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>>> Roll call for the board members. Dave Bacigalupi is present via telephone, Conrad Taylor is present. Rose Herrera is absent, Sean Kaldor is present, and Sam Liccardo is present. Under order of the day, number 15 will be moved and heard after item number two. And number 19 will be moved and heard after item number 15 is heard. And number 16 will be deferred.

>> Mr. Chair?

>> Yes.

>> Can I make a suggestion that -- oh, wait a minute. On the SRBR item, is that being deferred or are we putting that in order?

>> That's in order. Normal order.

>> Are the microphones on? I'm not hearing whoever is speaking.

>> That was Scott. He was asking the question regarding the SRBR if we're going to hear that in order or if we're going to move that.

>> Can I suggest that we hear that after we hear 15 and 16, then?

>> That will be fine. We'll just hear it after number 16.

>> Okay. Thanks.

>> I thought you were deferring 16?

>> No, I mean. We are deferring 15. After 15 and after 19.

>> Okay.

>> Under orders of the day, retirement, 1a for service retirement. We have Alan Anderson, battalion chief fire department effective January 22nd, 2011, with 25.45 years of service. Motion on the floor for approval?

>> Motion approved.

>> Second.

>> All those in favor? All opposed? Motion passes. Item number 1b, Michael A. Bauer, fire engineer, fire department, effective January 23rd, 2011. 26.53 years of service with reciprocity. Do we have a motion on the floor for approval?

>> Motion to approve.

>> Second.

>> All in favor? All those opposed? Motion passes. Item number 1c, David Churchill, da battalion chief, do I have a motion to approve?

>> Aprove.

>> Motion passes.

>>> Mark D. Efigenio, police officer, police department effective January 22, 2011 with 25.44 years of service with reciprocity. Motion to approve?

>> Motion.

>> Second.

>> All in favor? None opposed, motion passes. Item number 1e, Antoinette Igno, fire Captain, effective December 11th, 2010 with 20.29 years of service. Pending change in status to service-connected disability with reciprocity. I do have a motion for approval?

>> Motion to approve.

>> Aked.

>> All in favor? None opposed, motion passes. Larry T. McGrady, police lieutenant, police department, effective January 22nd, 2011. With 25.44 years of service with reciprocity. Do I have a motion on the floor for approval?

>> Motion to approve.

>> Second.

>> All in favor? Motion passes. Item number 1g, Arthur Mitchell fire department, effective January 22nd, 2011, with 25.06 years of service, pending change in status to service-connected disability. Motion for approval?

>> Motion to approve.

>> Second.

>> All those in favor? None oppose, motion passes. Item number, Cynthia Perez, police officer, police department, effective January 30th, 2011, with 22.71 years of service pending change in status to service connected disability. Motion to approve?

>> Approve.

>> Second.

>> All in favor? None opposed, motion passes. Item number 1i, James B. Wyatt junior, fire department, effective January 22nd, 2011, 25.02 years of service. Motion for approval?

>> Motion to approve.

>> Second.

>> All in favor? None opposed, motion passes. Under item number 2 service connected disability. We have Mark J. Skeen, fire Captain, effective may 13, 2009, with 19.23 years of service.

>> Thomas boyle making a special appearance for Sam swift.

>> Accompanied by Christopher platen.

>> Donna, go ahead.

>> Fire Captain Mark skeen is requesting a service connected disability based on back and neck with 19.23 years of service medical reports are listed in your packet. Hils work restrictions are he should avoid repetitive very heavy lifting, repetitive bending and stooping. He's currently separated from city service effective 5/12/09 at the

time of separation he was on disability leave. At the time of application he was deferred vested separated. There's no permanent modified duty available.

>> Doctor, do you have anything to add?

>> I have nothing to add to my report.

>> Mr. Boyle?

>> Thank you. Based on fire Captain skeen's being on disability at the time he last worked for the city, based on the doctor's report, with no treatment options to improve his functioning and based on the fire department's letter saying that there is no modified work and he can't do regular duty, we'd respectfully request that you grant his application for service connected disability retirement.

>> Do I have a discussion on the floor?

>> I certainly agree that there's obviously degenerative disease here and certainly serious injury. One question I had was just regarding the chronology and what's in the reports and what's not. It appears to me that the original injury occurred from a fall in the roof in the 1990s and that's recounted in the initial summary. But in all the doctors' reports, we don't have any of the initial reports from that 1990s fall. And the doctor's chronology that's provided, looking at the chronology on page 17, it's not included. I'm wondering if that was really the initial cause of this injury, why don't we have something about it?

>> That's a very good question, Sam. The battalion chief took me to the hospital that day. I have no idea why it's not part of my medical records or why -- where it is located in the city or any of that.

>> Okay.

>> I don't know.

>> Okay. I mean, I think we have enough here to make the decision. I'm just concerned about completeness of these reports.

>> I wanted to ask if the applicant would address the -- or applicant's representative would address the issue of the filing date under 336920 in terms of the filing of the application within a year of separation from service.

>> The issue under the law is whether or not the right to disability retirement has matured prior to any separation of service and within the meaning of the code. The code provisions are extremely ambiguous with regard to the one-year provision. The general principles as we all know with respect to plan, by the way for the record, this is Christopher platen for reporting purposes, the general provisions applicable to the plan is to construe the plan liberally in favor of entitlement to benefits under the plan. If you take a look at the case law, for example, in the marriage of Mueller, Smith versus city of napa, et cetera, the procedural issue cannot divest the individual of the right to the substantive entitlement to the disability retirement if the disability retirement facts and so indicate it was a service-connected injury that gives rise to the disability which is the case here.

>> So, is it the applicant's position, then, that he does not need to demonstrate that the exceptions set forth in 336920 are met?

>> It's our position that under the provisions of 336920 result in denial of application, one, disability occurred while Mr. Skeen was a member of the system. Two, it did not occur after he left employment. Three, it did not occur on a leave of absence and the filing was clearly within one year of the determination made by the arbitrator with respect to the separation from service. So, in our view, he clearly meets the provisions.

>> Just so I can clarify, then, under four it's your -- the application indicates the separation from service date was may 12th, 2009, I think. And the application date was June 1st, 2010, which is more than a year later, so --

>> Well, our position is, just to be absolutely clear, that any postseparation appeal process tolled that time period within the one year could conceivably apply, number one. Number two, we believe that under the law, the timeliness of the application is a procedural issue that does not divest the right to the retirement if the injury has occurred while on service, which is the entire point of the proceedings. Number three, we've done this -- when I say we, the plan has done this before with other applicants. I can recall a case, I don't recall the officer's name, in which provision for disability for retirement benefit was provided after the officer was separated from service and, in fact, was convicted and in prison on a gambling charge.

>> Was that before this provision was -- I believe we had a presentation at last month's board meeting that since this provision has been in effect, it hasn't happened.

>> But the point is there's a tolling to the one-year period by virtue of the postseparation appeal, number one. Number two, under the general principles of liberal construction and the ambiguity of this clause, I think the board must exercise its discretion in favor of the applicant under the legal principles of law. And, number three, as the Smith case says and in the marriage of Mueller case indicates, the procedural requirements cannot divest him of the retirement right.

>> Was there a stay of the separation of service during the appeal?

>> The tolling occurs by virtue of the appeal process. That's our position.

>> Okay. Go ahead.

>> Forgive me, because I'm not well versed in this issue and I'm trying to understand and catch up as I'm listening here. Chris, with regard to the notion that procedural requirements, failure to comply with procedural requirements can't divest a recipient of the benefits, I guess it begs the question, why have the procedural requirements?

>> Here's your problem. You're not going to have this circumstance too often. But you can't put an employees in a catch-22 situation. Take an employee who is separated who says before separation I've suffered a service-connected disability due to on-the-job injury or illness. I contest the grounds for my termination through any of the procedures provided by either a memorandum of understanding or under the civil service rules. The employee can't be put in a position to say I have to drop my appeal to protect my retirement. That can't happen. So, you can't force the employee to give up an appellate right simply because they have to file in a particular time period. So, that's why the case law clearly indicates you can't put the employee in that kind of procedural box.

>> Okay.

>> Okay?

>> Could you help me understand, then, the basis for your concern?

>> The basis for my concern is that the requirement is in the code, that it is in effect a statute of limitations or a claims filing requirement. That the claim be filed within a year after the employee's separation from service. It's clear in this case that the separation from service did occur more than a year before the employee filed. The reason I was asking the questions was because it wasn't clear on the face of the application what the applicant's position was going to be with respect to this code section because there are exceptions to the code section that we went -- we've gone through very recently. I -- I think to interpret the code section to allow an employee simply to file after the one-year kind of disaway with the statute of limitations or the claims filing requirement. I would like the opportunity to brief the issue for the board and take a look at the cases that Mr. Platen has cited and let you know if I think that the -- if there is a provision for tolling, and I think Mr. Ricada can look at it, too.

>> In the practical matter the employee is in the position of trying to appeal a termination -- I'm sorry, I'm not talking into the mike. The employee is in the position of appealing a termination decision, what practical alternative do they have? In other words, if they are to file a claim for disability service, does that somehow esstop them from being able to challenge or appeal the termination decision?

>> That's what I don't know right now to be able to tell you. I don't know that there would be anything to prevent this person from filing their application and pursuing their appeal at the same time. But I can't tell you the answer to that off the top of my head. That's why I said I had to ask the questions to know what the argument was going to be.

>> With respect to that, just two quick points. Number one is, I think Sam raises a real legitimate question. An employee by filing the application says I'm disabled, can't do the job. There's no -- at that point that terminates any kind of appeal from the discharge, because the civil service commission or the arbitrator is confronted by the city with the document that says this employee can't do the job. Dismiss the appeal.

>> But that's a different ground for the termination of employment certainly.

>> It's absolutely a different grounds. You put the employee in a catch-22 position and you precluded the employee from arguing, for example, that the employee's return to work the reasonable accommodation responsibilities have now come into play if the employee is, in fact, disabled. You know all of the stuff with respect to that, Sam, with respect to modified duty. Two, the provision that speaks to the one year does not foresee this kind of scenario. This provision was added in as a result of collective bargaining to deal solely with the question of the individual who retires on service and how long that individual has to ask for that service retirement to be recharacterized as a disability retirement. That's the purpose of the royce, not to deal with this kind of scenario. So, again, under the general principles of liberal construction of ambiguous clauses, our view is that the retirement disability must be granted.

>> Rose?

>> Yeah. I'm -- I think that we need to have a more full evaluation of this. And so I would -- I don't know if it's appropriate at this time but we need a motion to defer this until we get a reading from Molly, a more thorough reading on this. I think it's important we have that understanding. To me it's clear if we are not considering

336.920, my interpretation is that this is service connected, that it happened -- the injury certainly happened while he was working and connected to his job, and I'm inclined to look at -- seeing this as a very different case than the previously one we looked at, because this is clearly service connected. And so I would like to have an understanding of how the application for disability and whether that -- whether that is a reasonable -- having -- fighting -- having an appeal process going, is that a reasonable reason why the disability wasn't -- you know, wasn't applied for. And I guess I have a question of the -- you know, of the applicant. Just simplified, I'm not an attorney, why didn't you apply for disability, or could you have done that at the same time?

>> For the exact reason that we said in response to Sam's point.

>> Okay.

>> Which it conflicts you out with respect to the appeal process.

>> So, you could not have done that at the same time?

>> Then you're going to an arbitrator and the arbitrator is saying you are saying you're disabled and you can't do the job, there's no grounds to hear the appeal.

>> Right. But if you are disabled --

>> Right.

>> I want to hear more.

>> You've mooted out the appeal at that point in time. Let me indicate that if it's the consensus of the board, then I think we should have an opportunity to maybe put our thoughts also in writing.

>> Yeah.

>> I would include that in my motion. I don't know if I got a second.

>> Yeah, I'll second that.

>> And maybe appropriate also to get conflicts counsel insight on this as well since it may be a differentiation of viewpoints with respect to the application of the code. That's just a suggestion.

>> Before we do the motion, Mr. Gergen?

>> Good morning. Director of employee relations. This was a collective bargaining. I represented the city. The city brought this forward, the item about having a one-year time frame. Initially we did not propose any exceptions. The specific exceptions came up because through the collective bargaining process and they were very specifically put in there. The other issue I wanted to raise I'm not aware of any tolling issue. When somebody separates from service the may 2009 date, that is the date. If an appeal occurs, it's not tolled. The separation has already occurred. So, for example, a person who is separated may go apply for unemployment or do a variety of things, so from the city's standpoint, that effective date of the separation is still stands and isn't esstopped or tolled because somebody may appeal. In the future if you come back, I'm happy to provide more history on the negotiation of that specific provision.

