot. And there's the staff time, you know, as Rick mentioned, there would be a reduction of 10

attorneys. So my question is, is this the best time to even consider putting this one on the ballot? Where we have a laundry list of things we can do and to yield some savings and putting the injured worker back to work, like Councilmember Constant just brought up. So I will not be supporting this motion, and I wanted to stress that the most important issue we're facing at hand is to get our injured employee back to work. As is pointed out in the audit, where we keep the injured worker off longer, we not only end up paying for their disability, as well as paying for the backfill, for another person to replace their -- to replace them in the meantime. So I think we should put more of our resources, time, and money on this issue than just simply put it on the ballot. I don't think there's really that much of confusion in the charter language. And there are probably people taking advantage of the language. But you know, it's really not that black and white. It's not that confusing to me. So I will not be supporting the motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. To address an issue that Pete raised regarding the conflicts between the charter language and the Muni code. I raised a similar question I recall on the board. And as I recall, and I just looked it up online here, the state definition of permanent disability under the code of regulations, I think it's title 8, specifically reliance on maximum medical improvement as sort of the touchstone. And I'm looking at the code of regulations title 8 section 101.52. The notion is that a disability is only permanent when the employee has reached their maximum medical improvement, meaning their condition is well stabilized and unlikely to change in the next year without medical treatment. And I think the concern I kept hearing every time I'd ask questions along the lines of why are we considering this you know three years or two years after the actual retirement, was well, the person was undergoing medical treatment and they can't really be fully considered until that course of treatment has run, or at least the person's reached their maximum medical improvement. So that was how I understood it. It wasn't a question of Muni code trumping the charter but rather state law trumping the charter. I could be wrong but that was sort of my recollection of things. I of course sat on the board for a couple years and quite often voted in the dissent as some of these went forward, and I know that some of my colleagues did, as well, I know Rose Herrera and Scott Johnson. But the challenge really was often around the box that it was put in with the existing language. And I do think at some point we would need to change the charter. Whether that

happens this year or some other year, obvious that's a political calculus that we need to make at the time that we have all of our options in front of us. And I don't pretend to know exactly when that should occur. But obviously, if we can incorporate this in part of a larger package around retirement reform, all the better. It just seems to me that we need to at least get that ball moving forward. And as we think about moving forward I just want to clarify one issue with the maker of the motion going forward. We had one issue offline but I want to confirm, Vice Mayor, when paragraph A describes accepting the City Auditor's report that includes implementation of all of the recommendations in the report, is that fair?

>> Councilmember Nguyen: That's correct, that's recommendations 1 through 6.

>> Councilmember Liccardo: Great, that's helpful. Response to the question I think that Rick raised, which I think is an important one, because I think most of us would agree the term any gainful employment is really overly broad and could lead to some unfair and inequitable results. I have no idea how exactly to parse the language here sitting on the dais but I'm guessing that we might put mental impairments in a different category of impairments of physical maladies that prevent people from apprehending criminals or scaling buildings and ladders. And I have no idea if that's the right way to distinguish, but I know that as we look at our office buildings today, 95% of those people who fill those office buildings, we would never want or expect to be apprehending fleeing felons. But they work gainfully and are employed doing things that are both fulfilling and provide them with remuneration. So I think that may be one way to cut at it but that may get us into all kinds of thickets. We should be able to figure out a way to distinguish such severe degree of impairment that a person's unable to engage in any gainful employment from a person who simply has a physical disability, which I think we, particularly under the ADA, we recognize that should not prevent people from working and participating in daily life.

>> City Attorney Doyle: Yeah, and I think it's really incumbent upon us to sort of do some research, look at other plans and then meet with the stakeholders, to sort of work this one through.

>> Councilmember Liccardo: Yeah.

>> City Attorney Doyle: Because you're right, it's open. I just want to comment about people in the tower. I just want to note, for the record, a few years back the city attorney's office running team beat the police department's running team. So --

>> Mayor Reed: Was that before you got your injury?

>> Councilmember Liccardo: Is this the ancient history portion of the agenda? And then I just wanted to ask a couple of questions. Sharon, I think everyone agrees, is another excellent report from your office. Page 11 is an interesting statistic, it's contained there, I've heard before but I haven't really seen the data on it before. And this is the penultimate bullet point there, that San José had the lowest number of calls for service per year per sworn position, that's 305, as compared to 430 in California cities surveyed. I think that's important for lots of reasons but particularly to counter the notion that somehow or other, this is a really unsafe place to work. We know we're thinly staffed broadly across all our departments, and certainly in Public Safety we would wish to have more police officers, firefighters. Not only the lowest number of calls, but per sworn position I think is very interesting. And I'm wondering if publicly is this data available somehow, could we look at the various cities and see how it's laid out? She's standing.

>> Sharon Erickson: I'm looking at Steve --

>> Councilmember Liccardo: If this is something you need to get back to us on, that's fine.

>> Sharon Erickson: I believe the report is online.

>> Was that the question?

>> Sharon Erickson: Yeah, so the June 2011 HR report. So we can certainly get a copy of that and make sure it's posted if it's not posted. But yes, and actually, I am proposing -- I will be proposing to the council that I add to my work plan some additional work in this area to look at the incidence ever injuries compared to some of the

working conditions or things like by fire station and so on, so forth, so we can get to the bottom of some of these issues. So whatever kind of analytical support my staff can offer to help us answer these questions of what is going on and what is driving these numbers.

>> Councilmember Liccardo: Thanks, Sharon, I appreciate that. That is an incredibly important concept, if we are 27% below the average number of calls per sworn, now obviously we all agree there are calls and then there are calls. And clearly, some tasks are very physically demanding, and we want to make sure we're comparing apples to apples and obviously, I think members of the unions and the bargaining units can help us understand if we really are comparing apples to apples. But that's an important context for us understanding whether our injuries are driven by workplace or in fact there's really a problem with incentive in the process. As I think you suspect and as I do as well. Secondly, an issue came up that's described on page 5 about the medical director. And you know I think we benefit a lot from Dr. Das's insights when we were on the board. But frankly it was a challenging political environment for Dr. Das because I can remember at one point where some members of the boards were pushing to get a different doctor to handle some of the evaluations. And it tends to make I think it challenging for folks to be objective. If they feel as though being too tough may get them in trouble. And I think whatever we do, if there's going to be a process that we implement and I was very interested in some of the recommendations you made around ensuring there's a staff recommendation because we didn't have the benefit of that too often. Instead we would simply rely on sort of the boilerplate language that came to the department that said well, guess what, we don't have the position open for this person, so everybody just sort of folded at that point. And having a staff recommendation would be very important but with a staff recommendation has got to be some kind of protection that you don't shoot the messenger. I don't know how you do that. But somehow or another there's got to be an assurance that there's a contract in place for that person, that it isn't subject to whether or not they gave a recommendation that somebody on the board likes or not. And I guess the other issue I think is important, if we're not going to go with an independent committee and I know Pete has raised some issues about whether that is feasible or not, and I think outreach process, the notion of having council representing the city, asserting the city's position on each item I think is really invaluable as well to the extent that we have capacity in the city attorney's office to do that, it was often the case as we sat on the board we would turn to our left end, you know you'd have two attorneys offering sort of a battle of legal minds, about issues, and

usually one would say one thing, the other one would say the opposite and everybody would just kind of go on and realize we didn't understand anything that was just said and sort of vote based on our gut. And it just became really challenging. That is not in any ways to denigrate the good work of Mollie. She did a good job. These people were really engaged, you know these were complex issues and there's a difference between having somebody sitting on the sidelines who's asked for advice on occasion and someone who is advocating and specifically pushing an issue in a way that is I think rarely digestible by a panel. So I think putting a person in the position of advocate rather than sitting on the sidelines would be helpful, to ensure that we have a balanced playing field. So I appreciate that evaluation very much.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just a couple of questions. Going back to page 10 of the report, exhibit 4, I'm just curious, how did you come up with the jurisdictions to compare San José with? I was trying to figure out, I mean it couldn't be population because there's other cities in the state with similar populations to Fresno and Oakland. I'm wondering if you were to use those, did they have different numbers, or how did you -- yeah, how did you come up with that?

>> Sharon Erickson: Yeah, we pulled this information from the state controller's report. So there is a wealth of information for anybody that wants to compare retirement systems across the state, on the state controller's Website. The unfortunate thing is that it's all very stale information. So the latest information they had up on their Website was 2007-8. So we compared those jurisdictions that broke out sworn from non-sworn. So it was clearly a separate system. So in not every case could we see sworn separately from non-sworn. So we were looking for the costs based on sworn versus non-sworn and then some of the largest California cities was what we chose.

>> Councilmember Campos: And so with some of those jurisdictions did it matter if some of them had multiple tiers in their retirement system? Would that be a fair comparison? Because I notice that San Francisco -- I mean Los Angeles is there and I think they have three or four tiers.

>> There are some systems with multiple tiers, now there was some question on this, and there was some concern that the cost might not be comparable. What we were looking at was the percentage of cost, so it really wasn't the level of benefit so much as the percent. But I did go back and pull the information on number of employees and number of retirees. And let me tell you, San José was the only jurisdiction I saw where the number of disability retirees in every year we looked at exceeded the number of service retirees per sworn. Every other jurisdiction was significantly less. In Los Angeles for example, in 2007-8, there were 7400 service retirements recorded in their system. They were paying out on only 2300 disability retirees. Compared to San José, that same year, now, the numbers are very different of course. San José had a total of 635 service retirees, and 748 disability retirees. So if you look at those numbers, Fresno was the one that came closest to us. Fresno in that year had 332 service retirees, so regular retirees, compared to 323 disability retirees. Their numbers have been climbing every year. And they are fast approaching the one-to-one ratio that we surpassed a long time ago.

