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>> David Bacigalupi: Good morning, ladies and gentlemen, I'm going to call to order the meeting of the board of administration of the Plaintiff retirement plan. The chair David Bacigalupi is present, the vice chair Conrad Taylor is present. Trustee Sean Bill is present. Trustee Mike Flaherman is not here yet. Trustee Sean Kaldor is here. Trustee Damon Krytzer is here. Trustee Vince Sunzeri is here. And Trustee Dick Santos is here. The vacant trustee position is on the agenda, basically a recommendation is going to council as a result of yesterday's meeting. For the record the council liaison Pete Constant will not be here today. Okay, we'll start off with orders of the day, rearrange the calendar with one minor change, item 3.1 will be heard after item 4.2. 3.1 being the Staff presentation on the equity investment structure. Couple other items, item 3.7 was an administrative glitch, it was handed out to the board just now. Unfortunately, the board didn't get this until just now, glitch within. 3.1 also handed out is just an updated version of the one that was in the packet and it was updated as of yesterday. I'm told it's a few minor updates but haven't had a chance to look at it either. So with that we'll start off with item number 1, retirements, service retirements, item 1.1A Evan Bloom fire captain from the fire department effective March 19th, 2011 with 25.19 years of service. For the record, is captain Bloom in the audience? Does not appear to be. Okay I'll entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries. Item 1.1B, service retirement for Matt Elvander, effective May 28, 2011, 28.26 years of service, with reciprocity, and for the record Matt's not in the audience. I'll entertain a motion. [ Motion ]

>> David Bacigalupi: Motion and second to approve the application. Any further discussion? Hearing no discussion, all in favor, all opposed, motion carries unanimously. Item 1.1C, it's an application for a service retirement from Fire Captain Carlos A. Miller, effective May 28, 2011. 30.13 years of service. For the record, is captain Miller in the audience? He is present, welcome, congratulations to you. I'll entertain a motion. [ Motion.]

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, the motion carries.

>> Richard Santos: Chairman, Captain Miller is here, I do want to take the time to (inaudible) say, outstanding young man I haven't seen him in years. Carlos, the best to you and your family, you have done a great job.

>> David Bacigalupi: Good luck to you. Item 1.1D, application for a replies sarge, police sergeant Thomas Navin. For the record Tom's not in the audience. I'm e-i'll entertain a motion.

>> I'll make a motion.

>> Second.

>> David Bacigalupi: Motion and second. No further discussion, all in favor, all opposed, motion carries. Item 1.1e, application for Mike Piscitello, 24.83 years of service with reciprocity. And for the record Mike's not in the audience. I'll entertain a motion.

>> I'll make a motion.

>> Second.

>> David Bacigalupi: Motion and second. Any further discussion on the motion? Hearing no further discussion, all in favor, all opposed, motion carries. Item 1.1 F, application for service retirement for police sergeant Marc Remington, effective April 16th, 2011, 24.57 years of service, there is afternoon application for a service disability pending and for the record Marc's not in the audience. I'll entertain a motion.

>> I'll make a motion.

>> Second.

>> David Bacigalupi: I have a motion and second. Any further discussion on the motion? Hearing no further discussion all in favor, all opposed, motion carries. Item 1.1G is an obligation for a service retirement for police lieutenant Ken Tanaka. For the record, Ken's not in the audience. I'll entertain a motion.

>> I'll make a motion.

>> Second.

>> David Bacigalupi: Any further discussion hearing no further discussion all in favor opposed the motion passes unanimously.

>> Richard Santos: Mr. Chair, I had a chance to work with lieutenant Tanaka. In the Alviso community. I will truly miss him.

>> David Bacigalupi: I worked with him for years. Next item on the agenda is item 1.2A. It's an application for a change in status from a service retirement to a service connected disability retirement by police sergeant Steven Barnes, effective January 24th, 2009 with 25.96 years of service. For the record Steve's in the audience and is represented by Mr. Jeffers.

>> And if it please the court we'd like to ask for a continuance to get the records to Dr. Das, the records he did review are not complete.

>> David Bacigalupi: Continuance for one month?

>> That will be okay.

>> David Bacigalupi: Okay we'll move that over to one month in the May agenda.

>> Thank you very much.