>> I have a question. Mr. Platen, when he was doing this tolling period, was he going through the arbitration process to get a modified position or was it coming back for a regular duty position?

>> That two have to be yet determined if the discharge was overturned. That two would have to be determined after that point in time. Let me indicate with respect to Alex's point, he's correct. In collective bargaining this scenario was never contemplated, how to integrate this with separation from service for disciplinary issues, so our

point remains that ambiguity is patent on the face of the code. You must liberally construe the benefits structure for the applicant and that's why we make the argument we make.

>> Sean and Sam?

>> So, the separation was may 12th of '09. He filed for appeal when? Arbitration when?

>> Immediately after.

>> And then when was the arbitration ruling? When did the arbitrator make their decision?

>> In late '10. Right immediately prior to the application.

>> And then filed immediately. So, if the arbitrator had ruled six month earlier it was only a three-Month process, it would have all happened then.

>> Correct.

>> And it's Mr. Skeen's understanding had he applied for disability or applied for retirement, all of this -- you can't apply for retirement and --

>> You've mooted out the appeal on the discipline case.

>> And if you won the arbitration, he would have gotten all the back pay and it was like it never would have happened.

>> Right.

>> He was understand the expectation of winning this, that's why he went for the appeal and the expectation that everything would be reversed and he'd get his back pay and get on with his employment and do whatever he wanted to do at that point.

>> Correct.

>> I can see why from his understanding and perspective he needed to wait for the ruling waiting for the ruling and waiting for the ruling and did things as quickly as I think you could. And even with all that, we're talking a couple weeks, you know, the previous case was a five-year case. So --

>> And during that period of time, he's receiving disability benefits. I mean, he is during that period of time, that's correct.

>> So, I'm open to more information. More information's better. It always clarifies the situation, but I definitely see a difference between this and what was specified in the statute in terms of avoiding different issues and incurring ongoing liabilities and the previous case where we had this discussion.

>> I'd like -- if the motion could maybe include I guess it's implicit, a step to get as much information as possible. Because, yes, I think it's great to get briefing from Molly and Mr. Platen and me, but the more facts we know, particularly the more facts we have in common, you know, there's certain horn book principles I think that apply here. I think this is -- this language is ambiguous. That could be disputed and the board doesn't have to accept my view on that. But it looks ambiguous to me. Well, what happens in the context of ambiguity? You have the discretion to interpret it. Do you have unlimited discretion? No. You have to make a reasonable interpretation. And so that's just the background facts. Well, what's reasonable? Is it reasonable to say that separation of service means the date of termination or is it reasonable to include the appellate period? Obviously if you include the latter, you know, you're implicitly carving out an exception to -- I don't even know if it's proper to say an exception. You're interpreting what this means in the context of the termination. Probably not going to come up that often, but it's going to come up from time to time in the future, so we're dealing with a precedent. It

would be probably -- it would show respect, they did mention providing information on the negotiations. It would probably be helpful to the writers, even though Mr. Platen probably already has it, at least for us to have an idea of whether this was discussed at collective bargaining, because you may wish to know that. You might show more respect for an interpretation that was discussed thoroughly by the bargaining parties, or in the absence of such discussion, you might give less weight to what happened at the bargaining session, instead review this issue de novo. You might be interested in seeing the actual personnel action forms that the city took. What's on the piece of paper. What does it say. Does it use separation of service. Does it say termination. What does it say. What -- is the status of health insurance coverage. In the -- in the period of the appeal. I'm just scratching the surface on facts that might be germane that you might find germane and relevant to deciding how to interpret this provision which I personally think is not clear to me.

>> Along the line it may be beneficial for counsel and the city to actually meet, see if we can come through and stipulate to certain facts so that's all before the board.

>> I would include that suggestion on more information as part of the motion. It's okay?

>> Yes. That's fine. You know, I haven't read the provision, so, you know, I'm interested in knowing. Obviously if it's ambiguous, you know, I agree that typically we would want to get consideration of the pragmatic realities of someone who is trying to appeal and exercise their right to appeal. The one concern I hope this is briefed in some way or another addressed is typically in the judicial context, statute of limitations is jurisdictional in nature. There's not a lot of consideration with the other facts. We either have jurisdiction to consider it or we don't. If it's jurisdictional in nature, all of the points are interesting but wouldn't be relevant. And so I think at an initial point we have to consider that question. Do we even have jurisdiction to entertain this? If this is on par with essentially the statute of limitations.

>> Uh-huh.

>> But -- and I apologize for interrupting. For me, the first part of any statute of limitations inquiry is in a judicial context is the accrual of the stat -- of the date for the cause of action as to which a measure of the statute of limitations period. Here the whole point in my mind is what's the accrual date, and it's as to that I think there's ambiguity and it is as to that that the board may wish a full and factual development of the issues to allow you to come to what you consider to be a reasonable interpretation of the accrual date.

>> Any further discussion?

>> Randy coconi San José firefighters. We can include this in whatever report process comes to you. I wanted to share with you briefly. I was party to the negotiation process that brought this forward. It was the city who was looking for some relief in getting away from the scenario where you would have somebody coming back five, ten years later. That was the circumstance that existed pre-this change in the plan. During those discussions, the union's position -- we understood what the city was trying to achieve and said, yeah, that makes sense. You don't want to be on the hook forever. You need some sort of policy and impetus if you will that will drive people to making a decision. Our position -- so we were sensitive to that and understand the business realities. But the overarching part for us was that it not be something that is used to -- against the fundamental premise that you're supposed to look out for the beneficiary if it's a close call, if it's this it's not going to beat them up, and that was our fundamental position, yet we wanted to be sensitive to the business aspect. We didn't want it to be used if it's a gray area or something to be decided, you don't lose track of your fundamental position to look out for the beneficiary if there's a call to be made, if we can include that in the discussion later. Thank you.

>> No further discussions, Mr. Crosby, can you read the motion?

>> Sure. Motion by rose herrera to defer this matter until a more thorough analysis of the municipal code section 3.336290 can be developed by the council both for the board and for the participant. And including any other background or other bargaining notes or other relevant information that would bear on this matter. Second by council member liccardo.

>> Okay. Any further?

>> Does that capture it?

>> The question will we have this back by December?

>> Yeah, that's a good question. When?

>> Lawyers indicating yes.

>> If that's what you want, we'll work on that.

>> We'll have to do it.

>> I'm free on Thanksgiving.

>> Spoken like a true lawyer.

>> He's on the meter.

>> Okay, if there's no further question, if there's no further question or discussion. All in favor? All opposed? Motion passes. Moving forward. We moved up item number 15. Discussion regarding segal's economic assumption for the valuation for the period ending June 30th, 2010.

>> And we have carmen Rossi choi on the telephone and she'll do a short introduction on the matter and we have Andy young from segal here as well. Carmen?

>> Good morning. Staff is asking the board to reconsider the decision to choose 8% as the discount rate for the actuarial evaluations. There are various reasons behind the request. I'm going to go through a couple. First, last year's analysis that segal submitted to the board was performed with out-of-date survey of investment consultants, and that's a main input into their model. And if the analysis was to be redone, staff believes and segal has confirmed that the discount rate would in all likelihood decrease. Second, I think the issues that were iterated last year were included in the memo this time around, and fundamentally staff believes the approach used by segal overestimates the expected return that could be earned on the portfolio, and fundamentally that needs to be the discount rate. So, I'm going to discuss a couple of issues. I'm open to discussing any other issues that the board members would like to ask about. But fundamentally staff believes that superimposing the real returns from the investment consultant survey on segal's inflation expectation results in a significant overstatement. Also we believe the fact that segal is using capital market assumptions that come out of its survey as opposed to capital market assumptions that are developed for our plan by our investment consultant to be -- to cause a reasonable overstatement. There are other issues that were discussed last year, in last year's memo. I'm not going to go over them again. However, I'm happy to answer any questions on these.

>> And we have Andy young here. Andy, perhaps you'd like to get into the meat of the matter now.

>> Yeah, absolutely. Good morning members of the board. Good morning, carmen. We have been asked by staff to take a look --

>> Russell, I can't hear Andy.

>> Please have Andy speak closer to the microphone.

>> Andy, why don't you come over here.

>> Okay. I can move.

>> Sit in the corner.

>> Is it better now?

>> Much better.

>> Great, thanks. Okay. We have been asked by staff to prepare a memo in response to some of the comment that have been raised by carmen and Mike in the memo. We talked to staff on Monday, and we have prepared a memo dated November 2nd. I understand the memo has been shared with the board members. I also understand the copies of the memo are put at the back, so anyone who want to folk do so. As we've indicated in that memo, we were of the understanding that we were not scheduled to perform a review of the analysis of the economic assumptions. However, based on the analysis that we have done so far for seven of our other California public retirement system clients, we have come up with some, I guess, insight that we would like to share with you. If you look at -- if you are following the letter that we sent November 2nd, you can look at the bottom of the page. If you look at the survey that is the underpinning of the segal methodology, we've observed there's quite a significant reduction in the underslying investment performance. I know that carmen has put a copy of the economic assumptions review that we prepared last year for you. If you may please turn to page six of that survey, I want to highlight a couple of changes for you so you would be able to see. It would be page six of the economic study. So, the date of that study was October 26th, 2009. Okay. Right. Now, in this analysis, what we tried to do in order to come up with the economic assumptions, recommendation for you last year of 8%, we asked the investment staff. We say, well, what is your asset allocation and then we go to nepc who is your investment consultant, of course, and we asked them, well, give us the rate of return for each of the different investment classes. Now, unique to the model that segal have follow for developing this assumption for other client is that instead of just using assumptions from particularly investment consultant, we actually did a survey, and the survey results is basically developed by asking the similar question for eight other investment advisory firms that advise all of our other California public retirement clients. These are all the big names that operate in the field. As you can see, if you compare, first of all, at the back -- at the bottom of page six, the net rate of return for nepc is 5.2% based on your particular investment consultant's input, but if we do the input for the

other consultants, we would have come up with 5.6, so immediately, carmen is certainly correct, if you decided to use just nepc's number, the number would come in lower, the investment return assumption would have come in lower. But we believe there's certain advantage to use information not just for one consultant but for eight other consultants so that's, again, the underpinning of the model. This year when we go through the survey, when we go through the similar assumption process for seven other clients, when we look at the returns provided for each of the clients and we take the average, it is true that the returns have come in much lower than it was in 2009. In the number of cases the return have come in 25 basis point lower, in other cases it has even come in 0.5% lower, lower than in one year's time, even though they are meant to be long-term investment return assumptions. The other point that carmen raised that has to do with the difference between the two different models, whether or not we should use the normal distribution -- by the way, as we indicate in our memo to you on page two, we do absolutely agree with staff that memo is the right distribution to use instead of economic return assumptions. The only place where I think we still continue to differ is whether or not we should use the mean of the median in setting up that assumption. But the long and short is if you go to page three of our memo, from this past Tuesday, you will see that even in the report to the board last year, we have already identified for the board that there are really two ways to look at this assumption. One is you can set the expected return assumption using the mean, the other one is to look at the median. And that is the reason why if the board wants to take a risk adjusted approach, we certainly would have no problem supporting the staff recommendation to use the 7.75% assumption. So, I think the only difference between last year's assumption and this year's assumption process is that even if you use the simple model that segal would have recommended to you, it would have resulted in a reduction in the interest rate assumption anywhere from between 25 basis points to 50 basis points, but our recommendation is that because this is a process of setting up a long-term assumption and we usually would like to recommend to the board that you set the assumptions up so that you will make structure and measured changes from one year to the next, so for that reason we certainly would recommend and we would certainly support the staff recommendation to reduce the investment return assumption from 8% to 7.75% this year. For this year's valuation.

>> Any further discussion? Carmen?

>> I mean, given that we are agreeing on the recommendation for the current year at 7.75%, I think, you know, there doesn't need -- unless there are questions from the board. That we can answer. Fundamentally I think the main issue for this year, in any case, is we believe that if the survey of investment consultants is updated, that's already going to provide a significantly lower discount rate. So, you know, I think staff and segal agree to disagree with respect to the model. We believe that there is one right answer from the perspective that, yes, there is a range. However, the methodology, there is a proper methodology and a methodology that doesn't do as good of a job. We can discuss the different methodology, but I think for this year, even if we just reflect and update the survey of investment consultants, which segal used, while maintaining the segal methodology as is, I think -- we believe that we would still get to a number between 7.5% and 7.75%. So, that's fundamentally the bottom line.

>> Sam?

>> I make a motion to follow staff's recommendation. I'd like to ask a question or two.

>> Second.

>> Okay. Thank you. Yeah, I suspect that, you know, after we get to 7.5% if we approve that move in the following year, we're going to be looking to potentially go lower than that. One question I had relates to -- I'm not sure I fully understand the distinction or the relative positions of staff and the consultant with regard to the log normal as opposed to normal distribution. My understanding is what we're hearing now is that segal agrees that log normal approach is the correct one. But in the staff memo, there's an assertion that the segal method has underpinnings and assumption that investment return follows the normal distribution.