>> Councilmember Campos: Okay. So getting back to Nancy's question, I'm going to ask it a little differently. Could changes be made, and I don't think there's any doubt that all parties know that there needs to be changes. And it sounds like there's a spirit where the different groups, the bargaining groups, want to come to the table, and make changes. So could changes be made without having to go to the ballot? I guess that's a question to the City Attorney.

>> City Attorney Doyle: Councilmember Pyle asked that. To the extent you want to change a definition of disability that would require a charter change. So the short answer's no. There could other changes be made without going to the voters but to the extent that you want to change the definition of disability, which is part of the motion, and we're going to be doing outreach if it passes, that would have to go.

>> Councilmember Campos: I guess I should ask the question differently. Could the groups get together, come up with some real significant changes, regardless of, you know, let's say this memo never came out and the groups came up and said we're going to get together and we're going to you know meet and confer and come up with some solutions to make some significant changes. If they came up with changes, would those have to go to the ballot? I know it's hard to say because we don't know what would be discussed but-

>> City Attorney Doyle: I think again to the extent you are changing the definition of the charter, yes, it would have to go to the voters. To the extent that you're negotiating changes that aren't part of anything other than a change maybe to the municipal code or a practice, it would not have to go to the voters. So without -- I mean it's a hypothetical but until you get to the specifics of what the changes are, you don't know. But what's on the table now is a proposed charter change dealing with the definition of disability and so that has to go to the voters. After we have a meet and confer and outreach process.

>> Councilmember Campos: So my next question I guess should be to staff. Could there be changes without making changes to the charter, that you could see would be significant enough to make an impact on you know cost to disability retirements?

>> Sharon Erickson: Well, for example, our recommendation number 2 was to establish the expert panel. That could be done under the municipal code. So the charter is silent on would who approves a disability retirement. It just specifies what the criteria are. The problem is the city charter says the criteria are in your same classification. We can't theoretically place somebody outside of their classification. Has to be in their classification, was there a job available? So that's the limitation of the charter. But for example, this panel could be established, who approves the disability retirements could be changed in the Municipal Code. There is a significant amount of work that could be done without changing the charter. But the charter ultimately is the definition, it gives us the definition of disability.

>> Councilmember Campos: So I guess I am hearing that yes, there could be some changes, I mean you cited one. My concern is, is that I mean, it would be a significant cost if we had to put this on the ballot, just by itself, no other elections going on around the state. I think it was \$3.5 million. Even if there was, you know, we piggybacked on an election, I think it's -- was it \$1 million or you know or something to that effect. It's still a cost and it's a cost that could employ key -- you know keep libraries open or community centers open. I'm just concerned that when we -- you know I'm not saying that putting it to the voters would be a waste of money at this point, but I don't think we've exhausted one of our options and clearly the bargaining units have stepped forward and said you know we

want to try to work this out without having to put extra cost onto the city, those are the things we should be listening to so those are my comments. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. Before I start I wanted to see if Vice Mayor Nguyen, if you could repeat the motion with the amendments. It's been a little while. I just want to make sure I know what I'm speaking to.

>> Councilmember Nguyen: So the memorandum that's on the screen right now, that's the motion, with the two additional amendments from Councilmember Constant. The first one is to aggressively enforce the collection of the amount due to the city by the retirees and I believe it's about \$150,000 and the second amendment was to direct staff to look into ensuring that we reconcile the differences the conflict between the charter and the Municipal Code when we draft the ballot language.

>> Councilmember Kalra: My understanding is Councilmember Liccardo further clarified it, that it was not just simply accepting the auditor's report, but forwarding the recommendations of the auditor's report.

>> Councilmember Nguyen: Yes, recommendations 1 through 6.

>> Councilmember Kalra: In the memo it just says accepted, but I just wanted to make sure that was very clear. So in looking at -- I agree with a lot of the discussion particularly in regards what we can do in terms of wellness around shortening the time. I think that's where we have a lot of cost, shortening the time when we get to a decision on shortening some of the disability retirement hearings and so on. And if that means you know, if there's a doctor, there could be a number of issues that are involved but I think communication could be a big part of it where we can improve. In looking at the report, Sharon, you referred to exhibit 4, it went up to 2008, that's the last time the information is public. San Diego, Long Beach, San Diego is a very large city, Long Beach is a very large. They didn't have data on sworn and unsworn?

>> Mayor Reed: Sorry, the microphone didn't pick it up.

>> Sharon Erickson: This is Robin Opheim from my office.

>> Councilmember Kalra: Thank you.

>> Councilmember, we didn't include San Diego because they got themselves into their retirement system problems and discontinued funding both the Federated and the sworn employees systems. And stopped reporting to the state controller's office at a certain point.

>> Councilmember Kalra: Okay, so the data didn't have available and they were going through their issues, okay, thank you. The graph on Exhibit 4 as opposed to Exhibit 2, if you look at 4 you can certainly see that there's been improvement in terms of the percentage of the total retirements that are disability, from San José you see going in the right direction, other cities not necessarily so particularly Fresno. But even if you look at Oakland and San Francisco, looks like you leveled off on 40%. What's not included in that graph is shown in exhibit 2, which is '09-10, which showed a further improvement in the San José in terms of percentage of overall retirement, where although, yes, through '08 over half were disability retirements, in 09 and 10 it actually dropped below half, to the extent that in 2010, approximately 45% of the retirements were disability retirements. So basically it's showing the trend continues for the past two years, and San José's been -- you look back to '01-02-03, yeah, 60%, 65% plus are disability retirement. So the trend has improved and I'm hoping that has something to do with improved workplace conditions and some of the work that we've been doing in that direction. And I just mentioned that because again if we're going to talk about trends, that's an important trend to note, that we've been heading in the right direction in terms of cutting the overall percentage. If you are talking sheer numbers, yes, the number's higher, but the number's much higher on the retirement side, too. And in terms of cost, and this is something I think has been alluded to by a few folks, the cost to the city of someone that's at retirement age, that goes on retirement disability, disability retirement as opposed to service retirement what's the cost to the city in terms of General Fund?

>> Sharon Erickson: There is no difference in cost.

>> Councilmember Kalra: Okay.

>> Sharon Erickson: That's why we're saying the economic incentives are for people to file for this. Because it's a tax benefit. They're not getting an increased benefit, they're getting a tax benefit.

>> Councilmember Kalra: The city is also not -- the city, I'm not talking about the tax money to the federal or state government, the city is actually not losing any money here?

>> Sharon Erickson: Correct. For somebody who retires early, the city has established a floor for their disability retirement payments. So in a case of someone who had three years of service, you know, we would end up paying 50% of their wages in a disability retirement. The problem we were pointing out is, folks who were service, age and service eligible who are converting from a service retirement to a disability retirement, we felt that the point was to get the tax benefit.

>> Councilmember Kalra: Okay. So what do you base that on? I notice that on page 14, it indicates tax advantages may help explain why significant numbers of San José sworn employees who retired after a full career later find it worthwhile to have their retirement connected to a service connected disability retirement. All seem to affirm that some sworn employees filed worker claims to increase their claims for a service connected disability retirement. What can you base that on?

>> Sharon Erickson: It's exactly what you read. It was our assessment after having looked at the data and looking at the incentives. That's why we worded it the way we did. It's not something we can prove. It says we may have an impact and so on. That's why we used that kinds of language.

>> Councilmember Kalra: And so it's your opinion?

>> Sharon Erickson: Yes.

>> Councilmember Kalra: And is there any data either comparing to other jurisdictions or within San José itself that shows as afternoon individual gets older or in a career longer, particularly Police and Fire, that they're more likely to have workers comp issues, an injury that happens when you're 24 may not cause as severe an injury as when you're 44 or 54?

>> Sharon Erickson: You know, I don't have that data, but let me say, that's why we looked -- when we saw the large numbers that's why we asked, is San José an unsafe place to work? And our conclusion was, all the evidence to date had shown that San José was not especially -- was not more unsafe than other jurisdictions. So what was it that was causing this problem?

>> Councilmember Kalra: And I'll ask a question about that in a moment, but I'm speaking specifically to the same opinion that you have that our sworn personnel are filing workers comp claims in order to bolster -- in order to bolster their disability claims or that they're filing disability in order to gain tax revenue, are you of the opinion that as someone is later in life and isn't working on the job on the beat or at the fire station for 20, 30 years, that they're more likely to actually have actual injuries on the job, whether it be workers comp related or even something that reaches disability?

>> Sharon Erickson: You know, I don't have any evidence to support an opinion one way or the other. I can tell you as an older employee that there are differences. But I like to think I make up for it in smarts what I don't have in physical capabilities anymore. I think we need to be careful about forcing out older employees. There are ways that we can have people work that are safe. And I think where all of us agree is that none of us want to see an employee hurt. And all of us want to see good service delivered. So we will do anything we can you know and if I can provide any analytical support for that, we'll do that. But we need to be very careful about how we move through these areas.

>> Councilmember Kalra: I agree with you and I also, you know, I'm 39. I certainly when I get injured it lasts a lot longer than when I was 29 so I can say that. But I also know that I've never been a police officer or a firefighter for 20 or 30 years so I don't know what if cumulative effects of injuries are both emotional and physical. So the same lack of analytics in forming the opinion that our officers are essentially lying in order to say that they have workers comp claims or that they're choosing for disability in order to make money off tax.