>> David Bacigalupi: Next item on the agenda not my favorite part is death notifications. Item 2.1, notification of the death of Kevin MacPhee fire engineer retired July 7th of 1992, passed away on February 28th, 2011. Survivorship benefits to Barbara MacPhee, the spouse. That would be note and file. Item 2.2, notification of the death of William S. Bailey, police sergeant, retired April 5, 1987, died May 20, 2011. No survivorship benefits. If I could ask for a moment of silence for both these individuals. Thank you. Okay, we're going to pass on 3.1 for now. Under new business, item 3.2, is a discussion and possible action regarding the 50-mile radius residential requirement for board of administration trustees and the definition of the council liaison position. In your packet you have A, a memorandum to the board from city attorney's office and draft ordinance related to council representative to retirement boards. 3.2B ordinance number 28899 remitted to 50 mile radius residency requirement for board members. 3.2C is a letter from chair David Bacigalupi to mayor and city council dated March 16, 2011 and item 3.2D, report to city council dated June 23, 2009 regarding the fiduciary governance models of the city's retirement plans and report by Cortex applied research regarding the findings of the plans' governance models. Also included in the packet is a letter from the retirees association, regarding the discussions and the agreements made with the city when this came up, as to the council liaison position. There's also, I think, the 50-mile radius residency requirement, has also already been settled by council. They voted on that and approved it. So our opportunity, and this all stems from there's a code in the municipal section that says anything that impacts the board, the council unless it's some kind of urgent matter, can refer it to the board for their opinion to help them make their decision. And like I said the radius, 50 mile radius requirement has already been settled and passed by the council to my knowledge. Also, there's two letters of grievance demanding meet-and-confer from local 230 firefighters union and also San José POA grieving the modification to what they believe was agreed to as far as the council liaison position. So I think there's a couple more pieces of information, this board needs to have in front of it to review the entire packet and it's also my understanding and I may be wrong but if I understood the council correctly, they wanted this reviewed by the board when it was up to full

membership. Which won't occur, I think it's like the second week of May, by the time we get it to the council, what we decided upon yesterday. So I just throw that out there, that I think there's more information out there. And I think there was also a request by the council to have this reviewed, and their opinion rendered back to the council by a full board of nine board members. So I'll open it up for discussion.

>> I have a question about the 50-mile radius. Wasn't the standard that was held out by the recruitment process 50 miles live or work and now it's been narrowed to just live, is that right?

>> David Bacigalupi: I believe that -- I'll let Mollie answer it for sure I remember that was from councilmember Rose Herrera.

>> What changed?

>> Mollie Dent: Well, originally when the council adopted the ordinance for the new governance structure the ordinance provided live or work, within the 50-mile radius. And the ordinance was adopted that way. When the council reviewed the application for the retirement board positions, the council by a majority vote indicated they wanted to change that to just live within 50 miles. And so the applications actually did say, live within 50 miles. At the top of them, by council direction. And then the council directed at a that an ons come back to review to change to live within 50 miles. That's why they adopted to live within 50 miles. They had voted on that actually during the middle of the recruitment process to change it to live within 50 miles.

>> I don't remember living within 50 miles on the application. We said them yesterday and I thought it said live or work, no?

>> Mollie Dent: There were two spots on the application. Right at the top I think it said live within 50 miles and in the question I think it said, do you live or work within 50 miles. It got a little confused during the application process.

>> I guess the only reason it bothers me is it seems a bit troubling to be in a situation where the qualifications to be on the board are so much in play, where it could be to redraw the radius to exclude people who are not wanted by the council for reasons of policy.

>> Mollie Dent: Okay so let me kind of respond to that real quickly. The ordinance grandfathers in the existing board members. So there is a grandfather provision in the ordinance. For this term if the board member didn't live within the 50 mile radius if they have already been appointed there's a grandfather position.

>> David Bacigalupi: That's correct. My understanding there was only one member on the Federated board who had to be grandfathered, everybody else --

>> Mollie Dent: And might have needed grandfathering. I don't know what the status of his position is.

>> Why the change?

>> Mollie Dent: Why did council change? Well, I believe that the presentation to council, back when the applications came forward and I think other people may be able to correct me better on this is that's what the bargaining units had agreed to was that the board members live within 50 miles. Now whether or not, you know, you agree that that's something that is bargainable or whatever, the council decided, when that information came forward, that they wanted to revert to the 50 mile radius live because they got testimony that that's what the bargaining units wanted.