>> We are of the opinion that we are trying to come up with the means or the expected value of the long-term expected return, and we still think that that would get us to the 8%. However, if the -- so, that's really the difference is between the mean and the median of the distribution is what we're talking about.

>> But, Andy, the mean and the median of the log normal distribution offer a long horizon such as 20 or 30 year are the same. So, if you are agreeing that the log normal distribution is the right distribution, and if I'm sure we would agree that the horizon has to be for a pension plan a long-term horizon, there is no difference between the mean and the median. So, conveying to the board that there is two different approaches to the extent that we agree on the horizon, really there is one methodology that is right, and it does not lead to 8%.

>> I think I have to go on record that we would just have to agree to disagree on that.

>> Okay. Andy, do you agree with in the staff report there's some assertion that the research suggests that normal distribution over time overstates return? Is that fair?

>> From a median -- from a means standpoint, no. The expected return would still be coming in at the 8%. But we certainly agree with staff that the median would be lower than the 8%.

>> Well, I mean, okay. So, all I've got is college-level statistics here, so forgive me. But median and mean over the long term is the same.

>> We don't agree with that.

>> You don't agree?

>> I have a paper to prove that if -- I can make that available to the board members if you're interested.

>> We may have dueling academic papers.

>> We may have to rewrite some textbooks, too, I'm not going to get into that debate.

>> For both the normal distribution and the log normal distribution, the mean and the median are the same. So, that's why I believe that, you know, we'll agree to disagree, but definitely we can definitely pull out the appropriate research to support our position.

>> Yeah. We can do the same thing, too.

>> Okay. I won't try to resolve that here. I just want to make sure I understood the position, thanks.

>> Dave, after Sean. Sean?

>> So, staff's recommendation was over the course of two years to reduce the 7.5% in thinking of the security and the stability of the plan and the troubles we face with ensuring we have full coverage in current market returns and looking at our past 30-year valuation, the past 30 years of returns, what are our -- what are the pros and cons of not just making it in one step instead of taking this in two steps?

>> Sorry, I just want to make sure I understood the question. What are the pros and cons of going to 7.5% in two steps as opposed to one?

>> Correct. You're saying we should go to 7.5% over the course of two years, other than a quick change, what are the pros and cons of just not making that effective this year, the 7.5%?

>> Really the pros probably there is an advantage to moving to 7.5% immediately, and that's if the board is comfortable with 7.5%, fundamentally why move in two years. That's the advantage. The disadvantage of moving very quickly is it may not give the city sufficient time to raise appropriate funds. Clearly if lowering the discount rate would mean that both the employees and the city's contribution would increase, and so the members would see a significant increase in their contribution immediately as opposed to in two steps. Perception sometimes plays a role. Moving slowly as opposed to in one step may cause I think members to see the change as being

more palatable, and on the city's side, same thing, fundamentally just moving in small increments may make the move a little bit easier.

>> Just to reinforce that, that was really the thinking behind the staff recommendation, that our real baseline recommendation is 7 1/2 and we've made that recommendation to both boards, and Federated is ramping down from 8.25% to 7.75% at the moment. You guys held firm at 8% last year, but our basic opinion is still that 7.5% is really a better number than 7.75%. And our basic recommendation there still stands.

>> So, staff's recommendation is in the interest of the plan is 7.5% is the accurate view going forward. It's an implementation and what can the participants and members bear and what can the city bear, is there a way we could run scenarios and see kind of the sensitivity to that and whether it could be done at once?

>> I'd be happy to modify the motion to allow us to run the scenarios to understand the contribution levels on both sides. If the seconder's willing to have us come back in December to consider whether we're making this jump in one year or in two.

>> Absolutely. And I appreciate board member Kaldor's suggestion and thoughtfulness on that. I think that we debated this last time. There was a few of us that thought it should have been reduced. We didn't win, so I think that it's very important that we do the responsible thing here. But I think it's also, you know -- it is going to have a real effect, impact, in terms of the city and the employees, so I think that we need to consider that, too. I appreciate your thoughts on it.

>> I think segal would agree with all the reasons outlined by carmen when she was asked why not go to the 7.5% in one year. Now, there are only two other considerations that I would like to mention to the board. You heard us say that last year so you can think about that again this year. We deal with the fact that we are certainly trying to make an adjustment to a long-term assumption. So, you want to perhaps look at the rationale of dropping the assumption by 50 basis points in one year as opposed to do it gradually over a two-year period. The other consideration is that when setting up this assumption, there's really no one right answer. I know that we can

certainly use a model to come up with an assumption, but it is never an easy or difficult or easy way for you to say this is right and this is wrong, but certainly I think carmen said that at the onset of the discussion that certainly the 7.5% assumption as well as the 7.5% assumption are in the reasonable assumptions. Absolutely one is higher than the other. So, I would certainly encourage the board to take that long-term view into account, take into consideration that both the 7.5% and the 7.75% are within the reasonable range in determining whether or not you want to make a rather giant step to reduce the assumption by 0.50% or 50 basis point in one year.

>> But I think the motion to run the scenarios and bring them back next month. The board will look at it and make a decision at that point.

>> True.

>> Dave, did you have a question?

>> Well, I did. I was supporting the original motion if the board wants to wait. I've heard enough from both Andy and from carmen to support the original staff recommendation. I think there's going to be a major impact, and I think it does not hurt the plan to move a little slower than a major jump, you know, down to 7.5% all in 21 year. All in one year. I'm not sure I support changing to 7.5% immediately, but I do support the original staff recommendation thanks to the extra information from carmen and Andy.

>> Scott?

>> Thank you. I just want to get a clarification, Andy, on your report, you reference page six --

>> I can't hear who is talking.

>> This is Scott. I have a question for Andy. And that's on -- in his report, on page six.

>> That's right.

>> Andy, you referenced the schedule about real rates of return. I just want to get a clarification. So, these real rates of return are net of the basically --

>> We still can't hear Scott speaking.

>> Can you hear me now, carmen?

>> Yes. That's better.

>> Okay. I'll sit on the microphone. The real rates of the return take into account the assumed inflation factor, right?

>> It's actually net of the inflation factor.

>> Exactly. That's what I was trying to say. And does it also take into account the estimated expenses? So, is it net of the expenses?

>> Not at this step, no.

>> Okay.

>> There was an extra step. The latest step in the process which net the expense out of the equation, but this is not before the expense have been netted out. This is gross of expense at this point.

>> All right. So, nepc, based on our current portfolio mix, is that -- that's based on our -- the goal in regards to our portfolio mix, or is it based on our actual portfolio mix as of June 30th, 2009?

>> That's really a forward-looking, the goal that they are trying to have achieve. Not the past performance.

>> Okay. And so the total portfolio returns that are on the schedule, these are the weighted average returns based on that portfolio mix, on goal?

>> That is right. That is right.

>> All right, so what we're saying here we're assuming a 3% inflation factor, still?

>> 3 1/2. You can see page 12, Scott, of the report. This is where we fit all the pieces together. We take the portfolio return, which was the 5.6% number we saw on page six. We add onto that the inflation number, so on page 12 of the report, and wean we subtract off the expense and we make an adjustment for the risk adjustment factor and we came up with the 8% last year.

>> Andy, on page 12, the inflation assumption is 3.5%?

>> That's right.

>> But on page five it's referring to a 3% inflation rate?

>> Yes. 3% was the inflation assumption used by nepc in the asset allocation exercise.

>> Okay. So, what I'm trying to do is I'm trying to reconcile the real rate of return, the median rate of return, and the gross rate of return, and it would be helpful to have a schedule that kind of reconciles all that together. This is coming back to the board for a discussion, so, you know, we can make, you know, make our decisions based on the quantifiable data.

>> If the board would so choose to do so, we can certainly update, for example, the 63009 study that segal prepared to have the latest and the best numbers so as to bring that back to the board as part of their consideration if that's what the board would like us to do. We can do that.

>> I would like that.

>> Can we include that in the motion?

>> Sure.

>> Okay. And also just for clarification as far as, you know, getting the information related to the impact, are we talking about the impact related to contribution rates for the employer and the employee, and we're talking about the impact -- how does this impact the unfunded -- the current unfunded liability with our plan that we have based on the latest valuation, what impact will that have on the unfunded liability based on these changes?

>> Yeah, I don't have those numbers sitting in front of me. But I do remember last year we did several projections for the board, and we were asked by staff, well, what is the investment return assumption were to be lowered from the 8% to the 7.5% and, again, I apologize for not having the paper in front of me. But my vague recollection was that the contribution rate, I think it was just for the employer, is expected to go up for the pension plan only by about 8%, 9% of payroll if I remember correctly. So, that was from a 50 basis points reduction in the investment return assumption.

>> I don't have that memo in front of me, but I just wanted to point out that when the board is asking Andy to do scenarios, he's talking about scenarios with the 2010 valuation as opposed to 2009.

>> That's right.

>> Okay.

>> So that you get complete, updated information.

>> Just my concern -- let me just -- I'll put my instructor hat on. We're working on our capper. And so the board takes action to change the assumptions, I would imagine that our auditors would require a subsequent event footnote if that action takes place prior to the auditor's issuing their opinions. So, I've been spending the last several days reviewing our draft cafr and looking at our footnotes and what our disclosure requirements are and I'm thinking about the potential impact it could have on the financials.

>> The cafr is on the agenda, and the update that I do have on it is that this was a draft that went on. I spoke to macias yesterday and we were pretty much just clearing up some grammatical things on the police and fire cafr. We wanted to get an opinion on it. It is correct that if there is a subsequent event, there's a disclosure that needs to be made if the cafr hasn't been issued at that point. The plan's cafr rolls into the city's cafr. So, our plan can be held up if the city hasn't closed up yet. But I would assume it would be just a paragraph subsequent event that we have to add. It wouldn't be anything that would be major I would think at this appointment. Obviously it would be disclosure, but it's not anything that would hold up any other portions of the financial statement.

>> Right. Right.

>> And beyond that, the board hasn't taken any action and wouldn't until at least the first week of December. Are we talking about another 30-day delay on getting the cafrs out? I know you're within days of having an opinion and being done. So, I think the point is moot there.

>> As of the date that the report is completed, so the board is still contemplated to looking at these pieces, it wouldn't be considered an action event that has taken place.

>> Exactly. Exactly.

>> Any further discussion? We have a motion on the floor. Approve the motion on the floor, say aye? All opposed? Motion passes. And information will be coming next month. Next item to be heard is item number 19 which was moved up front. The approval of the segal company's actuarial valuation and review of other postemployment benefits as of June 30th, 2009 in accordance with gasa statement number 43 and 45 for the financial reporting purposes.

>> So this is an agenda item that's just to wrap up the adoption of the 45 portion of the report. Last year the -- or earlier in the year this valuation was brought forward to the board and there was a question as to gasb 45 and the projections of segal company versus the city. We've reconciled the differences and we believe this is the correct disclosure that should be made and we ask the board to please adopt the 45 portion of the report.

>> Move for approval.

>> Second.

>> Any discussions? No discussions? All those in favor? All those opposed? Motion passes. Okay. Moving forward. Going back to the normal order. Orders of the day. Under number three, change in status, there was none. Number four.

>> I'm sorry, if we move number 11 up?

>> That's correct.

>> Yes, we did. Yes. Sorry.

>> There we are.

>> Step back and discuss number 11, which is discussion of possible action regarding supplemental retirement benefit reserve SRBR. Three different items, "A," "B," and "C."

>> I had a question.

>> Might take "C" first perhaps.

>> I suggest we take "C" first.

>> Okay. We'll take item number 11-c, discussion of possible action on the city council action regarding SRBR payments. Any discussion?

>> Are we going to have a presentation by Mr. Gerson on his memo?

>> Was his memo in the packet?

>> It wasn't.

>> I don't have it.

>> 11-c, right?

>> 11-c.

>> Good morning. You should have a memo in the packet under 11-c.

>> No.

>> Yes, there should have been a memo in the packet for 11-c.

>> If not, I can explain it. Well, let me take a moment to explain it. The memo, there was a cover memo from me to both boards actually making sure that the boards were aware of the city council's action to temporarily -- and I want to emphasize the word temporarily -- suspend payments out of the SRBR until June 30th of 2011. And so I'd be happy to answer any questions or pause for a second if you want to look for the memo.

>> I seem to be the only one who has 11-c.

>> I've got it. You have to go back in the packet.

>> I've got it.

>> I don't have it.

>> There need to be copies. Was it posted?

>> Yeah.

>> But it didn't get in the hard packet. Okay.