>> Sharon Erickson: I'm sorry, councilmember I have to jump in there. We accused no one of lying. We said we - and we have not used those kinds of words in this report. What we said was, what we found were all the economic incentives pointed towards the use of this system in this way. I think it's very dangerous for the city to have these rates of disability retirement out there. And we need to address that. I accuse no one of lying.

>> Councilmember Kalra: The way -- when I read it, the -- when I read the assessment that employees file worker comp claims to increase their chance of service connected disability and couple the fact that they're filing disability to make more money from tax revenue it may not be lying but it certainly is they're trying to improve their chances of getting it. And it just -- I don't know it's very troublesome that we seem to be making insinuations based upon opinions that are not fact based.

>> Sharon Erickson: I'm sorry but do I not -- I made no such insinuations. Employees are taking full advantage of the contract that we've given them. So when an employee comes to the city we hand them an agreement, an employment agreement and we say here, abide by these rules. As far as we know these employees have abided by these rules. But what I'm saying is we need to rethink what those rules are. Was the purpose of a disability retirement to kind of supplement your worker's comp claim, so that we would pay you some kind of income supplement for the rest of your life, or was it an insurance policy that if I were so dramatically injured on the job that I could never work again, would the city take care of me? And we've got a melded system at this point. I'm saying we need to address that. Employees are taking advantage of that system, but there is nothing wrong with taking advantage of every tax loophole can you find.

>> Councilmember Kalra: Yeah, I think it's just the language on page 15 in particular that indicates that the increase in worker comp claims as someone who has been on the job or at least getting close to retirement seemed to affirm that some sworn employees will file their claims in years just prior to retirement to increase their chances for a service-connected disability retirement. And there could be a number of reasons why someone does that, and to indicate that that's the reason why and not have any opinion as to whether it's why someone's actually older and gets hurt more, I think you can make the same exact opinion and analysis on that basis as much as you can for the financial benefit. And so I think that's where -- again I think that when you insert opinion into these reports, that aren't fact-based, I think that that's where one can read it and reach that conclusion of what the writer is trying to say. And I think you can just as easily say the opposite, that someone especially when there's no -- when the comparison of data, I want to talk for a moment about working conditions. When there's comparison of data of working conditions for example and I think Councilmember Liccardo referred to the fact that you know you can't -- you don't know what -- discuss the call for service, you don't know what the call for service is. Was the same comparison done to these other California cities as to what their response time is, as to whether, if they have a call, do they send two engines instead of one because they just happen to have a lot more stations and a lot more engines available? And so therefore, you have twice as many people that have a call for service as opposed to in San José or for example the fact that we -- if a firefighter gets to a scene three or four minutes after a firefighter in another department that now that situation is much more severe and much more dangerous for that firefighter. And therefore -- and so what I'm saying is, there's much more analysis needed, rather than just saying simply that our working conditions are no different, in fact they may be better, simply based on one factor on the matrix. And I think that that's why I appreciate your comments that we need to do more in depth analysis than I think is true based upon stations but I think even beyond that as to how many engines respond or look at other cities in terms of their best practices in terms of there's no -- we don't know the veracity of -- especially if there's -- we already know that the staffing levels are higher in many other jurisdictions. And so as well as response times. And so I think that I know, at least anecdotally and that's why I'm not going to state this as a fact that there have been calls that officers have been injured and officers and certainly firefighters have been injured because of low staffing because they get to someplace late, get a response time late and now you're talking about a full structure fire, as opposed to holding it to a room of origin, and that increases the likelihood of smoke inhalation or other types of injury. And so I just mention it because I think there needs to be a much

greater analysis of this data including looking at those that retire eligible for service retirement when we look at the 13 case studies, these are folks that have been most of them on the job 25 or 30 years or more so there could be a number of reasons why as Councilmember Liccardo indicated they may not have their full -- they may not have fully gotten to the point where they've leveled off in terms of their Health condition and whatnot, in terms of their condition. That's 80 think it's important that we should have I think it should have been a much more involvement with the police department and fire department because they can answer some of these questions, better than you or I can and I think I'm glad to hear that at least we'll be going forward engaging with them more. Because I think that we are -- they're the ones that can answer a lot of these questions. We've seen an improvement in the number and a drop in percentage wise of disability retirements of over all service retirements. I like the move we're doing in trying to make sure we have the wellness program in place. There are certainly things we can do better. One other factor in terms of particularly in terms of firefighters, our firefighters do a lot more overtime because of short staffing. What role does that play? Simply speaking of number of years, doesn't necessarily speak to the amount of time they've been on the job. There are ways we can try to determine kind of apples to apples comparisons of really what rigors our firefighters go through as compared to other jurisdictions. And I could say the same for the police department in terms of just having a low staffing level particularly in patrol. In terms of Dennis or sorry Rick you had indicated some of these questions need some more analysis and that's one thing that troubles me is that going forward with the extreme cost of putting together ballot language without having legal analysis of a number of these items. And so one thing I wanted to ask you is what are the staffing costs going to be to go forward putting together ballot language?

>> City Attorney Doyle: I don't have a dollar figure on that but I do -- it does take a lot of time. We're going to be working on issues, research issues. We'll be working with staff on the outreach issues. Ultimately anything we bring forward, in our opinion, will have to pass legal muster. And so I think -- the Vice Mayor mentioned that the goal is to get something here in June, a proposal, proposed draft. But ultimately the ballot language has to be ready in final draft the first week in August, and usually it's the first meeting in August. So I think we have time to do that, but it is resource intensive and depending on the outreach efforts, I think that is a part of it.

>> Councilmember Kalra: And at the same time we have over half our bargaining units, we are trying to resolve and trying to balance our budget and at the same time we're going to have to ask you to do this and have your attorneys work on this.

>> City Attorney Doyle: I can't address the bargaining issue. The bargaining issue is --

>> Councilmember Kalra: But resolutions to put together for the budget.

>> City Attorney Doyle: June is always a busy month. We don't allow vacations in late may and June for that reason. So is it doable? Yes it's doable. But it is adding to the workload.

>> Councilmember Kalra: And Sharon in regards to those that retire on disability or have disability retirements prior to -- prior to retirement age, prior to service, so what cost is that to the city out of General Fund?

>> Sharon Erickson: You know, it's part of the -- yes.

>> Alex Gurza: If I could, Alex Gurza, Director of Employee Relations. The actuaries for each boards come up with assumptions. They actually assume that there would be a certain percentage of disability retirements. It has been built into the cost of the system. I don't have the exact figures on what their assumed rate is, but we could certainly get back to you on that. Because the benefit of retiring early, there is, as Sharon indicated, a minimum benefit if you retire before being age eligible and it's service connected. So for example, there's no time requirement. Somebody may unfortunately get disabled service connected very early in their career, there's a minimum benefit to that, and the younger you are obviously the longer that benefit is going to be paid. But we can certainly follow up with the actuarial on that.

>> Councilmember Kalra: It has to do with our payments into our disability insurance and what have you and the premiums?

>> Alex Gurza: No, it gets built into the contribution rates that are paid into the retirement system. In other words there's General Fund money that goes into the retirement system as well as all funds to pay the contribution rate. So the contribution rate the city pays is an amalgamation of all the benefits in the retirement system, disability retirements as well as service retirements.

>> Councilmember Kalra: Okay, and so we don't have a sense of what percentage we pay into retirement has to do with disability, just because we don't know, you know, you don't know if a person is going to go on the disability retirement.

>> Alex Gurza: Yeah well we certainly know we can go find out how many people now are receiving a disability retirement versus a service retirement but I can also follow up with the Department of Retirement services to get the actuarial assumptions. They do make assumptions that have been adjusted, so we can certainly follow up and give that you data.

>> Councilmember Kalra: Okay, at this point, we know that those, the greater concern that I read in the report are those that are retiring on disability particularly at the end or as they get their retirement and that doesn't save any General Fund money. We do know if we put this on the ballot it's going to cost the General Fund, if it's a straight or special election, \$3.4 million. Even if it's a June election or November election where there's other items on it's going to cost a million and we have a \$150 million deficit we're dealing with now. We need to look at this issue. I'm glad we're talking about it but I think as Councilmember Rocha said we put the cart before the horse on a number of these specific issues regarding this, including the definition of gainful employment. There's so many unanswered questions. I also think that you know we can talk all we want about how we care about the health of our employees, how we care about them. The fact that we're not engaging them and don't engage them before we go to a point where we're drafting language, I think shows exactly the opposite. They're the ones that get injured, they're the ones that are putting their lives on the line and yes we need to make sure that our costs are reduced and make sure we take care of them as far as the wellness program and make sure we reduce the likelihood of injury. This hasn't been presented to the Police and Fire board, I think with the General Fund deficit we have right now, that our staff time is much better spent for the next six weeks on trying to figure out how we can

balance this budget and then let's come back after there's been plenty of opportunity for our Police and Fire bargaining units to sit down with the City Manager's office, look at the auditor's report and make sure we come back with something we can all agree on so when it goes to the ballot we can make sure it passes or as Councilmember Campos said if we can get significant savings without having to go to the expense of going to the ballot and we can find other ways for cost savings, let's look at that. But to say let's draw up ballot language on something that is not going to save us any money at all in this fiscal year, when we are trying to reconcile a \$150 million deficit I think is irresponsible.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, Councilmember Kalra actually just spoke to one of my concerns as he closed and that was workload. I've heard over and over again from staff in temps of workload and yet here we are moving on something we don't even know we're going on in November. Really the only reason to move this quickly is if we're going in November. I've heard references about ballot measures here and there. Personally if that is the case I'd like to have at a discussion in the context of all of them. To me that's a strategy and a discussion that we should have as a full council about our interest going forward as a city. If we're going to piecemeal these and go forward one at a time so be it, if that's the workload I guess I have trouble with that. Did I have some question on the self-insured issue. We are self insured, forgive me do other jurisdictions do that as well?