>> So to redesign the board there was a discussion by the bargaining groups that are affected by the board, the 50-mile live decision was made it was codified as 50 mile live or work, and this was a correction based on what everyone assumed the understanding was?

>> Mollie Dent: That's my recollection of the way the testimony went. Originally I believe the recommendation from staff was for a 90-mile radius of living, probably, I believe, Russell.

>> Russell Crosby: Actually live or work within 90 base.

>> Mollie Dent: Within 90 miles. It went back and forth a bit and it went in the ordinance that was adopted 50 mile live or work and then the council went back to the 50 mile live.

>> David Bacigalupi: Which is my agreement as my understanding is. Damon.

>> Damon Krytzer: I guess I'm curious, I guess why this ended up on the agenda.

>> Mollie Dent: Because of the other item, really. The reason it is on the agenda is board member or chair Bacigalupi's information relates to the item that is related to the council liaison. That one has been referred to the board for review and comment. I would say that technically, these do not amend the sections of the code that automatically get reviewed to the board for review and comment. But the council voted to refer the council liaison ordinance to the board for review and comment. And I believe actually, I believe they specified that it would come back on the council agenda sometime in May. I think that was what they said. So that both of the boards could review the liaison requirement. Now, there's nothing to stop the board from commenting to the council on the 50-mile requirement. If the board just, you know, you can certainly comment on that. It's in your agenda. It's not been referred to you formally but if someone wanted to take issue with it, they could. But what's been referred to the board formally is the council liaison position.

>> Mollie on this radius can we refer it back to council? If we restrict ourselves, we might restrict our pool. I'd rather have it wider do we need to write a letter to council to say we're limiting our pool of qualified individuals so therefore we would like to have this rate use expanded?

>> Mollie Dent: You can certainly -- it's been referred to you for discussion and action. The if the board wanted to write a letter to council on the ordinance you certainly could.

>> David Bacigalupi: Sean and then Vin.

>> I don't want to describe what was going through their heads or I can only -- my best recollection of what was going on there, I don't want to put words into their Moustakas but my understanding is that the 50-mile thing and the removal from office which is very relevant to us was seen as a section 2 amendment and did not require the 60 days notice or any note or comment period from the board itself as opposed to section 3 which is the Plaintiff retirement plan. They seemed to be comfortable making that change and changing it to what they thought seemed to describe as a drafting error or let's call it a drafting error. The liaison was separate in that there was a lot of disagreement and not a lot of notes or evidence produced about what the understanding was supposed to be and so their intention was, let's have everyone go and review their notes give comments and talk about this before something is passed. They're looking at our comments to them before they is that roughly what you recall?

>> Mollie Dent: Yes, that's certainly what I recall. And just so the board understands, the correction in ordinance 28899 on the removal requirements only relates to the Federated board. It truly was a clerical error. It was my error in drafted the Federated ordinance. So there is truly a clerical correction in the ordinance that doesn't even affect this board. And the other change, which relates to the 50-mile radius again, if you want to comment on it, you can. It hasn't been referred to you officially for comments.

>> David Bacigalupi: Well I think one of the things that we could do is maybe take it as separate issues. The 50-mile radius if you want to comment on that. It's always been my practice that if something's already been done it's a little late to -- I mean, you know some people may feel strongly about getting a comment on the record but it's already been passed by the council so unless you want to try and change it so maybe we should handle that as two separate issues if that's what this board wants to do. Vince, you're next.

>> Vincent Sunzeri: If you want to stay on that I can. I want to talk about the liaison situation. Do you want to stay on the 50-mile radius.

>> David Bacigalupi: Is that of interest to the board? No.

>> Richard Santos: I want to make a comment, I can wait.

>> David Bacigalupi: I'm sorry?

>> Richard Santos: I say I can wait. I still had a comment about the 50 mile radius, yes.

>> David Bacigalupi: We can do that and move on because the other one would have a lot more discussion.

>> Richard Santos: We would hope in the future so 50 mile radius when I first came on in '68 that was one of the requirements but that was a different time. When you had like example reserves, auxiliary and all those type of things that was a different time. That was waived a long time ago, all changed. As you know today, many of our police and firefighters live all over. I agree with Conrad, I'm talking about the pool of talent and everything else that really bothers me. The way I understand that San Francisco had that issue and they took it to court and I don't know if it was resolved or whatever, it was so much confusion, the way I understand it, just dropped it. Probably my main concern would be though, you know you may have experts or whatever have you and it may be a phone call to address the board on the specific issue, and that person may be 150 miles away. I don't even think miles and distance should be even a factor. It's just are we getting the best professional people, are we getting the best talent and whatever have you. I hope that restriction doesn't go forward. Irregardless what the council did this board in my opinion has to do what they got to do to run this organization and this department. I would not support that 50 mile radius or any kind of radius. In most times we'll be using this talent and what have you. In case you don't, young people live in Dublin or whatever, why would that restrict them, you don't get the best talent that way. So -- yeah.