>> Yeah. No, it's on the Website.

>> Okay.

>> There need to be copies available to people in the audience, too, if they had hard packets.

>> Okay. If I could briefly just emphasize a couple of points to the board.

>> I can't hear who's speaking.

>> Yes. Alex Gersa, director of employee relations. The city council did not take any action to modify the SRBR distribution methodology. They did not take action to terminate the SRBR plan. I want to emphasize that. It is simply to take a temporary hold on making payments out of the SRBR. As the board may know, the city is in the process of beginning an extensive board, and it would give stakeholders a plan to review the SRBR as part of the overall context of the pension reform. I think specifically for the city's standpoint, a very, very large unfunded liability is a major consideration I think to pause by paying out these 13 paychecks, 13th payments, while it's reviewed and, again, there are very important stakeholders in this process that will be consulted. The bargaining units obviously, the retiree associations, among others. So, I'd be happy to answer any questions.

>> Sean?

>> So, just trying to understand this all. You know, I'm just looking to follow the rules and what we're supposed to do and what we as a board are expected to do, fiduciary responsibility. There's a 2002 city council resolution, and basically reflects that an agreement was negotiated with the different bargaining groups, and city council agreed that there will be this SRBR methodology for it. A payment set up for it, and said this will remain in effect until such time as the board recommends subsequent methodology and the council adopts a resolution approval the subsequent methodology. And in the methodology it says within 90 days from the day of the receipt of audited financial statements for each fiscal year, the board shall determine and by written resolution declare the excess earnings as of June 30th each year and shall transfer the excess earnings to the SRBR. So, once we have those audited financial statements, I feel like I've got a written rule here that says I shall declare and follow that formula and make that payment and I'm not really given latitude -- more than 90 days, which, you know, I can work with. But I'd be interested in the insight as to what city council was thinking when they said to delay it and what they thought our latitude was with regard to that.

>> So, I want to address, first of all, the issue. The council -- the council direction related solely to suspending the distribution for this year. It did not relate it to the section that you cited. So, the excess earnings would still be declared. There were no excess earnings this year, but the declaration of no excess earnings would be made. The transfer -- it wouldn't stop the transfer into the SRBR. It was to suspend the -- it was to suspend the distribution. So, the board's role with respect to the distribution is to follow the distribution methodology if you're making a distribution. The code and the resolution are actually silent on the amount of the -- the actual amount of the distribution. They put a cap on what the distribution can be, but there isn't -- you make a -- you would be making a determination as to whether do a distribution this year or not as the code is currently structured. And the council's action was actually direction to our office to draft an ordinance that would amend the code so that there would not be a distribution this year. So, the board has two functions. One function if you are, yourself, allowed to look at whether or not you think there should be a distribution this year. That's the section in the resolution about the board making a change, coming forward with a change to the distribution methodology. So, you're allowed to do that. The other thing -- the other function that the board has under the code as it's currently written is to make a decision about whether there should be a distribution this year or not. So, the section you cited doesn't have to do with distributions. It has to do with the fund itself.

>> Thanks for that.

>> Russell?

>> If I may, I agree with most of what Molly says. I don't think I share her view with respect to the distribution. I think the relevant provision is D-5, and the first sentence of D-5 said here to develop the methodology. Well, you did that. The methodology for distribution out of the SRBR account. You've done that. Then the second sentence says in essence you're supposed to submit that to the council for its review, and the council is supposed to decide whether it approves it or not. Then it says upon the approval of the methodology, remember, that's the methodology for distribution, by the city council, that's occurred, the board shall make distribution in accordance with such methodology. It doesn't say the board shall consider the amount. The board shall decide whether or not to do it. It says the board shall make distributions in accordance with such methodology. Now,

there may be things I'm missing, you know, this is a new issue. There may be legislative history that's germane to this that I'm not aware of, but that looks pretty automatic to me.

>> The part of it that's not automatic is if you read the resolution, there's no definition of the total amount of the distribution. It's a methodology for how you divide an amount up among people, but it doesn't define what that amount is supposed to be. The code and the resolution cap it, but it doesn't say what the amount is supposed to be. So, I'll say it again. What the council was saying they want to do is they want to suspend it to take a look at it. And the board has the opportunity to do that as well. I mean, you can make a recommendation that it be suspended. It's clear in the resolution that the board can come forward with that recommendation. It's also very clear that you don't have any obligation to move forward with the distribution now. I mean, the declaration of excess earnings does not have to be done for 90 days and the distribution doesn't occur until after that. So, it's clear that you don't have to move forward. I'm not saying that you can't move forward. I'm just -- I was trying to answer your question about do I have to.

>> Rose?

>> I'd like to make a motion to defer declaration of excess earnings. Because I think that we have 90 days to look at this, and that seems to be the critical item that triggers it, and during the 90 days have us take a look at this and decide as a board what direction you want to move in. So, I think we need some time. We do have some new issues to look at here. You know, one of the discussions that happened at the city council is what's the purpose of SRBR. And certainly one of the compelling things for me in that discussion was really making sure that members in need -- and that was the original intention. I certainly wasn't here when it was put into place. But retirees that need it the most get it. And I think that certainly is one of the things I'd like to look at, you know, down the road or as soon as we can is what was the intention. And is the program fulfilling that. Second, in terms of -- or maybe should be first. Is the financial situation we find ourselves in with -- you know, whether or not we have excess earnings, we have a tremendous financial liability, and I think this board has a fiduciary responsibility to its members and, you know, to make financially responsible decisions. So, I am very eager to understand the

program and to make sure that if we can continue the program to meet the original intent, I'd like to see that happen, but I think that we need to have a more thorough discussion of it. That's why I'm making the motion.

>> Scott and --

>> Did I get a second?

>> Was there a second in there?

>> I'd like to ask the maker of the motion, I'd be happy to second, but the question and make it a motion for clarification. Does that also include to defer any action on the SRBR calculation as well? So we're deferring both "A" and "B."

>> "A" and "B."

>> Okay. I'll second that.

>> Scott?

>> Can I also -- in the packet that we have, it is un -- if we could get a little bit of the history of establishing this SRBR.

>> Scott, I can't hear you.

>> I'm sorry. Okay. Can we also get some history on establishing the SRBR? Because when I read through the resolution, I'm not -- and maybe it can be clarified. I'm not seeing any reference to collective bargaining. It appears that each of the boards established this SRBR and the methodology, and then it went to the council for approval. So, it begs the question in my mind if the board determined that we would establish this SRBR, this

bonus payment each year, then doesn't the board have the authority to make changes to how we, you know, calculate and whether or not, you know, we issue an SRBR. And just a commentary to me, just, you know, to reiterate, you know, we're just basing these very difficult financial challenges. We're talking about multibillion dollar unfunded liabilities. And then we're declaring that we have surplus funds. It doesn't resonate for me as a trustee of this plan in my fiduciary role. It reminds me years ago when Perrs distributed and allowed agencies to delay or defer making contributions and now look where we're at today. I just want to -- from my perspective, we're looking at least a 30-year plan, and we want to make sure that we have sufficient funding in there to pay all the beneficiaries pursuant to the collective bargaining process. So maybe Alex can shed light on that history?

>> We can provide you and the board with further information. The SRBR when it was created in the police and fire plan was not a product of collective bargaining at the bargaining table. It started with a recommendation by the board to do an SRBR plan. The police and fire union sent a letter waiving their right to meet and confer, so it really went to council. We have a memo the administration put forward. We have the board's memo. So we have a lot of history on the creation of the SRBR, but it wasn't where we were sitting at the bargaining table creating the SRBR.

>> Thank you.

>> Yes?

>> Retired firefighter, I was one of the negotiators of the SRBR. I'll let somebody else speak to about whether it was negotiated or not. But a couple terms, bonus, it really isn't a bonus. It's not a 13th check. It's a supplemental benefit paid to people. Mr. Johnson talked about the harsh economic times we're facing today. Well, those times aren't any different for retirees, people have been retired for a long time and are in need of some assistance. The history is much more complicated than the union sitting down and doing something. There was continued efforts over a long period of time to try to reach out and help those retirees who made less than what their buying power had been reduced to. Coming back several times to council for assistance was awful time consuming and never got us to where we needed to be to provide a permanent benefit to those people. So, as far as the distribution,

Molly, I'm not sure -- I don't have the things in front of me. But we did say distribution should be paid. Although we didn't say what the amount would be, we said what the amount could not be. It could not be the principal part of the account. It could not be any -- and I hate the term excess earnings. But earnings beyond the assumed rate, 10% of that goes into the fund. That cannot be distributed. Andy may recall a couple years ago an error was made, and we almost distributed the principal part of the SRBR and caught it in time. Thanks to Bob cocalovo, brought it to the board's attention at the time and we fixed that. So, although we didn't define what would be distributed, we defined what would not be distributed and the logic was the rest comes to the retirees. The bonus part of the SRBR for those of you who don't know, and I don't mean to insult anybody's intelligence here, the bonus part is 20% of the amount that's distributed is set aside and given to those retirees and survivors who make less than the median of pensions. So, some make \$100,000, some make \$10,000, so whatever the average was going to be. We've heard a lot of numbers now that the political season's over make we can get some real numbers out there. What is the median? Those people that make less than the median divide the 20% bonus to help them out, because they're the ones that need it the most. So, we had all those discussions. We had all the things go on to try to fix it. To make it an ongoing benefit. That was the key part of our discussions, we needed something ongoing that we wouldn't come back every year and have these battles over whether it should be distributed or not distributed. Finally -- and I don't know the answer to this question. You were supposed to ask a question you don't know the answer to. But I don't know that there would be any savings by not distributing the SRBR. That money stays in an account. That can only be reduced when the account returns to the plan, to the general plan of the retirement system. For investment losses. So, although the plan gets -- the SRBR gets 10% of excess earnings, like I said, I don't like that term, we also -- that part also pays back to the general fund of the account 10% of the losses. Not to exceed 5% of the balance. So, there is a give-and-take on the system. It was built to share in the good times and pay back in the bad times. So, you know, there's a lot of discussion that needs to be taken place. I've heard talk from a lot of people about talking to the stakeholders and getting this all wrapped up. No one talked to the stakeholders before the city council passed this. It came out on the Website, I don't know, maybe Sunday night or Saturday or whenever. And then bing, bang, it was done. No one ever reached out -- Alex did send -- where is Alex? Alex did send an E-mail to the president of the retiree's association saying it was going to be there, but there was no discussions beforehand. You talk about involving the

stakeholders. The city administration needs to do more than just talk about it. So, that's my diatribe for the day. Thank you.

>> Thank you. Scott?

>> Can I just make a comment? I just want for point of clarification, the reference to the bonus payment, I just want to clarify, there's two parts to it, you know, for the record. There's --

>> I can't hear Scott.

>> What page are you on?

>> I'm looking at the resolution --

>> You need to speak louder. They can't hear on the phone.

>> I'm looking at the resolution on page two. So, my reference to the bonus payment was simply referring to a portion of the distribution. There's the base distribution which is 80% of the amount that's determined to be distributed, and the resolution refers to what's called a base -- a bonus payment, which is the 20%. So, there's no negative connotation intended on my part. I was just referring to, you know, what's laid out here in the resolution that the council approved.

>> I had a question.

>> Mr. Platen?

>> Thank you. Thank you, Mr. Chairman. Chris platen for the record. Chaotic and difficult financial times always cause a lot of problems with litigation. That's a good thing to be a lawyer. So, I regret to inform the board that in

the view of at least my client, this is a -- this is a vested contractual right that if -- that the city council does not have the power to up-end or suspend. That's a decision for this board within the meaning of the plan. So, we've got a classic conflict case between your responsibilities as fiduciaries and the intentions or desires of the city council. So, my first point would be that you really need to carefully weigh this. I agree that it has to be carefully agreed by conflicts counsel as well as the city attorney and input from the labor organizations, I would hope. Secondly, to say that this was not the product of collective bargaining is true insofar as the statement goes, but doesn't quite represent what happened in this instance. What happened in this instance is that this plan was negotiated by the retirees and representatives of the city. That product was brought to the labor organizations who agreed not to further bargain over it waived their right to bargaining. In exchange -- there was a quid pro quo. In exchange for an agreement that any costs associated with this benefit would not be costed against those labor organizations and ongoing collective bargaining. So, there was bargaining over the import or impact of the benefit. There was no bargaining over the content or context of the benefit. With that clarification is clear enough. If not, I can answer some questions about that. My point is once that became part of the plan, employees who worked after the date of implementation exchanged their labor in exchange for the benefit of this provision within the plan. That's a vested right. And maybe this thing unfortunately is going to require litigation to be sorted out. But what's clear at least to the bargaining agent for the firefighters, there's an obligation fiduciarily by the board to make a distribution, that's the way we read the code provision and the agreements reached with respect to implementation of the benefit and that it is a vested contractual benefit and the council does not have the authority simply to order it suspended. So, I'm just informing you of that. I regret that we may be in that litigation posture.