>> Sharon Erickson: We are self insured for workers comp and we have our own retirement system which administers the disability retirement system.

>> Councilmember Rocha: Is there any option to have an outside insurer for the disability retirement?

>> City Attorney Doyle: I think you may be referring to disability insurance. We do provide through the city you have the option to buy into a disability insurance policy. Alex you may have more information on that.

>> Alex Gurza: That's correct. Employees can purchase a long term disability insurance program. That is different than a disability retirement, I suppose we can look at options instead of a disability retirement, only the disability insurance. Like for example for the state you have a state disability insurance. The city doesn't participate in that but there's an optional program that the City Attorney referenced. So we could look at that as, again, the alternative to a disability retirement.

>> Councilmember Rocha: Okay, I think it would be a good idea rather than staying with something that we've pointed out I guess is flawed in some cases. Now, the disability retirement committee that's referenced in the memo authored by my colleagues, for me, in terms of appeal, my preference, but when we do look at this going forward, is that I'd rather see appeals going to the retirement board, as opposed to a hearing officer. My feeling is that the retirement board already has a fiduciary responsibility and role and experience, and I think it might be something to consider, but again, that's for further discussion. So given the point that Councilmember Kalra made and that I feel as well, I personally would like to see this pushed out after we adopt the budget but if staff feels compelled that they can do this work and important in case we are considering something for November then I'm supportive of that as well. I'm going to support this motion but my future support is dependent upon the commitment and the engagement that we've talked about here today. And if, come wherever we hear this item again, I don't feel that we've made that effort, then my support in the future of course may change. So thank you very much.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks mayor. I wanted to address some of the comments that have been made. First of all there was a comment made by Councilmember Kalra that our disability retirements are trending down. I want to refer everyone to page 20, exhibit 8, specifically in Police and Fire where retirement disabilities are trending up. To 100%. Now, if you look at the Federated plan in the beginning of calendar year 2007, disability retirements took a significant drop. And at the public safety committee, one of the comments we made, that staff look to see what changes were made at the Federated board that may have precipitated that board because it's a significant drop. It's important to know that the Department of Labor has jurisdiction over ERISA retirement plans,

and they have a clear guideline, whenever an ERISA plan experiences disability retirements that are in excess, I believe it's either 70 or 75%, it automatically triggers a review because of the significance of that action. Now, our retirement boards, because we're not an ERISA plan don't fall under the jurisdiction of the Department of Labor, but I think it's important to know that those guidelines are there for a reason. They're there to indicate there's a problem. And as one of the things that wasn't really emphasized as much in this discussion today but is pointed out in this report, is that many of these people were working up until the day of retirement. Either they were doing their regular jobs, or the city was accommodating any limitations that they had, yet they were still awarded disability retirements. And even though this is a small snapshot there's even one where somebody was awarded one that clearly didn't fit any of the criteria. I know that Councilmember Liccardo had talked about the state code about MMI. Maximum medical improvement. I think it's important to point out something that's not highlighted in the report and is often not really even discussed at the retirement boards. Is we do have a provision for our disability retirements when an injury or condition is of an extended or uncertain duration. And I think that's why we don't reference the state statute because we have our own provision to deal with those uncertain areas. So you don't necessarily have to have achieved MMI in our system. And that's another thing that perhaps we need to look at. Because we have a two-prong, yes if you read it we have a two-prong. It either has to be a permanent disability, or of and an extended or uncertain duration. That is another area. And Sharon if you want to comment there I know we've discussed it at the Federated board a number of times.

>> Sharon Erickson: Those are the kind of conversations we need to have about what is the purpose of a disability retirement, exactly.

>> Councilmember Constant: So I just think that is something we need to look at. I just point that out as one other thing that is in there that doesn't often get a lot of discussion and I'm sure that the process that we're going to go forward is going to address that. And then we've had some discussion about the process, and Sam, I'm glad you brought up the part about the role of the attorney, in representing or not representing the city. One of the things that is interesting is when you look at the burden of proof in a disability retirement is on the applicant. Yet the disability retirement hearings do not proceed in that manner at all, on either of the boards. In fact, most of the evidence presented is by either the city or the retirement board providing the basis for the disability

retirement. And the comments from the applicant or their attorney supplemental. And I think that's another issue that needs to be looked at, along with the disability retirement committee, is what is the process? Where is the burden of proof and are hearings being conducted in that way that respects the burden of proof? And without an attorney that is representing the city and the city's interest in it, that's where we miss the boat. That's it. We've talked a lot.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I agree with Councilmember Kalra in reference to the cost of the elections. And since the coming November election, which would be the closest one, is not a general election, it may be that the governor is going to be putting some things on the ballot. Dennis do you know anything about that?

>> Dennis Hawkins: I don't know whether the state legislature and the governor have come to any conclusions on a potential November election. That would be something that we'd have to consider, if the council were to want to call an election, and what other matters might be on that ballot that would affect the cost.

>> Councilmember Pyle: Right. Because \$3.4 million to do this doesn't appeal to me at all. So the closest one would be -- thank you Dennis -- the June election in which five of our council districts will be up for election, and the school districts are also going to be putting some things on the ballot, although theirs is mail-in only and they may have come up with special things. The point is: I think there needs to be something worded at the very end of the proposal, that signifies that our earliest election should be in the spring of 11 with indicators to show there are others on the ballot. I don't know if that is something you can core as a friendly amendment.

>> Councilmember Nguyen: Councilmember Pyle. I'd like to just stick with the lank on the memo. Again, I want to give staff an opportunity to go out and do the research and come back with the proposed language. We did not specify whether or not we want this to go on the November ballot or not so that gave us some flexibility.

>> Councilmember Pyle: I'm just asking for some assurance that we won't do something where we're the only one on the ballot.

>> Councilmember Nguyen: I'm not comfortable with specifying a date for this to go on the ballot.

>> Councilmember Pyle: I'm just asking that we not be a single person or single entity on that ballot which would cost us \$3.4 million.

>> Councilmember Nguyen: I think we'll have an opportunity to decide that, both at the June 14 meeting and then again at the August 1st or August 2nd when we come back from the break.

>> Councilmember Pyle: We'll know more at that time, that's for sure. Okay, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. So in terms of the motion and the memo we have in front of us, C can happen without charter change from what I understand, is that right, Sharon?

>> City Attorney Doyle: It can happen but it still needs a subject -- it may be subject to meet and confer, compensating on the proposal. Ultimately though it will require a Municipal Code change. And so that would be a council action.

>> Councilmember Herrera: But not necessarily a charter change though?

>> City Attorney Doyle: Not a voter-required item, no.

>> Councilmember Herrera: Certainly A we can accept the recommendations, we don't need anything. So it's B has the charter change potential, obviously we're asking for the language for that. I'm just wondering as we go

back and work with our bargaining units to get input, there may be a possibility that when this comes back we decide not to do that, or we may make any number of decisions and I'm wondering if I could ask for a friendly amendment, and simply to say, to add, come back with all the things that you've mentioned, and other ideas like workers comp process improvements, to contemplate the possibility that we might, you know there could be a possibility that we don't decide to do the charter amendment. Or I know we're going to be discussing that but it seems like right now we're only going to be coming back to talk about the language of the ballot measure. We're not contemplating that we might come up with some other kinds of solutions, too, when we're meeting and conferring with the bargaining units.

>> Mayor Reed: City Manager wants to say that the workers comp thing is too big sort of I think.

>> City Manager Figone: We are going to be working on workers comp reform. You'll see that on the plan that we'll discuss on the 18th. But what I wouldn't want to mislead you with is that we could come back with a comprehensive slate for workers comp reform. But please know it is a priority. We will be talking more about that as we go forward. To the extent that there are workers comp relationships, we would identify those, and maybe Alex, you can help me out.

>> Alex Gurza: If I could add, I just wanted to take the opportunity to mention that the discussion here today really highlights the needs to look at this issue comprehensively. If somebody receives a disability retirement, under the current definition, it really is, as the City Auditor points out, saying that they are permanently disabled. And so although we certainly support the recommendations, and need to follow up the recommendation, but as some of the comments are made, we can't stop there but go back and look at all of the other issues, workers comp reform and what are the issues causing the injuries, I think that if you look at it from just being an employer, if you have as Sharon points out two out of every three firefighters and one out of every three police officers becoming permanently disabled under the current definitions still working here, I think we may not agree on the solution, but I think we all agree that's a problem. If you can imagine if you ran some sort of company where it was very physical labor, and two out of every three of your employees were becoming permanently disabled, I think you would say there is a problem that needs to be fixed, and I think there is going to be many ideas on

solutions. So clearly, from the administration's perspective, it isn't a one solution, but clearly looking at the definition of a disability retirement and looking at these issues but also looking at the very large issue of workers comp reform when an employee gets injured are they getting the care they need, all of those issues that have been mentioned today are going to be critical and are going to be part of all the reforms that we review.

>> Councilmember Herrera: And I'm not saying that we wouldn't necessarily want to seek a charter change. It just seems that we're already at the charter change language here, and we haven't had enough vetting of this thing, I think with including all the stakeholders. It feels a little bit rushed to me, and also knowing that we're probably going to be looking at a lot of other things that are possibly going to -- we're going to want to do ballot measures for. I just want to make sure that we're balancing these things out because there are other things that are going to be even more critical. So I'm concerned about the resources and certainly would not want to spend money on a single election for this. You know so we definitely need to look at all that, it's very important I agree with the recommendations. I think it's very important. I'm just looking -- I think we need to look at in the context of everything we're trying to do especially trying to balance the budget and getting those things across the goal line too. So I again would -- I would feel more comfortable if we could entertain the idea that when we come back on June 14th, that there might be another solution, or just be open to that so it's not just basically a discussion of what is the language that's going on the ballot. And I think that's where we're at right now.