>> David Bacigalupi: Any other comments on the 50-mile radius? Does anybody want to make a motion to address the council or send a letter to the council on it?

>> Richard Santos: What I would like to see Dave is I really feel when the report today ends there's chances to put things on the agenda for next month's meeting I think that will address itself. I think it's too early because I think with the council liaison, even when I went through this draft about attitudes, there's so many things I don't disagree with, just doesn't make sense to me and so I think when we get -- if the next month's agenda is allowed to put Cortex on, some things come to light, taking actions on, I think I'd want to wait but I have no problem sending a letter saying I oppose it, yes.

>> David Bacigalupi: Are you making a motion?

>> Richard Santos: Yes.

>> David Bacigalupi: I have a motion to send the letter to council. For clarification, Dick, do you want the letter to say the 50 mile radius should be moved?

>> Richard Santos: There should be no restriction on the radius.

>> I'm going to second.

>> David Bacigalupi: Any discussion on the motion?

>> I'd like to comment. I'm not so opposed to the 50 mile radius, I think there's enough talent on the board, both living and working within the 50 mile radius should be included. That would be my only comment to that. My understanding is the employment was taken out of that, correct? I don't think that we're such a small city or a small community that we need to go beyond the 50-mile radius.

>> David Bacigalupi: Okay. Other than discussion, did you want to try and amend the --

>> Well I guess if I were to amend the motion I would want to add back in employment within the 50 mile radius in addition to living. Either/or.

>> David Bacigalupi: Okay so you want to keep the 50-mile but make it -- okay. I think that actually changes the motion. Maybe let's see what happens to the first motion and you can make a second motion to that.

>> Richard Santos: My concern is what if you had a call from some legal advice in Florida.

>> I don't think that would affect the board membership.

>> David Bacigalupi: What we're talking about is board trustees, people that are going to be here at the meetings and I think part of the -- dug the discussions it was the reasonableness of board meetings, so they thought that there was some sort of mileage restriction that the gloarkts agreed to that would make it more likely that the board members could participate more fully. That was the restriction. It doesn't change a thing as far as any investment advice, any other kind of advice that we get from vendors, I mean it could be anyplace in the world, we have investment people outside the country. This only applies to and Mollie, correct me if I'm wrong, this only applies to this board.

>> Mollie Dent: It only applies to public members of the board. It doesn't apply to employee or retiree members. It's the public members.

>> Abi Maghamfar: .

>> David Bacigalupi: You're one of the retired members so it wouldn't even apply to you. Okay, any other -- Sean.

>> I kind of see this as one of the elements of how they redesigned the board, include defining each board member whether they're public or private. It was worked out came to agreement that everybody felt comfortable

they had representation, the city could appoint independent people, everybody make sure they had majority hold of it. Kinding sending a letter to the council that we don't like this rule, is commenting on the overall design of the board. Other things we could comment to the council that overall condition of the board, the 50 mile rule probably won't have an issue for us and that would be a chance to say hey, here are things you've built into the system that aren't working and maybe we could recommend these changes to the board. Right now I feel we are where we are and it was part of the negotiated solutions with the unions and the city and everyone bought into a 50-mile. That's kind of what my thinking is on this.

>> David Bacigalupi: And you know I have to disagree with my colleague as well. I can't support the motion. I think there is a lot of negotiation going on between the city and the retirees and the two labor groups that came up with that. And to come back now and give a different opinion, I personally can't support that motion.

>> Yeah, I would just add that I don't know that it's really worth the effort to comment. Because it's number one a moot point and second, it really is reflective of the situation that was in flux. And I'm willing to take the city council on good faith at this point, that there was no nefarious intent.

>> I just add that I think Dick's point was, he was concerned about this effecting investment advice which I think under your interpretation of this is just purely for a trustee thing so it probably is different than what we originally were talking about there.