>> Very briefly. I agree with Mr. Platen that attorneys are quite busy these days and you ask these issues you ask ten attorneys about these matters, you may get a variety of perspectives. The city does not believe the council action which, again, I want to emphasize is to simply temporarily suspend the payments. Necessitates the discussion of the contractual, whether it's contractually vested or not. We happen to believe it's not, but we believe that to the bigger issue that can save to the future, because I don't think it impacts simply a temporary suspension for a period of seven months. Even if it were a vested benefit, the question, then, arises as to whether or not anybody could claim it's vested for anybody who retired prior to its implementation. Which is in 2002 or so

which, again, the very people that it talked about wanting to hem are people who had already been retired when this went forward. So, again, I just think that there are definitely important issues that need to be talked about. You know, from the long-term perspective when we sit down and talk about what to do with the plan, whether it's vested in all those issues, but I don't think you need to get to that simply to take a seven-month suspension of the payments.

>> Sean?

>> So, in looking at it, going through the whole bonus payment, my concern is here we're affecting some retirees significantly. This is a benefit that was set up for people who as we talk about the 20% of it, these are people who are retired at least ten years and earning less than two-thirds of the average monthly retirement benefit, earning less than 56 grand a year after working an average of 28.4 years. So, this little extra bit of money, little in some perspectives, it was designed and set aside for those people to help them get through. And I don't want to think about waiving that or delaying that or postponing that without carefully weighing the significant impact it will have on those people. So, I am -- I get nervous -- I don't get nervous. My inclination is not to do that. The motion was to delay not just the payment but the calculation. I feel like we have a window here we could do all the numbers, we could figure it all out. Get all the opinions and have everything sitting before us in December and make that decision, but not even to look at the numbers and not even think about it, like, it's not even on table and then let another 30 days to say, yeah, we should think about doing and another 30 days, and we're achieving the same delay without voting on it. I wouldn't support the motion as it stands.

>> Dave, you'll go after Scott.

>> Thanks. When is the normal -- when do we normally distribute SRBR payments?

>> I can't hear who is speaking.

>> This is Scott again. I had a question, when do we normally make this distribution of this payment each year?

>> Historically the payment is made in November.

>> In November.

>> The end of November.

>> The end of November.

>> So, the request was from the council that the board delay that payment until June 30th of 2011 to allow discussions to take place, which I think is reasonable. And the other thing is -- I think it would be really helpful to get as much information as we can with regards to this particular issue. The way I'm reading it also that this board has the authority at any given time to make changes to the methodology related to this, and it might be premature, but maybe if this coming back for further information, discussion, we may want to consider asking staff to look at how other plans are administering, especially, you know, given the financial situation and the need for those who need additional assistance that are having financial hardships that are retirees. So, I'd like -- I'd like to see that at some future time, you know, when we have further discussions on what other options do we have in regards to how we're calculating a payment if we are to move forward with this payment in the future.

>> Dave?

>> I also cannot support this motion. I would -- I would offer to make a substitute motion. That we do everything that we would normally do as far as SRBR calculations and preparedness to issue the SRBR checks, but hold off the actual issuance of the checks until next meeting so that all the information that was made in the original motion could be provided and at that time this board can make its own independent decision for distribution of the SRBR.

>> Russell?

>> Well, assuming the board wanted legal input from me and certainly from Molly --

>> I would appreciate it.

>> And whether or not Mr. Platen or Mr. Tenant, but, again, the more facts possible, we've mentioned two memos, a board memo, the memo to the board I think might be a memo to council. I think it might be helpful for staff to develop the practice, it hasn't been that long, but it's probably been a practice for six or seven years how the amount was determined. I think Molly made a very good point that I really hadn't thought of, that not everything is set forth clearly in either the ordinance and the resolution. For example, is there -- is there a give on time in terms of -- I think the board may want some legal opinion on whether distributions have to be made every year, whether the board has the discretion to suspend them. Secondly, the amount. How is the amount determined? And, again, this is, you know, difficult application of the vested rights doctrine. Maybe what we've done in the context of the code produces a vested right, but maybe not. And then the methodology question, you know, the code talks about a methodology, but does that mean you can't revisit it, as board member Johnson just mentioned?

>> I just wanted to clarify one piece that the calculation for SRBR has always been actuarially determined, and it's been consistently determined in the same model, when mercer started to over when segal took it over and Andy, you can speak to that as well.

>> Maybe there's memos for each year that could be provided to us, because my hunch is it's going to be a little intricate if the current memo in the packet is any indication. I just mean the more we can develop that information, the more we'll be able to provide maybe some thoughts, comments, and opinions that are relevant, that are helpful to the board.

>> Definitely staff can provide the memos that support the declaration of excess earnings and distributions over the past years, and as Veronica indicated, mercer was the prior actuarial consultant and currently segal has followed the same methodology since inception. And that information can definitely be provided to legal counsel.

>> And maybe the relevant board minutes. I mean, somehow there had to be a decision on the amount. You know, that's going to be --

>> My understanding is that it's true the methodology has been consistent and that every year there's been a payment authorized by the board, but only to the extent that the principal balance wasn't reduced.

>> Right. But within that, that's the outer limit, but within that how was the amount determined? Was it just whatever the figure -- I mean, was there an intervening thought process on the amount, or was it just assumed anything below that ceiling's going to be distributed?

>> I did want to clarify the actuarial's role in the process has been to determine the amount of earnings. Some years it's a million, other years have been higher, some other years have been zero, but we never actually assist staff in the individual level in determining should John doe get \$1,000 or \$2,000, we have never been involved in that calculations to each individual.

>> Sure. But the total amount to be distributed has been actuarially determined. The million dollars that's goin out, how each individual retiree has been able to get it, it hasn't been done by segal or the actuaries, but it's always been contained in the excess earnings letter that comes from the actuary, the amount is always contained in the actuarial report.

>> Somebody had to make a policy call. Maybe it was done implicitly.

>> What the actuary is doing is telling the board what the maximum amount that can be distributed is. That's what the actuarial report is saying.

>> That's correct.

>> This is the maximum amount that can be distributed. The board has apparently, according to segal's report, gone ahead and approved the maximum amount for distribution in past years. I believe that's what the --

>> It's always been the maximum amount.

>> But the actuary is not making a determination as to the amount to be distributed.

>> That's correct.

>> They're making a determination as to the maximum amount that can be distributed.

>> That's correct.

>> But those are some of the facts that would be helpful.

>> And so says no more than or up to a maximum of?

>> It doesn't say.

>> It just says how it's calculated.

>> It doesn't say how it's calculated. It says what can't be distributed.

>> It doesn't say it's a maximum or anything. It just says this is how you calculate it.

>> It says you can't distribute the principal and you can't distribute excess earnings, and so by definition or by default, it's been determined that the maximum that can be distributed is regular earnings.

>> If I may, Mr. Chairman.

>> Mr. Platen.

>> Thank you. This is different from the methodology, the code, the plan itself provides in paragraph D-2 --

>> Chris, a little louder.

>> Sorry, mr.? [Bleep] It provides the board must make an annual distribution. A determination has to be made. Even if the distribution is zero as determined by the actuary, the board has to take action to make an annual distribution. That's a mandatory requirement.

>> And I think that's a very good point, but, again, it sort of begs the bigger question of the amount. Does the board have discretion to decide how much. Does it have to distribute everything it can, or even within the context of that D-2, so there has to be an annual distribution. That seems fairly clear. But what's the amount of that distribution?

>> But to that point we can't just delay and not do anything. We either have to decide it's zero or we decide a dollar amount.

>> You don't have to take that decision today. I think using the word "Delay" is -- there -- at some point an annual -- at some point under the code as it's currently written an annual distribution is to be made, but as Mr. Platen points out, some year there is no annual distribution because there are no earnings. Last year that happened. There was no annual distribution. So, and I don't remember whether that decision was made in November or December, but there --

>> But we can't delay this year's distribution to next June. We either need to make no distribution this year. I mean, every year we need to decide whether we make a distribution or not.

>> Right. But I don't think the decision has to necessarily be made before June if that's your question. I mean, there's no deadline for making it.

>> Okay.

>> Mr. Chairman?

>> I'm Jay Wendling and I'm with the retired police and fire. We requested the Police and Fire Board administration make the required disbursements to qualified retirees and their survivors from the SRBR as required by the municipal code and the plan. If the board does not make the distribution, the association of retired San José police officers and firefighters officially requests on behalf of our members that the board direct that the following actions take place. The board sends each qualified retiree and survivor a letter informing them of the exact dollar amount they were entitled to based on the SRBR guidelines, which they are not to be received due to city council actions. The board direct the plan actuary to detail the exact savings that will be achieved by the plan and the city's general fund as directed results of the so-called suspended SRBR benefit. The association is sympathetic to the economic conditions of the time. However, we believe the action taken by the city council last week was done without complete information relative to the actual savings generated by this suspension. And without any outreach or notification to the plan members outside of a six-day period two of which were on the weekend. The SRBR benefit was established to assist those retirees and survivors who need the help the most. The board was obligated to share with qualified plan members the specific benefit amount that is being withheld and the financial justification for doing so. Show us the savings to the plan and the city's general fund, if any. We have proved in the past that this opportunity has been provided. The association of retired San José police officers and firefighters is an effective partner in crafting solutions that meet everybody's goals as we did over the -- over several prior plans. We've seen the -- in closing, we've seen the memo that was

signed between the city council and the retirees association. Part of that council was our now mayor chuck reid, who said he would only pass this resolution if the older retired police officers and firefighters were the first to get the money. He went on to say -- and this is 2001 dollars -- he thought no San José police officer or firefighter should retire with less than \$25,000 a year. That was in 2001 money. We have retirees and survives that are getting \$1,100 a month. And this is in 2011 dollars. So, again, we ask you to go ahead and make the distribution as is required by the plan and the memo signed by the retirees and the city council. We have letters, if you would like to get a copy.

>> We've distributed the copies.

>> Rose?

>> I want to get an understanding, and one of the reasons I made the motion to defer this, an understanding of what latitude we have and what decisions can this board make. I sit here today firmly concerned and aware of my responsibilities to this board and to this fund and not as a member of city council, and I believe -- I take very seriously the fact that this fund is underfunded, that we have over billion dollars of unfunded liability, 2 billion whether we look at it actuarially or we look at it in the market view, we're seriously underfunded. I'm very aware, becoming more aware of the history of SRBR. And I think it can have an important function, but I think we have to look at what was it intended to do and what is it doing. The reality is last year there was nothing distributed, so, you know, to the extent that people are relying on these checks, they are not certain. They've never been certain. It was always dependent on what happened with the -- with the funds. And if there was distributions to be made. So, that, you know, looking at it as a reliable source, it certainly hasn't been able to be counted on that way. The other concern I had when we were looking at the distribution of these checks was the vast difference. Checks -- some checks \$46 or \$60 all the way up into thousands of dollars. And I would want to understand that going forward -- and this doesn't really necessarily play now we're getting into Scott's view of the future and what kind of decisions we can make. I think it's very important that this program do what it was intended to do, and that's really provide that support to those individuals who have the most need for it. And that also could include looking at what are the other sources of income. If we have a retiree who is retired who

spent a lifetime or, you know, many years of service and is getting by on a very low check, and that's the only income they have, I think that needs to be taken, you know -- that should -- they should be given priority over somebody who has got other independent means and other incomes coming in. I mean, let's look at -- I think we need to look at reality here. We need to make sure that the people that have the most need for this get this. That is my viewpoint. I expressed that, you know, in discussions at city council as well. So, I think having this deferral gives us a chance to look at this. We don't have to make that decision today. I want more information on this I want to understand what our decision making is in this and where we're limited. Where we need to by statute make that decision so --

>> Sam? And then herida and Russell.

>> Just my own thinking as I sit here as a board member recognizing my duties as a fiduciary to the soundness of this plan, and nationally, New Jersey is failing to contribute, that's a decision that governments are making throughout the country that essentially the plans are going to be left to their own devices. That's a very scary reality. And, you know, the number I heard on Tuesday was that if this city decided that it no longer was going to contribute, I think in the last year it was somewhere on the order of \$50 million, to start paying down this unfunded liability out of the general fund, if we decided we can no longer keep laying off firefighters to do that, we can no longer keep closing parks to do that, we simply don't have any more money to that, we've got 17 years to pay off beneficiaries to this plan and we're done. So, the notion that somehow or another we're simply going to go full speed ahead with a benefit, the vested nature of which is very much into question. I appreciate Chris platen's comments, but I think it's very disputable at this point. The bottom line is we've got serious concerns about the soundness of this plan and to continue to go down this path is just remarkably imprudent. So, I made that decision on Tuesday. The decision I'm making today as a board member with regard to the concerns about the soundness of this plan is simply that we all need to take a step back and think very seriously about all this. You know, the one question I do have with regard to what we decide and what we deferred, and maybe Alex could let me know, help me understand, if we went forward with a consideration -- I'm sorry, I'm looking for the agenda now. I must have misplaced it. I think it's letter "A" -- thank you. Thank you, Russell. If we went forward with the action on the

calculations, how does that affect us, my understanding is there is some implication of going forward with calculations. Can you illustrate or help me understand that? Understand that?