>> Mayor Reed: Okay, believe it or not I think we're done with the council discussion on this but there's still some public testimony we haven't taken so I want to do that now. Robert Sapien, George Beatty and Aurelia Sanchez.

>> Thank you, mayor and council. Robert Sapien, president of San José firefighters local 230. As you heard earlier, I did have an opportunity to meet with the City Manager, with Ms. Erickson and with Alex on this matter. Opening this discussion I'm very excited to hear there are some areas of common interest. As the union president and as the former fire department safety officer I'm very interested in minimizing the amount of disabling injuries that occur to our firefighters, I want to make sure there are fewer disabled firefighters when they leave. This can save the city a tremendous amount of money, this saves our members a tremendous amount of hurt and suffering. That said, I want to make sure that it's clear that I do not reject that we have too many disabled

firefighters. I want to be a part of solving the problem. I want, as we heard here today, this is a very complex issue. Just a simple subject that Councilmember Liccardo referred to, and Ms. Erickson referred to, trying to figure out if we're comparing apples to apples in terms of data. I often get kidded by colleagues from other departments when they say oh yeah, Santana Row was just one call. Well we do have some apples to apples problems because San José has not always worked to aggregate per unit call, and so our data can be very skewed. Just an example specific to this report, it excluded nonemergency responses. In one year's time, for example, EMS calls, non-emergency EMS calls, which as you know as alphas and bravos, which involve mounting the apparatus, driving to an incident, dismounting the apparatus, carrying equipment, caring for the patient, lifting the patient, loading the patient, it is ergonomically an EMS call but it is excluded from the data. We don't believe that all of the compared agencies segregate calls that way or prioritize calms. So understanding what really is going on in San José is a difficult endeavor. I stand before you today, to tell that you I'm prepared to talk about best practices, to find good solutions, I want to really emphasize that I fear that if we prescribe a ballot initiative changing the charter right now, it will make it very difficult to be fully collaborative, to really look at the problem in its entirety, as we move forward. You have my commitment on the heels of my membership, giving up everything that you asked for and more, in the previous contract. I'd like to have the opportunity to continue in that spirit. Thank you.

>> Mayor Reed: George Beatty and then Aurelia Sanchez.

>> Good afternoon, mayor, members of the council. First I'd like to thank you for your thoughtful dialogue that occurred here today. And I want to say that the POA in many aspects agrees with some of the commentary that went on here today. We agree that there are people out there that tend to gain the system, abuse it, take advantage of it, whatever you want to call it and that's very unfortunate. We can't help that. That's what human beings do. But the truth is that police work is a very physically demanding job. People do get hurt and they do become disabled and that's also an unfortunate ugly side of our job. Whether it's physically or emotionally it happens, and we see it happen every day throughout this country. So I'm hoping that the few bad apples that may be out there taking advantage of the system certainly aren't going to impede those that are truly hurt from you know, getting the disability retirement, if they so truly deserve it. I agree, that the workers comp program is broken. There is no doubt about it. Many of our members wait months and months just trying to get an MRI to

diagnose their injury and sometimes it gets rejected for whatever reason and it moves on and now that person has permanent nerve damage or some other kind of damage that could have been mitigated had they gotten treatment earlier. I want to say almost two years ago we came to the city with the Long Beach Plan proposal through our deputy chief, David Cavallaro, only to be told that nobody was interested in it at the time. That is something we would like to explore as we move forward. You know we're open to sitting down and discussing a disability screening committee or disability retirement committee that meets prior to the retirement board. So we can discuss those things. We're certainly open to that and working with the city. A wellness program we're certainly open to that. We'd love to see that come back again. Sick leave overpayments, I have to tell you if somebody is taking money from the city that they shouldn't have and they owe the city, then the city should go after them and get their money. And you know, if you have to garnish their retirement I'm all for that as well. I don't think that's fair. You know and it was mentioned here earlier by Robert and by Ash Kalra an in-depth analysis and I think the City Auditor did a great analysis but I'd like to see an Apple to Apple analysis. Nobody to my knowledge called over to the POA and sought our input on what we thought about the disabilities or the retirement -- the disability pensions or workers compensation, et cetera. We would love to be a part of that. I think if we all work together we can come one a reasonable solution that is fair to the citizens, fair to our employees, and fair to the council. And like Mr. Sapien said look the last thing I want is to have an injured cop out there. I don't want anybody to get injured. Hopefully, everyone can start this job at year number one and finish in 25 to 30 years and leave intact with not really bad happening to them. But unfortunately that's not the case. So in closing I say I look forward to working with the city, whomever it may be, Alex, the City Auditor's office, City Manager's office, we look forward to working with you to help resolve some of these issues and find some creative solutions. Thank you very much for your time.

>> Mayor Reed: Aurelia Sanchez.

>> Hello. After the great depression president Roosevelt separated the commercial banks from the investment banks. What happened was, bankers got greedy and caused the grade depression. President Clinton and president Bush deregulated the banks where the investment banks and the commercial banks were combined. We had a lot of greed and a lot of fraud and we had the situation that we have now thanks to

politicians. Now, the banks are charging the government money for the money that the taxpayers gave them. Not only that, the oil companies are making record profits. Insurance companies are charging exorbitant rates and that is why we have these huge workmen comp funds. No politician is addressing the problems of the nation. Instead what we're having is people attacking the working people of America. You need to just get out of this room and talk to a lot of people. Lot of people are working two jobs. Inflation is high, wages are low. Whether you be a government worker or a private worker. So I'm glad that there is going to be some reform. But what I would like to see is, reform with the businesses. I've seen, you know, the chamber of commerce come here and ask for money. Lew Wolff is asking for money in the sense that we're buying land for him that's costing taxpayers millions of dollars. No one is talking about the infrastructure that it's going to cost the taxpayers. Our schools are in a mess. We have people that cannot get educated here, that live in America, that are Americans. We are selling those positions to students out of state and out of the country. The United States has recalled the ambassador to India because India shut out Americans when it came to, I guess they're going to be --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion on the floor made by the Vice Mayor. All in favor? Opposed? I count three opposed, Kalra, Chu and Campos opposed, that passes on an 8-3 margin. Thank you very much. That concludes our work on whatever item number that was. And now we're going to move on. To item 4.1. Public hearing approval on the annual action plan fiscal year 11-12. We have a motion to approve. Are there any requests from the public to speak on this? Yes, there are, like to take those now. James Charles and David Wall. Go ahead David. You got a little interference up the stairs there so go ahead.

>> David Wall: That's fine thank you sir. There is an inherent reliance built into these housing projects. These are people that need taxpayer assistance to live here. Furthermore, it is very foreseeable that this money is borrowed by the federal government to other sovereign nation, it is one thing for a rich society to go out of their

way to take care of the poor and downtrodden. But for society that is poor, it is abject foolishness to go into debt to do the same. These housing projects act really -- they serve to deteriorate the neighborhoods that they're put in. But they are, above all, non-sustainable entitlement programs. We also see the possibility of a department director acting as a de facto lobbyist. Because a department director, or an entire administration of a housing department, acts as a lobbyist because these programs are in their interests. Financial interests, professional interests and what have you. And this goes to the issue, too, you no longer can sustain the services of a major city. You want to incorporate more housing, more people coming here. Or maintaining the people that are here. But you do not have the police or fire to take care of them, or code people or city services as an aggregate. Thank you.

>> Mayor Reed: James Charles.

>> Good afternoon. I'm here to make a comment about the consolidated plan update, and the purpose of section 3. It is to ensure employment of the economic opportunities generated by certain HUD financial assistance to the greatest extent feasible and consistent with federal, state and local laws and regulations be directed to low and very low income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to the low and the very low income persons. The section 3 implementing regulations set forth individuals 30% of the new hires to be very low and low income individuals. And 10% of those contracts go through those business concerns. The -- in review of the City of San José 2010 to 2015 consolidated plan I find no reference to section 3 requirements. Review of the annual plan for 2011 and 2012 states that on page 2 that the plan is based on individual priorities identified HUD for providing decent housing and suitable living environment and economic opportunities for low income households through 2015. Please address how the City of San José will be incorporating section 3 requirements in the plans going forward, 2011 through 2015. A review of the CAPR for 2009 shows very low opportunities for those individuals of low income and contracting opportunities. Thank you very much.

>> Mayor Reed: Anyone else wishing to speak on the consolidated plan? This is the final element of the public hearing. I'd like to know if the staff has any additional comments to add. None? Okay, we'll close the public

hearing. We have a motion to approve, I think. City Clerk? We got a motion to approve. All right. Further discussion to council? All in favor? Opposed, none opposed, the plan is approved. Congratulate the staff for getting it done again. These are complicated things that are required by the federal government. We do get a lot of funding from the federal government and it's always good to look at the plan and see the progress that we've made even though there are challenging times, we still get some funding from outside and it's really important to our programs. Let's hope that times get better at both the federal and the state level for funding some of these programs. That concludes item 4.1. Item 5.1, actions related to the Tamien specific plan area purchase and sale agreement.

>> Norberto Duenas: Mr. Mayor, members of council, satisfy is available to answer questions.