>> David Bacigalupi: Okay. (inaudible) are you withdrawing your motion?

>> Richard Santos: Now that I get the clarification.

>> David Bacigalupi: The motion I assume is dead, it's been withdrawn. Okay. Let's go on to the other issue and I think Vince you wanted to lead off on that one.

>> Vincent Sunzeri: Sure. I'm not opposed obviously to having liaison position attending these meetings. I guess what I'm trying to understand and get some clarification on is, I'm looking at, in our packet here, in item 3.2A there is an attachment B. And council policy item A, addresses council liaisons. And what's confusing to me is this appears to be sort of a gray area. This policy addresses what the liaison role would be. And then it also refers to in section A, any councilperson who is appointed to sit on a board, they are no longer going to follow the policies of being a liaison. This appears that this falls into a gray area. Either you're a liaison, a board member, now we're creating a position that's a little bit of both.

>> Mollie Dent: I think that's probably an accurate reflection, at least that some councilmembers thought that they were creating more of a hybrid position. Whereas, some people thought that it really -- that the liaison was just going to be a liaison and subject to the council policy. So that is the -- that really is what gave rise to the ordinance was that there was the sense at least on the part of some councilmembers, that they wanted the liaison member of this board to be something different than the normal council liaison who would be subject to the policy. So the draft ordinance really simply reflects one way you could do that. I mean there's -- so there is no particular pride of authorship if you will in the draft ordinance on my part. I drafted it. But it was simply a way to try to carve out a different niche. Because that was the understanding that some councilmembers wanted that. Now, the council has said well, they want to get your comment on that. What kind of niche do you want to have for your council liaison member? So for this board, you could say well, we want the council liaison for this board to be just like the council liaison to all the other boards. We don't want them to have any different roles to council liaison to any other board or commission. what you want the role of that liaison to be in terms of making a recommendation to them.

>> Molly if I can ask another question then, in other boards and commissions where you have a liaison position, they're also able to sit at the table and comment. No different than what we're talking about here, is that correct?

>> Mollie Dent: Yes, they -- they are. Their role is -- well, any -- first of all, any member of the public can come up and comment. So that's not a particular special role, even for the liaison. But normally the council liaison to the other boards and commissions would come when there was something of particular interest to the council on the

agenda, or might comment because the board asked them for a comment on the item that's on the agenda. Obviously the council think these two boards, the retirement boards have items that are frequently on the agenda that are of great deal of interest to them would be a fair way of saying it.

>> Just as a comment, having a representation from that stakeholder in my mind as an independent board member is critical. I want to hear that voice. Understand whether they should truly be a board member, if they don't have a vote, is kind of an odd position to be in. So it seems like if in fact they fall into this gray area, then there needs to be a much more defined role for that individual. Because this particular council policy does not address that.

>> David Bacigalupi: Sean and then Mike.

>> Sean Kaldor: So there was two different understandings of the policy that got us to get here. natural means of communication and several city council members understood that to be a superliaison role with more interaction, the concern I'd have as a board member is as we look at the Cortex research all the justification to swap out city council members and replace them with industry experts was to get all of your expertise on here. It was also to remove kind of the influence of city needs or city concerns overarching our fiduciary responsibility to the plan. They outlined here, while there may be many reasons for the pension plans' ability to needs to be changed to prevent future inequities. And it talked about the classical definition -- classical conflict between the settler function, with the city, and the fiduciary responsibility of ourselves. I welcome a city council member here. I think they need to be exposed to everything that's going on here, everything that's going on. Nothing's hidden. Nothing's closed. They need to totally here everything that's going on. fiduciary responsibility to the plan and having -- the key thing that they can bring that I would expect to be brought to this is city needs, city concerns and that's one of the things that we need to take into account but I'm concerned that we would be lobbied in that dreck. And somebody who has a board member role will not only be able to comment but ask questions and push the questioning in certain directions in certain lines, that gives me some concern. They can also ask for reports and ask for research to be done and call for staff to do certain actions. Again that pushes in certain directions. I don't want to be pushed in one direction. You're also talking about one city council member' opinion. It is not city