>> I think I would probably defer to council to discuss what the implications are if, you know, you approved the calculations do they have any impact on suspending the payments?

>> I think because the calculation includes the distribution, it includes the maximum distribution, you will in effect have approved the distribution.

>> Right.

>> It's not that the calculation is incorrect or anything like that. It's whether or not you want to approve the maximum distribution that's embedded in the calculation.

>> Okay. So, then, I think it's critical that, you know, the motion defers is the one that's approved, that it include action on the calculations as well as the declaration of the excess earnings. So, the motion that was made by member herrera was I think the appropriate one.

>> Mr. Heridia?

>> I apologize for getting up here twice. As far as the distribution and Molly said you don't need to make one today, I want to tell you that when we approved this thing in October of 2002, there was a lot of discussion about the first distribution, because the ordinance does say calendar year. So, we got it approved in October. There was difficulty for staff, and rightfully so, to decide all those things and get the distribution out in December because December 1st is our last distribution for the calendar year, but it was done, and it was done December of 2002 to stay consistent with the code, and it has been done every year, approved by this board in November, distributed in December, to get it out in the calendar year. So, if we're required -- if you are required to make an annual distribution and it has to be in the calendar year, then I think you have a fiduciary responsibility to act

today. The other point, Sam, I can't agree with you more, the pension plan and all these things are of everyone's concern. And everyone is very worried about what's going to happen, how we're going to get there, and we've made a lot of attempts to try to help talk about those decisions as we get through there, and me, I'm not on the board. I'm just, you know, a retiree. I help and I speak my mind and stay involved as best I can. I don't think that suspending a payment reduces the fiduciary -- or the unfunded liability of the plan. I don't think that hanging it out for a day or 90 days or whatever changes the unfunded liability. That's not part of the calculation. As I read Andy's report, it appears that last year there should have been a distribution made, but there was an error in the calculation of about \$230,000 because the corridor was changed. There was a distribution that should have been made last year that was not made. That's just a mistake. That happens a lot. Go ahead?

>> Yeah, I'd like to clarify the timing difference. I think we wrote a letter to the staff.

>> Right.

>> Asking staff whether or not that should be taken into account in making the distribution, so I'd like to encourage the retiree not to use the word error, it was a timing difference that we brought to the staff.

>> I didn't mean error. I was still at the World Series. I lost my train of thought. That happens when you get older, you see. As a retiree, you have a duty to distribute the money and you need to make the decision today. I can tell you, and I don't know why you need all these pieces of paper, it helps delay the process. But every November, the actuary has issued a report telling us what the action of the SRBR is. In the code it says what can't be distributed. You're supposed to make an annual distribution. You're supposed to make a distribution every calendar year. I think you have a fiduciary responsibility to act today, and that's the last I'm talking about today. Thank you.

>> Rose?

>> I think even if it's true that we need to make a distribution, I think the minimum amount is not been established. I don't think we know parameters are today. That's why I want to hear some advice about that. It sounds like the maximum has always been used, but that may not be what we need to do or what we have to do.

>> Scott?

>> Yeah, I'm just putting on my fiduciary hat. Here again, the mention is this was implemented in October of 2002 initially. And if we look at, you know, our draft here we look at the footnotes what was happening around that time? What was our liabilities? What was our funding status? The latest information in the cafr, the unfunded liability was \$191,000, we were almost 90% funded. Fast-forward to the end of June, 2009, we're down to 66% funded. We have a liability close to a billion dollars on the pension plan, and then more so related to the health plan. And the way I'm reading the resolution -- and this is why we're asking for more information. It appears to me that the board has the options to look at the methodologies. And I think, you know, after the largest recession in history since the great depression, we're dealing with a new reality. And just also have a couple questions. One, want to confirm that all those that are retired receiving benefits currently receive an automatic cost-of-living increase each year, is that correct?

>> Yes. I believe so.

>> Okay. And then just another factoid is that, you know, we've all heard Social Security, those that are on Social Security are not going to receive an increase in their pay. They're not even going to get a C.O.L.A., so I'm very respectful and sympathetic about the economic situation. But I'm uncomfortable about the methodology in calculating the benefits. If there is a benefit we should be paying through this plan, irrespective of our funding status, the way I'm reading this is that 80% of the distributions are not based on need. They're based on a formula that's based on years of service that people have worked here and so on and so forth. The 20% that's referenced as a bonus payment, it appears to me that's what's based on need. So, if I'm misunderstanding this, I really need more information, because I'm very respectful and very sympathetic that these are very, very difficult economic

times that people are facing. But we also have a fiduciary role, and I'd like to go back to figure out and understand what was the purpose of establishing this supplemental benefit, and I hear a lot of people saying it's based on need, but it appears to me that 80% of it is not based on need. And I've heard discussions. I've read newspaper articles. With examples of people that are making over \$100,000 retired and receiving this benefit. So, if that information's available to the press and if that information is available to others, I'm requesting also that be made available to the trustees so we are shining a light on what benefit are we authorizing to the beneficiaries of the plan and at what level and is it truly based on need, or is it based on some other factors? So, I really need more information, so I support the motion that's on the table.

>> I would like to add that request of that specific information to my motion.

>> Second.

>> Sean?

>> For the retirees, when did they start receiving the C.O.L.A.? Do we know? Was it 2001, 2002? [Inaudible question] Yes.

>> There's been a C.O.L.A. for a long time, but it converted from a cpi C.O.L.A. to automatic. Somewhere between 2001, 2002.

>> There was a C.O.L.A. prior to that?

>> There was a C.O.L.A. prior to that.

>> So that guaranteed C.O.L.A. Was more recent. For the people that have been retired for a while. I appreciate we've got a two sets of people one that fit into this formula, here's the extra money and people that are significantly at a lower compensation level that can pay rent or food around and yet may have served 20

years of city service. What I'm concerned about is I don't get the -- I don't know if I have the ability as a pension board representative to decide that I think it's worth they get that it's not worth they get that or I think it's a constructed right or I like the formula. I feel our role is here's the formula that was determined and negotiated or maybe not negotiated, however that it is, it's been decided and our job is to execute. And maybe there's latitude on whether we can execute or not and maybe it's a maximum and that's what we need all the information on. If it is decided we need to execute, I'm concerned that we come back in December if information comes out that we have to do this or we're subject to liability or suit or whatever or not doing our fiduciary responsibility, we'll be unable to execute that payment by the end of the year. So, that's why I would still like to have the calculations done and then in December when we come back, they can certainly be said we don't have to do it or we can do it totally different and we have time to, then, change everything, but if we have to do it, we're in a corner where there's no way to execute on that without a special meeting or agreement.

>> So, I think the calculations are in your packet. They're done.

>> Why were we adding to the motion --

>> The motion was whether or not to approve the calculation because I has embedded in it the maximum distribution. So, that would be the issue of that you would come back to in I guess -- if the motion is to defer it for a month, is that the motion?

>> Yes.

>> In December you would come back and look at whether or not to make the maximum distribution, I guess.

>> That's the motion. That way we can have some input on whether or not if we were going to make a distribution, what level of distribution and all of the other issues that have been raised here we can be properly instructed. I think that is our fiduciary responsibility, not to mechanically go through something that we have some latitude of decisions on.

>> I want to clarify, the current methodology, if the board wanted to change the current methodology, they would need to make that change and propose that change to the council for the council to approve a change in the methodology. But it sounded like the motion was also to try to bring back some information about whether or not the current methodology is achieving its original objectives or whether or not there could be changing in the methodology that might better achieve the original objectives, and then that would be something for the board also to consider in December.

>> Yes, to the extent we can do that in December, yes. The issue at hand is the distribution, but to the extent we can look at whether the methodology's working and there's other ideas, I think that should be brought forward as well.

>> So, just to clarify, that the packets currently include the calculations of both excess earnings, interest credited to the SRBR fund, and the maximum amount of distributions. Not just for the past year but for the prior calendar year, and the reason for that is last year SRBR was declared I believe in November or December as usual. Modifications were made to the corridor, I believe, in March. So, about four months later, and the modifications that were made to the corridor, which was to extend it for one year, basically would cause a certain amount of interest to be credited, which would not have happened under the prior corridor of 120%. So, this year we've recalculated the amount that basically should have been credited. Not just last year, but the year before, so that it reflects the decisions taken by the board after SRBR was declared. As has been pointed out, I believe, by segal, you're looking at really not just the calculation for the past year, but also of the year before due to the corridor change.

>> Yeah. I think the real issue, though, is just whether to delay or not delay. And there's a motion to defer this discussion particularly parts "A" and "B," until December of next year -- excuse me, December of this year, next month and that's been seconded. Does that capture?

>> Yes. Call for the question.

>> We had one person standing to speak, and then I have -- just for the retirement purposes, just so we receive additional information next month that says we do have to do the distribution, what would be the timeline?

>> We can turn it inside of a week. We'd really like two weeks, but it can be done fairly quickly.

>> The distribution could be done at the end of the calendar year.

>> Correct. If we know at the next meeting amounts and everything. And it's really fairly simple from knowing the amount to having the distribution to the entire population. We want to spend a few days, fact testing and balancing to make sure it's correct, but beyond that it's a fairly quick process.

>> Yes, sir? I'll let you speak.

>> Good morning, I'm Paul salerno, I'm with the retirement association of the police and the firefighters. Let's not forget that most of the excess funding goes back to the employer, the city. Number two, the item here in question is the motion by the city council to delay disbursement of the SRBR checks. This board has a fiduciary responsibility to make that decision, as it did last year. When you made your decision last year, last November, that was the time for the city to direct their staff, let's start analyzing this, let's see what other options we can come up with in the next 12 months. But it is your responsibility as the board right now to distribute that funding, as you have by the code and the previous procedure for the last nine years. If the city wishes to change things, they can proceed ahead for next year. Best analogy I can think of, three weeks ago I got a new PG&E smart meter at my house. My house is a little financially tight like everybody's is. A lot of horror stories about these smart meters. Like me telling PG&E I'm worried about my finances, how about if I tonight pay you for the next six months until I get a better grasp on my finances? I'd be sitting in a dark house with no electricity or gas. The board has an obligation, a fiduciary responsibility, you should do so. If the city wishes to change things for the future, start now, work toward next year, go through the process. Thank you.

>> Sean?

>> Just one brief --

>> I called for the question.

>> One brief -- one more, please.

>> Okay.

>> If we're talking about a one-month delay to collect all the information and it will not inhibit our ability to still execute payment within the calendar year, if that's the decision that comes back that we're obligated that way no matter what we feel, I would support that one-month motion.

>> Okay. We have a call for the question.

>> Mr. Chairman, if I might? Again, I would like to ask --

>> I think we already have the question called.

>> We need to vote on that actually. I don't know if I got a second. Did I get a second?

>> Yes.

>> So, you have to vote on that first.

>> Can you go ahead and read that?

>> It would be defer parts "A" and "B" of the section that's the calculation and the resolution to the December meeting and to provide additional information to the board from counsel and staff for that meeting.

>> Russell? Clarification. Are we also deferring "C"?

>> No. "C" you've just done. You just did "C."

>> Okay.

>> And this defers it for additional information, so if the information comes back and says, yes, you can make a distribution, then the distribution is made?

>> No. You have to vote on it. You'd have to make a decision. Affirmative. We'll have at least "A" and "B" back on the agenda.

>> And the time lag would be done by the calendar year?

>> If a decision is made at that board meeting to distribute, we can achieve a distribution before year-end.

>> Okay. Okay. Have a motion on the floor. All those in favor of the motion? All those opposed?

>> Opposed.

>> Motion passes. Okay. Next item.

>> We did three and four.

>> We did three and four?

>> No, we need to do four.

>> Next item on the list would be number four, deferred vested, would be dini ackemann, effective November 30th, 2010, for 25.20 years of service. That would be a note in the file.

>> Don't you have to approve?

>> Oh.

>> Motion to approve.

>> I have a second.

>> Second.