>> Mayor Reed: All right, I have one request from members of the public to speak. Mary Guzman. Thank you very much for waiting so patiently. I'm sorry it took so long to get here.

>> And I know how to wait. Mayor, Vice Mayor, city council, women and city council men. I'm known as Mary bear. I'm lovable, huggable, make me mad and I growl, and I come at you. They know me as white polar bear. Thank you for purchasing this property. We need it. Our kids need it. I'm tired of seeing the kids play on the street. I'm tired of that property being under fire, because the gangs get there, the grass is higher than me and when we have 4th of July, bottle rockets. And my house is on Palm street, 1235 and can I smell the smoke. I called the fire department on that property lots of times. Right now, the grass is higher than me. I went in there and I measured myself, I'm 5'2". That sucker's 5'6". Okay, they went and cut down, when you go into the CalTrans station, about five feet this way. But on lick avenue they didn't cut down. Anybody can walk by there, throw a cigarette and it starts burning. I hate it but you know, that's the city dump. Everybody comes and dumps their beds, their mattress, their clothes, even a toilet. I said what's a toilet doing here? There is a van right there on the CalTrans station and they have got people, homeless people living in there. One of these days it's going to burn completely and the whole area is going to go. My house is safe, I've got a tile roof but the other highways aren't. And I'm tired of seeing all that grass debris, I don't know. Maybe they should pay us some money because all the city dumps comes there and dumps everything from couches, you name it sinks and toilets. I'm tired of it

but I thank you for purchasing this land, okay? You know, Chuck, you know me. I've been here before. Sam knows me. Madison Nguyen knows me.

>> Mayor Reed: I think we all know you. Thank you very much, your time is up.

>> Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, marry. I wanted to thank Mary Guzman for coming down on behalf of the community. Art Guzman has lived 30 saga ever this for many, many years now since 2005 when this development got underway and we've tried to unwind what has been a very complex and tortured agreement to what we hope will be a much easier path forward. Although I know this is not simple. I wanted to thank Matt Cano and everybody else for getting this ball rolling.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Congratulations, Councilmember Liccardo. This is probably the most complicated real estate transaction I've seen in the time I've been here, ten years. Not easy. Item 7.1, is our next item, report on bids and award of contract for the Padres drive sanitary sewer rehabilitation project.

>> Motion to approve.

>> Mayor Reed: Motion to approve, all in favor, opposed, none opposed, that's approved. We'll now convene in a joint City-Financing Authority meeting. I don't know if we're going to swap staff around or not, because we have all the staff here that we need. We have to take up actions related to the payment of the supplemental education revenue augmentation fund, more commonly known as the state take-away, the second phase of the \$75 million of state take-away. This is only \$13 million. So I think we'll have a brief staff presentation on this, and I have a

couple of people that wish to speak and we'll take those later. Okay, we're going to have a presentation, a shared presentation between city staff agency staff and financing authority staffer.

>> David Baum: Mr. Mayor, members of the board, David Baum, chief financial officer of the redevelopment agency. I'm going to start this presentation, and Scott is going to finish, and Leslye is here to answer questions. We're all here to answer questions. But the background of this, as you will recall last February this group approved a payment of \$62.2 million that was cobbled together with funds from the housing department and different city funds, on behalf of the Redevelopment Agency, to meet San José Redevelopment Agency share of a \$1.7 billion statewide take by the state. And this is the part 2 of that payment. San José Redevelopment Agency's 12.8 million payment as part of the \$350 million state take. Again, this was approved last February in its totality and today's action will just reaffirm that commitment by the group. The board, the city council financing authority to make this payment. I just wanted to point out that we think it's worth making this payment because over the last 25 years, the Redevelopment Agency has been a big tax increment producer. Generating an average annual increase of 6.7%, where it's actually 28% faster than non-redevelopment areas in the city. And we also think that supporting redevelopment in the future while it's sort of dormant right now, there's about \$15 billion of tax increment that can be obtained by the Redevelopment Agency, \$3 billion has been generated to date. And so that's just a little background. I'll turn it over to Scott right now with the financing plan.

>> Scott Johnson: Thank you David. Mr. Mayor, members of the council, Scott Johnson director of finance and I'm also the treasurer of the financing authority. On this next slide we just wanted to remind the council, the mayor, you mentioned a total of \$75 million payment to the state over a two-year period. We made the first CRAF payment in May of 2010, by \$62 million. \$10 million of that was funded from interfund loans from the city. An additional \$40 million we're able to free up funding due to a financing that we did for our housing program. In addition, we issued commercial paper to free up additional funds for the housing program. And all those funds were then loaned to the Redevelopment Agency to make the payment to the state. The action before you today is to make the second payment, which is approximately \$13 million. It's actually \$12.8 million. I'll briefly in a minute go over the structure that we're proposing. It's a little bit modified from the \$12 million that we funded through the commercial paper program through housing department. So I also wanted to go over on the next slide, you know

we thought it was important to -- and David mentioned this -- talking about the benefits of making the second CRAF payment. But I did want to mention that if we don't make this payment what would occur, what would happen. This is all based on the CRAF legislation that the state adopted last year. If the agency doesn't make the second payment by May 10th the agency essentially, what the legislation calls goes dark. What that means specifically is that the agency would be prohibited from developing any new or existing redevelopment project areas. They would be prohibited from issuing any new debt and prohibited from encumbering or expending any funds from any source, except to pay for the existing obligations, and to pay monthly operations and administration of the agency, that could not exceed 75% of their average monthly amount that they spent for those purposes in fiscal year 2009-10. So that's a severe penalty in itself. In addition, if we don't make the payment, an additional 5% of the gross tax increment that the Redevelopment Agency receives would then be allocated to the housing, affordable housing fund converting that from a 20% fund to a 25% fund and that would be on an ongoing basis. In the future if the agency would determine that it could later pay the payment after the May 10th deadline, the 5% provision would still be in effect. That 5% additional amount that would go to the housing fund. However, the prohibitions would be lifted in regards to issuing debt and having an ongoing program. But until the payment is paid, all those provisions would be in place, and the 5% penalty would exist, and would exist into the future as long as the agency continued to receive tax increment revenues. Other concerns regarding the nonpayment of the CRAF second payment include potential challenges that the agency may have in renewing the banking relationships with both J.P. Morgan for the letter of credit and with Wells Fargo Bank as it relates to our agreement for affordable housing. As they expire, and that may result in additional financial pressures on the city. The housing would also go dark, it's really important to note that not only the 80% would go dark until the CRAF payment is made, so the additional 5% penalty would go towards housing is really irrelevant, to the extent that housing would not be able to initiate any new programs or projects until the payment is made. So as outlined in this slide there are a number of benefits to making the CRAF payment to the state, which prevents further negative impacts to our redevelopment agency, the affordable housing program, and the city. Also it's important to note in the staff report, the governor is proposing to eliminate redevelopment agencies. To date there's been no action by the state to take this action. However the risk remains that the state may take action to eliminate Redevelopment Agencies, which could make this payment irrelevant. The problem is the timing here. The payment is due May 10th and we don't know if and when the state may take up the action to

eliminate redevelopment agencies. Therefore we are making the recommendation to the council and to the agency board and to the financing authority to adopt the resolutions authorizing the City Manager and the executive director to the agency to negotiate and execute the First Amendment. I also want to mention in the staff report, we also looked at other funding options which included the -- using Redevelopment Agency cash. We outlined that that is not recommended, because of the burden that may place on the City's General Fund ultimately. We also looked at the housing fund cash, without issuance of any additional commercial paper notes and we didn't see where that option was necessary, because the housing fund would not have sufficient unallocated housing funds. We also looked at issuing commercial paper through the General Fund but we felt that that was putting additional risk to the General Fund. And so we're making this recommendation to make the second installment pursuant to the existing loan agreement but making the modification where we're not going to issue the commercial paper immediately but we will issue the commercial paper to the housing funds when the funds are needed, based on their programs and project needs. And with that, you know, Mr. Mayor, members of the council we're available for any questions you may have.

>> Mayor Reed: Thank you, staff. I want to thank -- there are a lot of people involved in this, some of whom are sitting here with us but not necessarily everybody because this is a major effort to put together this \$75 million. It's been underway for over a year ago whether we first had to deal with it. So the City Manager and Scott Johnson and Leslye, our executive director Jim Forsberg, Janet Curran, David Baum, our city attorney with Patty Degnan and Tom Murtha have all worked on this, and that's just part of the team that's tried to figure this out. So it's taken a lot of cooperative effort, a lot of collaboration among departments and between the agency and the city to make this happen. I don't think it's been easy for anybody, because the path has not always been clear as to how we could make this happen. So I appreciate their recommendations, I certainly support the recommendations with a protest. The state's taking our money, and there's not much we can do about it. But we can protest it. It's kind of interesting that we're talking about this after the passage of prop 22 last fall in which the voters decided to protect local government resources like this. But this legislation was passed two years ago, I think, before proposition 22 became effective. So we're stuck with having to make this decision to pay it when we are short money in all kinds of areas. But I think the staff's analysis of the upsides and the down sides of doing this is accurate. So I think it's something that we need to do. And in doing this, of course, we have to answer the question, why? Why should we