council's opinion, X, whoever that person is not just now but 30 years from now if they're ledge strongly one way or another way to be constantly lobbied about our disability process, we're disapproving too. plan that's what I want to stay focused on and part of that fiduciary responsibility is minimizing the contributions of the city, minimizing the contributions of the employees. So we have that responsibility. One other point I make is, I know there's comments about the city being the primary funder of this plan and wanting to ensure their cares are addressed. And Cortex actually outlines all the points as to how their concerns are protected. They appoint the majority of the board. At least a majority of the board will be industry experts. A majority of the board will be independent. We can't advocate for benefits. We have this fiduciary duty of prudence. The city sets our funding goals. The board is to provide relevant reporting back to the city. We're supposed to have an audit committee which I hope to bring up and any one of us can be removed by our sides for cause. So the city feels like the independent members are not adequately understanding and expressing in a fair side of the City's concerns, they can say, you know that they can remove them for cause. So I think the construct works without someone else influencing it, and again, I totally welcome the liaison definition, someone sitting here with us fully informed and reporting back to council so they know what's going on.

>> David Bacigalupi: Thank you. Mike you're next and then Damon.

>> Michael Flaherman: Along the same lines as Sean, I don't have any problem with the city council being fully a part of the process. Sitting here, and maybe I would even go a step further. It doesn't even particularly bother me to give them the right to be recognized and ask questions. Because if you didn't give them that right, the reality is if somebody is aggressive they can effectively achieve the same thing, by asking whenever they get the chance to comment for permission to comment on the expert, et cetera, that really doesn't particularly bother me. What really bothers me is entirely the designation as a liaison. That can be troubling. The ability to go into the outside world and identify one self as a board member and then take positions that will be heard by the public or the press as in some way associated with the retirement system board, even though you're saying I'm speaking only as one board member. But you're not even really a board member because you're speaking without the fiduciary obligations of a board member. I think that's very problematic. As you touched on I think it's very problematic for someone who is not a fiduciary to be identified by the staff and by our service providers, as a board member, it

produces a lot of uncertainty about how they need to be responsive to that person be, even if that person is pushing them to do things that seem inconsistent with the fiduciary mandate of the system, et cetera. So to me, you know, you can really get caught up in nomenclature, but I think this is a situation where nomenclature is important. And I don't have any problem again with the function. It's really just the title that I think is not appropriate. And I think that that -- I would advocate that that should be our position is that the person should be called a participant observer, liaison I'm certainly fine with but not -- not nonvoting member. Or nonvoting board member.

>> David Bacigalupi: Okay, thank you Mike. Damon.

>> Damon Krytzer: That was the strongest argument to sway me from the middle, I got to say. Because I also don't so much have a problem. I guess I have a question first and then a comment, and forgive me if a.

>> Mollie Dent: It would be appointed by either the council or the mayor's office as authority to appoint a lot of these liaisons.

>> Damon Krytzer: And then we have ability to --

>> Mollie Dent: Well you can let them know you don't like it.

>> Damon Krytzer: But they have the final authority?

>> Mollie Dent: It is not within your ability to make a recommendation, a formal recommendation or anything. I would say in the title to the section I did designate the person as a council representative.

>> Damon Krytzer: I think at this point there's conflicting nomenclature.

>> Mollie Dent: There is, then it says nonvoting nonfiduciary member. Because the council had said they wanted the person to be a member. Your comment is I'm not getting into the policy behind the comment. It was very important for me though as an attorney that this person not be a fiduciary, that it be clear this person is not a fiduciary because they're representing only one stakeholder. And it was also very important for me as an attorney that this person not have any participation in the quasiadjudicatory hearings. That could really present a problem. There are some things in this that were significant from a legal standpoint.

>> Damon Krytzer: My point is we should make sure that person is labeled in a way that makes it clear that they don't have the fiduciary responsibility, and can't claim it.

>> So I also agree with Sean's point but ooms the back story, which I think we miss, we miss in the documents as a new trustee, you know, it seems like a lot of these things we're picking up from the middle and there's a lot of thought process from the city council that we can pick up in the line of questioning as opposed to saying, okay we're being steered in one direction. The questioning and the thought process, to participate in the discussion, the liaison is going to bring us a lot of information as far as how the city council's thinking or at least how a voting member of the city council is thinking and I think that's important for us to understand, as well.

>> And frankly the comment Sean you made about loibl can go both ways.

>> Yes.

>> And so we have to be careful in driving in that direction because the four to, now soon to be five independent board members, we don't work for the city, we don't represent the city. However, as a firefighter or a police officer, you are being appointed to some extent almost a representative of your bargaining unit. So I think having someone here that sits at the table, as a liaison is critical. I think we just need to find whether that person's a liaison or they're a board member. This gray area is a little strange to me and I don't think it's clearly defined.