>> All those in favor? Opposed? Motion passes. Next item, death notifications. Number five. David P. Brickell, retired police sergeant, died September 15th, 2010. Survivorship benefits to Maryann brickell, spouse. And item number six, Joséph S. Cancilla, retired fire engineer, tied October 13th, 2010. No survivor benefits. Okay. Just have a moment of silence, please. Thank you very much. That would be a note in file, number five and six. Under new business. Under number seven. Approval of retirement date change for Cheryl faltersack from October 30th, 2010, to November 13th, 2010.

>> Motion.

>> Second.

>> All in favor? Motion passes. Number eight. Adoption of resolution number 3682 denying change in status from service retirement to service connected disability retirement application of John P. Quayle.

>> Motion to approve.

>> Second.

>> Or deny.

>> All those in favor.

>> Abstain.

>> Do we have the -- I'm going to abstain on that also.

>> Do we have a quorum?

>> Two, three, four.

>> Item number ten. Discussion regarding disability process and board training.

>> Did you do nine?

>> Did you do nine?

>> Did we miss number nine?

>> Yes, we did. Let me do it. Let me step back and do number nine. Approval of retirement date change for John P. Como from November 27th, 2010, to December 25th, 2010.

>> Motion to approve.

>> Second.

>> All in favor? Motion passes. Number ten. Discussion regarding disability process and board training.

>> This was the chairman wanted to talk about this some. I'm not sure you're ready to go yet. Are you? David?

>> Not at this point. What we're looking for is to try and -- there was some discussion about either getting additional training for the entire board or looking at additional processes for the disabilities. There's a lot of the time of the meetings is taken up with disability processes, and there's some other boards that use subcommittees at that level and I just wanted to float that out there and do some research on what the viability would be to change that process for our board. We have a lot of financial issues. We need to spend time with. And as important as the disability and the retirement process is, there might be a more efficient way. So, I'd just like to put that out, and then I'd be willing to entertain any ideas from any board members for future discussions on what they think would be best suited for that process for this board.

>> Sean?

>> So, I think there's benefit both to the point of education so we all have an understanding, but also to as we talked about different board constructs, new members joining, a growing board, different backgrounds coming into that, I think we'd all benefit by moving the disability hearing process into a smaller subgroup, a committee hearing, to hear that information, report back to the board or to be able to provide those approvals. So, I would also support the idea of maybe either a staff recommendation or review of how other boards handle. I know they already did that whole study of hearing processes. Maybe we could explore ways or come up with

recommendations or thoughts about what we as a board could do to subject a smaller number of board members to a higher level of training to be better able to review those cases.

>> I think we can come back -- I think between staff and our office, we can come back to you with the information about what the options are. We just got finished doing that with the federated board. If you wanted to really and truly go -- if you really wanted to go completely to a subcommittee structure, where the disabilities didn't come ever to the board at all, it would require a code change, but there are some things that you can do sort of below that level.

>> Recommendations and such?

>> Molly, can you come back with that information next month?

>> And, actually, we could do the whole education program as well.

>> Yeah. We did a training.

>> We did a training session for Federated That was quite successful, and this is probably the time to do a similar thing here.

>> It takes some time. The staff presentation, it was probably three or four hours, the whole training session.

>> Yeah.

>> For the new board, you know, we do a big changeover.

>> So, why don't we just come back next month with the information on process stuff and think about doing the training after the first of the year?

>> Okay.

>> Thank you.

>> Okay. Moving forward. Number 12. Discussion and action regarding internal revenue code tax and plans review plan ice Miller for the police and fire department retirement plan. 12-a. Review and recommendation to city council on ordinance amending chapter 3.36 of title 3 of the San José municipal code to incorporate provisions related to the primary purpose of the police and fire department retirement plan. Use of retirement plan assets, prohibited retirement plan transactions, pension benefit vesting, pension benefit and distribution limits, permits of purchases of service credit, rollover of employee contributions into other tax-qualified plans and accounts, permissive retirement plan investment vehicle, qualified domestic relations orders and contributions, benefits, service credit for qualified military service, date of establishment of medical benefits accounts, and to make other technical amendments related to internal revenue code provisions for qualified governmental retirement plans and --

>> To the top of the next page.

>> "B."

>> "B" is "And."

>> And "B."

>> And 12-b. So, is this had to be written by an attorney.

>> It had to be written by an attorney. It certainly did. So, what you have in front of you is -- or the code amendments to the police and fire plan that implement the recommendations that were made by tax counsel in

the tax study session. And you also have a recommendation that you authorized submission of an application for a tax determination letter. To the internal revenue service or an application to the voluntary compliance program as well. Most of the amendments are technical amendments. Just technical language the irs is looking for in the plan document. There are a couple of the amendments that will be -- that will require some operational changes. I call it kind of around the fringes. The two probably main changes represented in this ordinance will be that some of the permissive service purchases will have to be done on an after-tax basis. Can no longer be done on a pretax basis, as a result of some irs changes in their regulations. And the language on that that is currently reflected in the draft ordinance is going to have to be revised a little bit. We got some common facts from ice Miller after we put the ordinance together, but substantively this won't change, but there may be a few revisions to that language on the permissive service credits. To make it flow a little better so that it is clear that people that are now under contract to purchase service will be able to finish theirs out on the basis of the contract that they're under. The other operational change as you may recall from the tax study session has to do with setting up these I.R.A.s for people who get mandatory return of contributions. And so the code does -- the recommendation is to go with that, which is kind of the default position under the internal revenue code. And there was some discussion at the tax study session about whether the board has to do that, and I want to make it clear that you don't have to do that. There are other code amendments that could be done rather than setting up those I.R.A.s for the rollovers. The other methodologies, though, have their own sort of problems, in the sense that you wind up holding on to people's money for a very long period of time and having to keep track of them and finally having to start distributions to them when they're 70 1/2. This is the recommendation. It isn't the only way you can go. But it is the recommendation. And other than that, I mean, unless people have follow-up questions from the tax study session.

>> Motion to approve "A" and "B." Which is, yeah, recommendation of the amendment of the ordinance amending chapter 3.36 and adoption of the resolution containing the plan tax compliance language.

>> Sean?

>> I'll second the motion. In fact, you had a question?

>> Yes, hi. I do have a question. I did attend the joint board meeting on this issue and clearly we absolutely support the plan becoming -- getting the tax compliance. I noticed in your reading of the agenda item, there's a lot of big titles, some technical and some not. I've not had a chance to reviewing this, one of the problems is in reviewing this when you have tax compliance sometimes there are options what you do to become compliant and sometimes there is no option. We would need some assistance. So for every item is the change the only option? Or are there alternate ways you could become tax compliant? And also importantly in making any of these changes, are there cost implications, or are they all simply technical? I just think the city administration needs time to really fully understand each item and, again, whether there are options that tax counsel would say you can either do it this way or that way, and you'd be tax compliant either way and what are the pros and cons and differences between the options?

>> I'd just like to reflect as well that I had a similar conversation with Mr. Platen, and he expressed a very similar issue.

>> So, I'd be willing to amend my motion.

>> If the board wants to get more information on the tax ordinance, there aren't -- there aren't -- I will say briefly that there aren't a lot of options for many of these sections, but if you want to hear from outside counsel on the ordinance itself, we can schedule this to come back in December and have them on a conference call for you. And if other parties have specific parts of the ordinance that they have questions about the options on, we can try to answer those in the meantime. There is an option, as I said, on the automatic rollover.

>> I was there, and that -- what was being proposed as the option sounded like the best one to me. If other folks have questions --

>> That's why we put the ordinance out, you got to get out and see it. So now it's out. And I've talked to tax counsel about having -- the problem is in order to meet our deadline for filing in January, an ordinance needs to

go to the council in December, but if it comes back to your December, early December meeting, we can still I think get it to council.

>> Can I add in there, if it's possible to delineate those things that might have any financial impact on the city? I think that's one of the urgent concerns. And I wasn't registering any. I'm not a tax attorney. I wasn't registering any. If we can get that delineated or be identified if there is any.

>> There may be. You know, when you say financial -- this -- when you make operational changes, you may have some costs associated with making those operation changes. I guess I would have to -- I think staff might have to say, well, what's it going to take to do that kind of testing and that sort of thing.

>> If there were options that were significantly less, you know. I don't think there was, but, you know, I don't think there were situations like that.

>> Sean and then Russell?

>> If you'd be open to a substitute kind of friendly motion, I would propose that this be sent out to the city and the bargaining groups.

>> It has to be.

>> We just heard he was looking for the city mentioned that they were looking for an opportunity to review these and explore alternatives.

>> They've only had it as long as you've had. They've had it for about a week, I guess.

>> At least to make clear that we'd be looking for their inputs by the time we meet next and we could meet at our next board meeting, hear from the different interested parties and have all that input before we approve this.

>> That's the intent of -- I think I amended my motion to include that. Yeah, that was my intention.

>> Russell?

>> I would suggest that the board ask that all the relevant parties. I think it's probably if the lawyer for the poa, the lawyer for the firefighters and definitely Mr. Gersa, or however he wants, get on a conference call as soon as possible. I don't think it's particularly helpful -- he has serious concerns about a serious complicated issue, and if we wait another month and just kind of present it then, Mr. Gersa very understandably might still have serious concerns of this nature, and we're moving ever closer to the January 31st deadline. We don't necessarily have to adopt, you know, have the ordinance enacted as I've been told by January 31st, but we want to be well along in the process and make sure everybody's on base. And we've heard city administration, you know, obviously just recently got a very complex set of amendments and is not comfortable with what they provide. And I think the more we can do that this month, the better.

>> Yeah, I would echo that. But to the extent that anyone has particular parts of this ordinance that they can point out that they're concerned about and we can focus on whether or not that's a mandatory provision and there is an option to it. I think we'll move things along a lot.

>> Can I make sure that that is -- I would like that to be included as the intent in my motion. That's why I was bringing up the issue s of the financial impact, because I think if there's certain particular issues, they should be surfaced immediately and worked on. I don't think we can suggest that they get together and do that. I think that's a great idea to have a conference call meeting.

>> Because I think it will be really helpful. I think they'll be satisfied that there are not many with options and those that have options we've already analyzed it and that there are really no significant financial implications. Much of this is just putting in the required language that should not have any financial impact, but obviously it's a totally appropriate question and Mr. Gersa needs to be satisfied that my assertion is accurate.

>> And how will we ensure that Mr. Gersa and the labor unions get together as fast as they possibly can?

>> I think we can't tell them to do it. But we can certainly invite them to let us know as soon as possible, which parts they really do have issues with or want to talk about, and we can make sure that our tax counsel is, like I say, available to try to address those concerns.

>> And just channel the issues back to Molly and Russ.

>> Yes.

>> We totally appreciate the opportunity to have time to do this and will take the opportunity. I can contact Molly to see if we can set up a conference call as soon as possible to go through this and answer any questions. I appreciate it.

>> Great. Thank you. The motion's on the floor? We have a second?

>> The motion is to bring it --

>> You seconded, uh-huh.

>> The motion is to have the meetings and discussions and come back to the next meeting and hear all that?

>> Uh-huh.

>> All those in favor of the motion? All those opposed? None? Motion passes Molly, since we're extending this, 12-b is that part of it?

>> Deferring "A" and "B."

>> "A" and "B"?

>> Uh-huh.

>> Okay. Number 13, discussion possible action regarding auditor's report pension sustainability, rising pension costs threaten the city's ability to maintain service levels, alternatives for a sustainable future.

>> Yes, this is Mike mayle, retirement staff, and as you remember at the last board meeting, Sharon Erickson presented her report on pension sustainability audit, and staff felt it was appropriate to respond to several recommendations made in the audit and also to talk about an issue that was raised in the audit. So, I'll briefly go through our analysis of very significant item in the audit and that's the large increase in unfunded liabilities that's pointed out there. We believe that staff in working with the board, particularly the board, made significant and responsible decisions as part of the '09 valuation to address the rise in unfunded liabilities, in particular the board adopted several assumption changes recommended by their actuary. And we're not sure that there may not need to be further changes in those assumptions, that's why we put on the agenda item 16, which is review of the noneconomic assumptions. We just want to make sure that there's not a continuing pattern of actuarial losses on the demographic assumptions. And also want to point out that the board today is considering lowering the discount rate which we believe will go further to address variability and risk associated with the pension plan. A couple other items. We know that the board last year actually recognized \$45 million in deferred losses, which we think very significant decision during a very difficult time on investment returns. The board also adopted a new asset allocation policy, which really is focusing more on the downside risk of the plan. With those changes, the plan actually moved up six positions in the financial survey, so now out of 40 California public plans, they moved from 13 down to 7, so that's a pretty significant move to our conservatism. There are assertions in the audit, one is that the valuations prepared by the board, the actuary should be audited by an outside consulting firm every five years. If the consultant hasn't changed during that time. Note that segal's been reporting on serving the board for approximately five years. This will require that an actuarial audit be conducted of segal's evaluation. Number

two the auditor recommended that the retirement staff make sure that the city council members receive the cafr. That's already happening. And she also recommended that the city manager's five-year report be expanded to include sensitivity analysis on pension contributions, and we agree with that. We work with the budget office already. We'll work with the budget office to include the variability. Segal provided additional information that's of importance. The auditor also recommended that staff prepare additional information to members, called a cafr. Our feeling is that all this information is on the Website by January, you know, you can get a hard copy in the cafr and they can go online and get the information. We don't know if we add additional information whether it will be read and whether that is really of much use. Now, if there's any recommendations from the board on how we could improve what we do, we'll listen to that

>> and we'd also like to work with the city auditor on finding some ways to get more information into the hands of retirees and actives and that may be using our newsletter or other communication channels through Brown-bag lunches and other things, we'd like to explore that with the auditor.