spend \$13 million to stay in the redevelopment business, and why not just go dark? Staff has outlined part of that. But I just wanted to reflect on the fact that when Frank Taylor was the first executive director, this was I don't know how many years ago, we had a staff of about five to ten people, and no money. And over that time period the tax increment has grown enormously because of the investment and the work of this agency. So it's kind of back to the future. When the resources have been taken away from us, and revenues are going in the wrong direction, they're going down, and we don't have as many resources, we're not going to have as many people. But we can still do effective work to help grow tax increment, keep our economy moving, deal with the problems of our city but at a different way. But we need to stay in the business, the redevelopment business so we can take advantage of the fact that the economy will come back, tax increment will go up again, and we need to be in a position where we can use those resources as we have in the past for the good of our community. And while there is a risk that the state will ultimately try to put us out of business and maybe the \$13 million could have been saved, if we'd known that, I think it's going to be a long time before the state is successful at doing that because first off the governor hasn't had the votes in the legislature to do it. Secondly, I certainly think it's unconstitutional under the voter approved prop 22 and it will be several years before we have the answer to the legality of that. In the meantime there's work to be done. I put out a memo that recommended the payment of the \$13 million, almost \$13 million to the state with some additional things I'd like to talk about those. First I think it's important that we stay in the redevelopment business as I've mentioned but that we have to focus our resources since we have very small amounts of resources. And I've suggested that we ought to focus them in three areas. Meeting our contractual obligations, retaining and attracting driving industry companies and jobs, investing in programs and projects that generate tax increment revenues. Fundamentally those are things that I think have to be done no matter who's doing it. Whether or not the state puts us out of the redevelopment line of work, there are things that need to be done, and we should do these. We can do them with a much-reduced staff, and I think those of you have seen had a chance to review the proposed budget that came out yesterday. Can you see that there will be a reduced staff. But those are decisions to make in the budget process exactly how to staff and how to fund. We'll be doing that over the next few weeks. But since we have a lot less resources we have to focus on those really core services and those are the ones that I believe are the most important and have to be done, no matter two does them. Secondly there are other services that should be performed by the city. The smaller agency you certainly don't need all of the support services done by the agency and those can be done efficiently effectively by

city staff and those can be worked out. As we look to the future coming out of the malaise of this great recession and see a future with more tax increment, we need to ensure our investing community that there is a future that we're going to continue to grow tax increment and when it grows we're going to spend it wisely so that they don't have to worry about the debt service obligations that we have. And I'm suggesting that we adopt some budget principles as we have on the city side, for General Fund things that will help guide us in the future, so that potential investors will see that the same high quality of performance we've had will continue in the future. So that they can have a higher level of confidence. And then finally, there's the recommendation on the incubator program which many of us have had contact with, and know the value of it, but we're not going to be able perhaps to cover the obligations on that. We have lease obligations. I think one of our leases expires in a little over a year. One is a little bit longer. And we need to think about a transition plan so we are in a position to do something, we can't wait until the leases expire. I know that conversation has already started but we ought to at least make it official that we're going to work to transition that to some other model that will enable the incubators to go on, whether or not there's a Redevelopment Agency the incubators are important and our relationship with San José State university research foundation is important. And if we focus on a transition plan and get that underway then whatever happens with the state we'll be in a position where we can continue that great work that has created so many companies and jobs in the city. With that I hope that we can move this along and that the \$13 million will be well spent, because we're going to have a lot more tax increment revenues to deal with for affordable housing and other programs in the future, even though things look bleak today, they're getting better. They're already getting better and I think we'll be out of this malaise in a period of time, shall I say. I'm not going to predict how long a period of time but a number of years. That number might be one, might be more. But we'll get out of it. Councilmember Rocha. Going to make the motion I think.

>> Councilmember Rocha: Thank you, mayor. I would like to move approval of the mayor's memo on the financing plan to fund the agency's second CRAF payment, and I'm not sure if I want to legally include those protests. I would like to emphasize a few of the points and share some of my thoughts on that as well.

>> Mayor Reed: Sure.

>> Councilmember Rocha: Given the option of a better alternative, I feel it's our best interests in the short term to allow the second installment of the CRAF loan to the agency to be made with housing funds and later replenished with a loan of commercial paper proceeds with the authority of the housing program as I read it. As for the direction on agency folks beyond July I wholeheartedly concur with the mayor's direction. And as for developing a plan for support services I would expect that the scope could be related to the divisions such as I.T. HR and clerk duties. The divisions of finance, job and land development and real estate in my mind are critical components that should remain with the agency staff. As for the direction on budget principles and reforms modeled around the city's budget principles, a few examples in my mind are establish an appropriate reserve fund for economic uncertainty, follow CRA proposed reforms which focus on job creation and the agency funds should not be used for non-redevelopment expenses. The mayor mentioned the incubator program and I too want to support that and make it clear to me in my mind that this program is a citywide program and an agency wide investment, and it's very critical to our business development community. We need to work with San José State Research Foundation, the stakeholders and incubator staff and tenants in a collaborative fashion. In order to develop this transition plan that we've discussed. Let me close with my appreciation for the mayor's leadership on this issue and let me also say that I agree with the mayor that the agency's focus, for scope beyond July should be specific to meeting obligations, retaining and attracting driving industry companies and jobs, and tax increment generation. I know this personally. We can only hope that Sacramento won't eliminate the Redevelopment Agency and we continue to add value to the economic development and housing goals of this mayor and council. And this action should help us stay prepared for that. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Scott, it sounded like from your comments that there is a \$13 million available in the housing department. Without issuing commercial paper.

>> Scott Johnson: Yes. The -- well, let me explain that answer. You know, we're currently working on a reimbursement to the trustee of bond proceeds that we have. But there's other commitments that the housing

fund has that in the future they will need those funds back and that's why we're proposing this hybrid model of not issuing the commercial paper until they need it you know for their program.

>> Councilmember Oliverio: And then you said funds they would like to spend money on in the future. Are those things that could be decided not to be spent by the directors of the Redevelopment Agency?

>> Scott Johnson: I'll refer to Leslye to answer that.

>> Leslye Corsiglia: The funds that Scott mentioned were actually going back on funds we have already spent and we are putting -- using bond proceeds to pay for those to free up cash to pay for this. So the only way we can do this is by taking funds that are meant for the Ford and Monterey project which the council has already approved and for the Markham terrace project which was an agreement last year of the project that we need to rebuild that's a HUD project. And that's what essentially that \$13 million is for is for those two projects.

>> Councilmember Oliverio: So if we unencumbered those funds those projects would not go forward, we could pay the state loan and not issue commercial paper?

>> Leslye Corsiglia: You could do that but again Ford and Monterey, the council has already taken action on that project.

>> Councilmember Oliverio: I understand, Scott what's the cost of commercial paper?

>> Scott Johnson: The interest rate we're paying is less than 1%, one half of 1%. We pay fees less than 2%. So it's the cheapest financing we have available. This is also one of the reasons why we're proposing this hybrid model of not issuing commercial paper until the housing department needs it. Because the housing department then can save and ultimately the Redevelopment Agency can save all the costs associated with that financing.

>> Councilmember Oliverio: Or you could save even more if you took the money and didn't issue the commercial paper. I mean, long ago when we first talked about CRAF I talked about never issuing commercial paper, just taking all the money from housing, which the governor allowed to make the CRAF payment. Understand this council decided on something different and we did the commercial paper but inevitably someone has to pay that bill and inevitably the General Fund is going to make a payment at some point for commercial paper if there's no increment to pay it.

>> Scott Johnson: Councilmember may I add one additional piece of information. With the flexibility of this strategy, and that is if the state does eliminate redevelopment agencies prior to the housing department needing those funds we wouldn't have issued the commercial paper. Therefore it wouldn't have to be returned. And therefore it mitigates the risk to our General Fund in regards to the commercial paper program.

>> Councilmember Oliverio: So that need might be in three months six months Leslye?

>> Leslye Corsiglia: No it will be longer than that. It will probably be sometime within the next 18 months. I should also state however this is basically a loan that's coming through the housing fund. So the General Fund is not paying the interest. The housing fund will pay the interest, or as the law is intended, the agency would pay that back with interest. But if the agency can't then the housing fund pays that interest.

>> Councilmember Oliverio: I concur with that on paper but I'm also seeing that the Redevelopment Agency has had less increment now, we are going to be paying for the fourth street garage out of essentially the parking fund so I view this as more -- it's a more difficult financing situation. So I know that you talked about that there are state ramifications of going dark, the 5% hit, the can't spend 75% more than the 2009 budget which isn't a problem now because our staffing is so much lower. So outside of the state laws and the J. P. Morgan relationship, what are the consequences of going dark? Just we wouldn't have this future ability that in 12 years there might be some tax increment to spend?

>> Scott Johnson: Well basically by going dark the agency then would, from looking at the legislation, basically be paying just their legal obligations, their debt obligations.

>> Leslye Corsiglia: Well, and there would be a 5% penalty. So the 20% fund would be a 25% immediately as of May 10th.

>> Councilmember Oliverio: But I guess we'd be done anyway, we'd go dark.

>> City Manager Figone: I think one of the challenges, councilmember, if I could jump in is what the penalties have. What increment is flowing is restricted, and then I think causes us challenges with paying debt and that we wanted to avoid that.

>> Scott Johnson: May I expand on that? It depends -- you know if we go dark, if we don't make the payment and you know as we mentioned there's a 5% additional amount that goes to housing. That is triggered once the agency is able to pay their senior obligations. So it's given the -- if the agencies are eliminated based on the current legislation, the other debt that you mentioned, the Fourth Street Garage and the convention center, would not be protected and therefore the waterfall of what would be paid as far as obligations, that CRAF penalty would be paid first after the senior obligations and therefore there would be less money available to pay some of the other debt that the agency owes the city of approximately you know another \$40 million. So it here again puts additional risk on the city by triggering that penalty by going dark.

>> Councilmember Oliverio: And City Attorney if I'm correct a redevelopment city board of directors can end the agency at any time?