>> David Bacigalupi: Okay, I'd just like to make a comment and then I've got Dick and then Kong RAD. Being in the background of the discussions when this came about, I agree with everybody that said the same thing, the council liaison is a very valuable position. But I think some of the clear details that were brought up by Sean you know in this definition of what a liaison does, during the discussions that's exactly -- that was a known factor that there would be a representative here that could you know respond to questions and information requests and things that would come from the council, rather than one individual, no matter who that individual is. And because I talked to two other councilpeople that were also interested in that position. And it was the understanding and like I say there's documents not in here but there's documents from the other half of the bargaining part, other than the council, that came to the agreement that disagree with some of the councilmembers that feel that it's more than a liaison position. The original thought process was, it fits within this liaison description to be a resource to this board and to be a resource to the council for information going back and forth. So I want to stand clear in my position and my experience of the years that I've been on this board, that the Cortex report was pretty clear to remove the councilpeople. The councilpeople that sat on the board side by side with me were pretty clear they didn't think it was right they were here, they thought they should be off this board and that it should be a more professional board and they shouldn't be tied to it. And so I think there was a lot of agreement and a lot of work put into restructuring that board. And you know as we see there's still little minor work details and stuff. Sometimes it's just in the nomenclature. And I'm not an attorney but when you say a lees eight son will be appointed to the board, your mind goes to liaison. Then somebody else puts the emphasis, appointed to the board, and there's another thought process. There's where I think some of the disagreement comes in. So I just want to stand clear on the fact that I do think we have a very valuable resource in having a liaison to this board. But it's not a board member, it's not a fiduciary to this board, it's not a representative of this board and I think that's where -- and I'd like to see those other documents produced for this board before we have another decision made on this. Who did I have next? Dick is going to comment.

>> Richard Santos: I agree with the chair. I read the Cortex report. That's why the city council paid for that report, to no longer have that link and get the best experts and make sure politics was not the issue. The way I understand it, he or she come here and make their reports to the city council. That's where it ends. To expand any more than that you're going back to where we started. You're basically here to listen to information and make your

report. That's it and to start putting other things in it becomes back to the politics and it shouldn't be -- if you read the report and other cities and counties will have this, that's the role. It's one of sitting here listening, it could be a resource if you want to ask the question but that's where it ends.

>> David Bacigalupi: Conrad.

>> Conrad Taylor: I agree with Vince away he said, I agree with Mike, with the labeling, I was concerned with the labeling on it.

>> David Bacigalupi: Sean.

>> Sean Kaldor: I wanted to comment it's not the next person. I don't want to be pushed by someone who is completely thinking oh the plan's overfunded and we need to get benefits back to the firefighters and the cops. I don't want to push either way. I want to do the right thing with the plan regardless of the comic environment that might be going on. And then, one thing I think's important for this liaison is to be able to give us the inputs, a liaison is what really happened here tell me what was the history behind this. And we can ask them anything. They are a resource to us and they can say if they're comfortable commenting or someone else may have more information on that or we can do research on it. Mollie, the one thing I wonder about this policy that you've drafted, is this the comprehensive capitol of this role or is it inclusive of the other liaison role?

>> Mollie Dent: No, they are alternatives. The council policy which is attachment B is the existing policy on council liaisons. And so this -- and because it's a council policy it can be changed by council at any time. The ordinance on council liaisons you actually do have the ordinance on council liaisons, if in -- if in attachment A, code section 2.08.060, you can see I've underlined the acceptance language, that's language I've added so the current council liaison language is the remainder remainder of that section so the ordinance on the council liaison is very much more broad and subject to interpretation. If you will, then the policy is. So the policy that council has adopted in attachment B tries to put some meat on what council liaisons to all of the boards and commissions can do, okay? But council said they didn't like that approach for some of them said, they wanted something more than

that, for the representative to this board. So the ordinance would be an alternative. So if the ordinance were adopted, attachment A, the liaison to this board would no longer be subject to the council policy attachment B. Instead the liaison would be governed by retirement boards of administration, a special representative to your board. Does that help?

>> Sean Kaldor: Yes, it does. Because what I see in this policy for liaison is a well crafted well written thoroughly researched policy that's been in place updated 2007 but been around for decades, a decade before that?