>> So, our conclusion is that the plan and the board acted responsibly last year and we're moving ahead and it looks like the board is even looking at more ways to reduce the risk in the plan, and that's very good. Our recommendation is just to forward this memo to city auditors, city council and the mayor.

>> Sam?

>> Thank you. I just have a couple questions. Relating to page two, you know, I certainly understand why we believe -- or the author believes that calpers is not a sensible alternative, it may be better for us to look at a longer term historical period than nearly one year or three years as is listed here to really understand it. We've seen enormous volatility and varying performance of plans and so forth. First of all, I think the administration of this plan is, you know, staff is extremely competent and does work at a very, very high level. But I think to make the case, it would be helpful we were looking at a longer-term historic period and maybe even, you know, I know we've had obviously changes in leadership. At one point there that's irrelevant. That is relevant. You know, it may be even a compare and contrast just to see the direction it's taken. So at least the council can clearly

understand and the public can understand when they read this what the distinction is, particularly in the change of direction that's occurred in recent years.

>> Can I make one comment on that? And I've made this statement to unions and to the city, that with the staff we've got and the capabilities that we've got in-house now, the day comes that we can't outperform calpers, you need to fire all of us, just put us in the street.

>> Understood. Calpers has its own unfunded liability of half a trillion dollars. We're not eager to jump on that onto that ship. But I think it would be helpful to understand the broader historical nature. The second thing I'd say in the analysis section, the very first paragraph on page one about the sense that the audit report notes significant reason for the rise in the plan's unfunded liability, the actuarial assumptions do not hold true over time. Just in terms of our tone, I think it would be more appropriate for us to say we agree, if that's the truth. I think we do agree. And I know there's an acknowledgement that unfunded liabilities grew, but I think we need to acknowledge the reason for that is we had actual assumptions that were not --

>> I certainly agree with that.

>> And then to say exactly at what date the board did act to remedy that. I know it says the board acted responsibly to make changes in 2009. But for many years before that, we were not making changes, and so I'm worried about the tone being somewhat defensive here, instead of saying, look, we acknowledge there are problems and here's what we've done since and I think we should say the action that we've done today or the sentiment expressed that we're going to almost certainly move forward with the reduction in our interest rate as well.

>> Okay. Should we come back with a revised memo with the analysis you requested?

>> I don't feel the need to have to approve new language. I was hoping that, you know, we could just express our sentiments in terms of suggestions and however you guys decide is the best way to express that, I can see that.

>> Rose, did you have a --

>> Yeah, I agree with what Sam said. I wanted to know if you -- in terms of calpers, so we're not seven, and as you said, that puts us in a more conservative position.

>> Yes.

>> And that's a good thing in financial terms. Where would calpers rank?

>> Currently they're 40 out of 40.

>> Calpers is number two.

>> In the legislature.

>> They have two small plans, one for legislators and the Judiciary, those are conservative, the general plan for the base population is 40 out of 40 in the state.

>> I wanted to add my positive comments about the team we have here, Russell, and the team and the really outstanding job they're doing, and I think the board has been acting very responsibly, and so, you know, the decisions that have been -- we've been taking up and moving forward I think, you know, is a good thing.

>> And that's what we were trying to say in the memo, that certainly last year this board stepped up to the plate in a very big way with everything from the corridor to the underlying assumptions to the overall asset allocation. The board has done what a board is supposed to do, and continues that process this year by examining that the earnings assumption and the discount rate very carefully. That you are acting as true fiduciaries for the plan at

this point. And that's all I wanted to get across, is that, yes, there have been issues historically, but at this moment in time, this board is acting very responsibly.

>> And I think that does need to be said.

>> Yes.

>> Thank you.

>> Yes.

>> Just one quick comment on the number three point about the communication with the membership. I'm a strong supporter of that and I think it can be as simple as an extra little four-page supplement with the newsletter once a year or that combined with a brown-bag lunch offer, not everyone's local, but a chance for them to ask questions. If we can just put a timeline on that so we'll research ways and come up with a plan by and, you know, I'm not going to hold you to an exact day, but January or something would be great so we have an action plan.

>> Okay.

>> Do you have a motion?

>> Wait, it's to send it on to the city council and --

>> Motion to send this recommendation with some of the -- I think we are suggesting some changes, some additions in the memo.

>> Correct.

>> I would move for approval.

>> Second that.

>> All in favor? Motion passes.

>> Who made the second? Sorry, I missed that.

>> Sean did.

>> Sorry.

>> Item number 14 discussion and action regarding the draft police and fire department retirement plan comprehensive annual financial report for the fiscal year ended June 30th, 2010.

>> Do you have a memo in your packet along with a copy of the draft cafr. As I mentioned earlier, speaking to macias last night, there's a couple of wording changes and a couple presentation changes, but the base financial statements haven't changed from the version you have here, so seeking approval to move forward once we have the audit opinion and to go ahead and print the cafr. Macias will be back in December to present the audited financials.

>> Motion to approve?

>> Second.

>> Any discussion?

>> Just to confirm, this is a, you know, a lot to digest and I haven't had to go through one of these before, so not to check every little box along the way, but this is all approved by staff and our actuary and our auditor or not audited yet --

>> We have been audited by the auditor, we're going through now and changing the presentations and some of the disclosures, but the numbers you see in the base financial statements will not change.

>> Thank you.

>> I'd like to make a recommendation. If I understand the recommendation and the action is to -- what exactly is it? Because the report isn't final. So, I know the final report's going to come back and then the board will approve the final report, accept the final report?

>>Yes, but in order to process the printing and get everything we need, we need the board to authorize us to go ahead and take the steps. Once we have the final report from the auditor that we can plug into the cafr that we are approved to go ahead and print the document.

>> And just to add on to Sean's earlier comments, my suggestion when it comes back for the final, I think it would be helpful for the auditors and staff to make a brief presentation to highlight the significant issues that are addressed. This is a very large document, but also a very important document. There's a lot of disclosures in here, a lot of data and financial information that I think would be helpful to review in a public forum, and I think we have part of our fiduciary responsibility is to take note and have a presentation at a limited level as well.

>> I agree. But macias is scheduled to return in December so that we can have that type of discussion and presentation at that time.

>> Great. Okay. Thank you very much.

>> Sounds like a light meeting.

>> November and December are always your worst meetings of the year.

>> Mr. Vice chair, if I may, too, I just want to really commend Veronica --

>> I'm sorry, I can't hear Scott.

>> Scott Johnson. I just want to commend Veronica in particular, because she does an outstanding job. She really understands the accounting issues, and the city's finance director, I really appreciate the cooperation and the collaboration that she has along with our accounting staff in the corporate, you know, finance office downtown. So, just want to commend. I really recognize Veronica's abilities and her understanding of the governmental accounting standards and what our requirements are and how we disclose them. She just does a fantastic job, so I want to personally acknowledge her for that.

>> Thank you, Scott. I also want to add that it's been pointed out a number of times for one individual to be doing two cafrs and Veronica sits for both Federated And police and fire and has produced both of these, with assistance from investments and some other folks in the room, but Veronica is the lead on both of these, and it is unheard of to have one small accounting group doing two of these things and running two trust funds.

>> Great. Thank you, Veronica.

>> Yes. We're very Luclucky.

>> It is a group effort. The whole department plays on it, Michael does the actuarial second and investment plays a role and benefit gets some information on it and it's a group effort and everyone contributed this year. Thank you.

>> Okay. We have a motion on the floor to accept staff's recommendations?

>> You need a second, too, right.

>> Uh-huh.

>> I second it.

>> All in favor? Motion passes. Moving on to the next item. Number 17. Approval for the secretary to negotiate and execute an agreement with Ir wechsler ltd for consulting services for procurement of a pension administration system phases one through four as outlined in request for proposal 6/30/10 dated June 30, 2010 for an amount not to exceed \$400,000, cost split 50/50 with Federated And city employee retirement systems.

>> We have Donna and Barbara can address this.

>> We didn't know if you were going to have questions. But basically phases one through four will take you through the development of the -- well, the assessment of our systems and all of the business processes all the way through to the writing of the rfp and the actual assistance and selection of the vendor. Phase five which is really the bigger chunk is the implementation of the new system that we are going to use a consultant for as well, but we wanted to just approve the first phase one through four just in case something, you know, maybe we don't like the vendor and we have an option to not go all the way through to the end with them. We don't think that's going to happen, but that's why we're only seeking approval for the first phases.

>> And the committee that looked at this was not just retirement services but included someone from payroll and someone from the city's I.T. department as well.

>> Motion to approve.

>> Second.

>> All in favor? Motion passes. Under old business continued deferred items. Number 18. Approval to discontinue exit health physicals and provide communication regarding the use of the current health plan for similar services as exit health physicals.

>> Donna?

>> Yeah. This is a follow-up and we finally have received information back from the health plans on what we could offer alternatively. There had been some questions that came up back in June as far as us being able to do this benefit and whether or not the health plans could do it as part of their regular coverage. Our assessment is that the health plans can do almost every aspect of the exit physical without a cost to the plan. I don't think we came up with a rationale for the board to pay for it. I think the doctor said it was not very useful. And as far as wellness, the fact that they can still do these tests with the regular health coverage made it unnecessarily really for the exit physicals --

>> I'm losing Donna. I can barely hear her.

>> I think the track we're going to go down is to do more communication with the retirees as they're going out to get the tests done, because we do feel it is important and it is for their benefit for wellness to get these tests done. So, I think our track is going to be more along the lines of communication and encouraging the members to get these tests through their regular providers.

>> Motion to approve.

>> Second.

>> Any discussions?

>> I really am glad to hear that there's going to be more communication, that's the issue, making sure people avail themselves and go and get those physicals done.

>> I'd like to thank staff for going through and doing all this. I was one of the ones who didn't want to lose this benefit, but seeing the information provided realized there's a way for people to still receive that level of care.

>> Donna, there's going to be a list of suggestions, this is what you should do?

>> Yeah, we're actually developing, like, a pamphlet that we're going to give to people, yeah.

>> Scott, did you have a question?

>> Yeah, actually, I have one question about the communication, because I think it's very important. I definitely saw through this long discussion as we continued this item month to month as we're waiting for the additional information from the health providers that the communication's really key. I do recognize the doctor's comments that he has not made his decisions in regards to disability retirements based on this information. But here again, you know, we saw some examples at this board how very important exit health physicals are, and so it's really important that we as the board and staff, you know, continue to communicate and make that commitment to make sure that folks are aware and just kind of remind people that they should have these physicals on a periodic basis at least. So thanks again for all the good work that staff did on this research.

>> Okay. There's a motion on the floor. All those approving the motion? All those opposed?

>> Nay.

>> Motion passes. Understanding committee reports, recommendations. Number 20, investment committees, the next meeting will be December 16th, 2010. That will be a note in file. Number 21, committee as a whole, next

meeting December 16th, 2010. Note in file. Number 22, real estate committee, next meeting December 16th, December 10th, note in file. Consent calendar. I'll make these all in one motion unless anything needs to be removed.

>> Motion to approve consent.

>> Second.

>> All those in favor? All those opposed is

>> I'll abstain on the minutes.

>> He's not present.

>> Yeah. Okay. Motion passes. Now is the time for -- yeah, number 33 board members state mandated training, ab-1234 ethics training San José City Hall, December 9th, 2010, wing 119, 120, 6:00 P.M. to 8:30 P.M.

>> Just confirm we can do that on the computer as well?

>> Yes. It can be done online. I think the link is in the memo.

>> And, Molly, just --

>> Thank you.

>> -- For clarification or confirmation, if the requirement is every two years, it's biannual, is that correct?

>> Correct.

>> If we did it two years ago, by December we're okay. I confirmed mine, so I'm good for this year.

>> And who do we give those certificates to?

>> They should get provided to the city clerk's office.

>> City clerk, okay, thank you.

>> Proposed agenda items? If there's any items, okay? Public comments? Adjourn the meeting.

>> Let's adjourn.

>> Thank you.