>> City Attorney Doyle: Well, you can move forward with that. But you've got a lot of obligations outstanding that need to be satisfied in the first place. So I don't think you would want to go down that road and I certainly wouldn't recommend it. But the answer to your question is the board has that power but your banking relationships with J. P. morgue your existing indebtedness would have to be satisfied.

>> Councilmember Oliverio: So we recently had a settlement with the county that affected old City Hall. So how has that affected our choices today?

>> City Attorney Doyle: Well, they're in different context. That doesn't really impact your choice. That settlement was independent of this decision. This is a decision that the state has enacted legislation that says pay us money either pay it or you don't. The consequence of not paying it is, you go dark. The county settlement was in response to a \$62 million obligation, the county had filed a lawsuit, there were a number of property transfers and things we were looking at trying to do because we're looking at an impending vote on the end of redevelopment. And so to facilitate that and allow that to go on we entered into an agreement with the county. But there is -- it's really not -- I don't believe it has anything to do with this decision today.

>> Councilmember Oliverio: Well I guess it would -- I feel that doesn't the recent agreement with the county encumber my decision on the I wanted to close the agency in that they have now moved in a position of you mentioned properties. That they now have some type of higher ranking on city or RDA assets?

>> City Attorney Doyle: Well, there are certain things that secure the agency payments to the county. But the agency has legal obligations to not just the county but others that are still continuing to be ongoing. So -- and those would have to be satisfied. You know quite frankly we have not done as part of this analysis the -- an analysis of what happens if we shut down the Redevelopment Agency. I could just tell you that there are millions of dollars of obligations, that need to be satisfied, in going dark permanently. And I think the idea here is, your choice is you either go into hibernation, which is one way to put it, until such time as you make the payment or you make the payment, and you are allowed to continue your day-to-day operations, a fairly active housing program, and a much reduced redevelopment program but you're allowed to go forward at least.

>> Councilmember Oliverio: And I guess continuing on the I go dark or I close the agency how's the county, how would they manage the City of San José redevelopment assets at that point?

>> City Attorney Doyle: They don't manage it I don't think --

>> Councilmember Oliverio: Sorry maybe the terminology is wrong. If we go dark or we choose to close, my understanding the county has some control via lien or something that restricts those properties?

>> City Attorney Doyle: They take, subject to J. P. Morgan's rights at this point, J.P. Morgan has a first deed of trust on a number of properties, and the county is in second position on those same properties, so --

>> Councilmember Oliverio: What situation would remove J.P. Morgan as the first?

>> City Attorney Doyle: If the state does not take action to terminate redevelopment. I think but the bottom line at this point is that the county and the -- the county has certain rights per the settlement agreement. They have certain rights per their original pass-through agreement. You know, those would have to be sorted out but they are still in the very junior position compared to your 140 plus million dollars in annual debt service to senior bond holders plus your \$90 million line of credit with or letter of credit with J. P. Morgan and then a host of other obligations. The City Manager I know is very concerned about the long term ability to pay for the \$15 million annual debt service on the convention center, the -- you mentioned the parking garage, \$4 million there. There are HUD loans outstanding, and they -- you know in the aggregate approach another \$4 million approximately. There is a ton of debt out there that would have to be satisfied and so I think the idea here and the recommendation is continue to go forward so that they can continue to service that debt and have those relationships with their banks and it is a much reduced Redevelopment Agency but at least it's a going concern.

>> Councilmember Oliverio: So Rick in synopsis you're saying the settlement agreement is really insignificant, it has no affect on the agency, should the state close us?

>> City Attorney Doyle: Well, It is not insignificant but the obligation would remain. It continues and that obligation would have to be satisfied.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Just wanted to mention the fact that we don't seem to have any kind of an update on what is going on in Sacramento. And I was just going to request that we do get some -- I did talk to a couple of offices, and what I'm hearing is that there is an attempt to try to bring redevelopment agencies into compliance but the state needs time to do that. What they're thinking is that there will be a sort of attrition as we go. In other words, those people that can afford to pay what they need to pay, in order to stay in the pond, will be one of the first considerations. I don't know really whether -- how truthful that is or not. But perhaps Harry has some other words.

>> Harry Mavrogenes: Good afternoon. Harvey Mavrogenes, executive director. The current status, there is a bill, SB 286 with senator Wright that proposes some reforms on redevelopment state wide. And that bill is working its way through -- in fact there's a hearing on it tomorrow. Those reforms do reflect improving practices, tighter fiscal controls, elimination of funding from the school districts for future project areas. Lessening the impact in the state. So that group of reform is going to go to hearing. There is nothing right now from the governor. We do expect on May 14th the governor's revise on the budget which may or may not have anything to do with elimination of redevelopment. So there's not a whole lot going on. Now, the other bill, the Lowenthal bill, SB 450, which has housing reforms, was looked at, at committee, yesterday, I understand some suspense now, because it has some cost implications to the budget. So the talk in Sacramento right now is toward reform measures, not elimination, but again, that may change.

>> Mayor Reed: All right, couple of things. One, I think the City Attorney wants to talk about the protest issue.

>> City Attorney Doyle: Mayor mentioned and I don't know if it's part of the motion, but just for the record. The California redevelopment association, as you're aware, has a lawsuit against the state challenging the legality of the CRAF payment. That issue is on appeal in the Third District Court in Sacramento. We will be paying this

penalty under protest, in light of the fact that the court could determine that this is illegal and we would want to make sure we preserve our rights and get our money back.

>> Councilmember Rocha: Then I'll include that protest, thank you.

>> Mayor Reed: City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, and I do want to thank you for acknowledging all the work that's gone into this and all the staff creativity, collaboration. I would be remiss, however, if I didn't acknowledge Leslye Corsiglia in particular. Really, you have these choices because of the outstanding management by the housing staff, over time, to have given the city and the agency the capacity, both in CRAF 1 and CRAF 2, to make these payments in these ways. So thank you, Leslye.

>> Mayor Reed: We do have some requests to speak, I'd like to take that now. Please come on down. Pat Saucedo and David Wall.

>> Pat Saucedo: Mayor and council, Pat Saucedo, for the San José chamber of commerce. I'm here this afternoon to encourage the adoption of the motion before you, conclusive of the mayor's memo. The chamber strongly believes in economic development. Redevelopment has been the key tool to achieve some of the goals that we've had over the past 25, 30 years. When you look at some of the companies that are here in San José they're here because of redevelopment. It will be a very, very small Redevelopment Agency, for a period of time, but it does keep that agency door open. The world will change. We will see activity in the future. It may not be as robust as we've seen in the past but we need to be prepared when it happens. And have the physical facility in place to implement. So we strongly encourage the adoption of the mayor's memo and also appreciate the staff's efforts and all of your efforts to try and maintained some semblance of a Redevelopment Agency for the City of San José. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: There are times where I think the code of conduct is designed to keep back the honest and free speech about learned people that are elected. Where some of the most incompetent financial decision makers not just on the planet but in the universe. Your whole topic is illusory as far as when the economy will come back. You cannot predict it. It is beyond your scope. Robbing Peter to pay Paul from all these fund transfers carry an inherent and significant final risks but you're basically left with a cancer patient. Like we started out today by wearing purple, still for some. The cancer patient is the City of San José. If you stop the treatment, the cancer patient dies. All right? But if you keep up with the treatment, the patient suffering is prolonged, significant, horrendous, and unending, except the patient's going to die anyway. So I have to really step back, because the people off to my left and before me, or off to my right, whatever, learned financial people, in their own pursuit, but when it gets down to it, this is the reason why the governor wants to kill redevelopment agencies. Because of all these nested financial agreements that have serious ongoing and pronounced financial requirements, legal obligations. This is a mess. You should be ashamed of yourselves.

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor made by Councilmember Herrera. Made by Councilmember Rocha. Councilmember Herrera wants to speak on it.

>> Councilmember Herrera: Thank you, mayor. I just want to say I support the motion. I think it's very important that we keep the tool of redevelopment available as an economic development tool. It's been very discouraging to me to see the action of the governor proposing that it be killed and I think that for that reason and also, because doing this is going to allow us to pay our bond debt, I mean it is one of the ways that we can continue to pay our debt. So I don't see that we have a lot of other options than to move forward with this -- you know with this idea. So I will support the motion.

>> Mayor Reed: On the motion, all in favor, opposed, one opposed, Oliverio opposed, that passes on a 10-1 vote. That concludes the business except for open forum. I have Mr. Wall who wants to speak in open forum.

>> David Wall: Two items, I'll be brief. On page 13 of our agenda today, item 3, addressing the council, Redevelopment Agency board, committee, board or commission, item B it says meeting attendees are usually given two minutes to speak on any item. And/or during open forum. The time limit is in the discretion of the chair of the meeting and may be limited when appropriate. Applicants and appellants in land matters are generally given more time to speak. Mr. Mayor, when a citizen fills out a card on any item on the agenda, as it says, either there's an error in the agenda which I find hard to believe, or there's some other error, that reasonable speculation exists within your purview. The other item I wanted to testify about is last week I made an error in my testimony and want to take this time to give public apologies. This issue dealt with the 360 residences. I assumed you had sold some of these things. That was an error on my part. I didn't check into it. I made a mistake. Nobody lost any money by having a bunch of gang bangers move into them and have a bunch of property loss. That was my error. But in my error, overshadowing my error, is the fact you didn't sell any of them. Checked at the other places, they allow renters on third party type arrangements. This goes to issue what we talked about here today about these financing these redevelopment projects. They're killing the City of San José. Thank you.

>> Mayor Reed: That concludes the open forum. I have no other cards that's it we're done, we're adjourned.