>> Mollie Dent: Gosh, I don't know. When it was first adopted.

>> Sean Kaldor: Okay but it spells out certain protections such as the councilmember shouldn't speak to us on matters that will get referred to them ultimately. A matter such as this liaison role is ultimately going to go to the council. They can influence a retirement body such as the retirement board and then have their say at the city council level as well. There is a lot of other things spelled out here as well that defines what a liaison should be and the proper code of conduct. I'd have to throw that all out in exchange to a couple ever paragraphs that says they can fully participate. And it gets to the whole point of the tention of this role. If the liaison role, safeguards to the city, liaison policy isn't right, I don't know if this prevented alternate to it is an improvement.

>> Prefer --

>> David Bacigalupi: Mollie, you drafted this ordinance along the lines of what some of the councilmembers were thinking of as far as the board liaison-appointed --

>> Mollie Dent: I've had no conversation with council about it it, just to be clear about that. What I did was simply try to pick up the concept that the council memo said that the liaison was supposed to be a member of the board. That's what the memo said, so I picked up that concept, the reason the ordinance is bare bones is because there are only a few things that I really knew about what council intended, was that it was to be a liaison, they were to be able to participate and there was supposed to be a nonvoting member. There are things as I said

from a legal standpoint it was important for the owners to say. That if they are a nonvoting member they can't be a fiduciary because they're only representing one stakeholder and they can't participate in quasijudicial matters because they don't have a vote and if they were to participate you'd have to define what their role was when you got to court on those matters. So this was not an effort to be -- to parallel the council policy in any way, shape or form. It was simply an effort to pick up the concepts that were in the council memo and put concepts into the ordinance that were important from a legal standpoint.

>> David Bacigalupi: Okay, the part that you're reaving to that you picked up from the council memo that created the new board structure is section D of the council memo dated February 4th, 2010, correct?

>> Mollie Dent: Okay -- yes, that's all it says.

>> David Bacigalupi: This is under section --

>> Mollie Dent: Correct.

>> David Bacigalupi: 3.2A and towards the back attachment C.

>> Mollie Dent: Correct and as the board knows from your last meeting there was a lot of conversation about what this meant. There were people that there were -- there were different interpretations about what this meant. So the ordinance was simply an effort to get something started on one way you could address that. As I said at the very beginning, the ordinance that was drafted isn't necessarily the only way you could address it. So it's one way you could address it. It was important to get, like I say, at least a few concepts in from a legal standpoint.

>> David Bacigalupi: Maybe another way we could have it is two ordinances, an either/or which emphasized more the liaison position rather than the appointed board member position.

>> Mollie Dent: And one alternative for this board. If you want an ordinance that's on your liaison, and you want to provide direction for what you would like to see come back to you, you could provide direction to look at an alternative ordinance. I mean you have -- let's just go with the regular council liaison. Let's give some direction for how we would like the ordinance to read. Let's say that we're okay with this ordinance. You have options available to you.

>> David Bacigalupi: I have Sean and I --

>> I have two questions. What restrictions are there on a council liaison in terms of them asking questions during a board discussion, my first question?

>> Mollie Dent: Under the liaison policy?

>> Say he's a liaison instead of a nonvoting board member? How does that differ in terms of his interaction with this board in terms of his ability to ask questions or -- of the board during discussions?

>> Mollie Dent: I think a lot of that depends on the boards and the board's chair. Normally, board liaisons will participate to the extent that the board wants them to participate. If you look at page 2 of the policy, their staff members can't participate in the discussion. They can participate. But they normally do that when asked by the board.

>> Okay, my second question is: What is the Federated board's position been on this issue?

>> Mollie Dent: They haven't seen this item yet.

>> Russell Crosby: They're two weeks behind you.

>> David Bacigalupi: And Mollie you referred to page 2 but also one of the things that I've brought up in the past is on page 1 the definition of the role of the liaisons, to be available for questions and information. Is a good thing for this board. But the council policy as they set it for other boards and commissions is the council liaison would not be an advocate, not give discretion or influence a decision. I think that is one of the major sticking points is the information is needed, information gathering, finding out what the council as a whole feels about an issue. But also, not having the politics influence this board in its decision making. And that's where the questioning -- I mean obviously any information that can be provided is going to be helpful to the board. There's nothing to hide. But it's the new on the board. I just point out you didn't mention that, you went to page 2 but that's an important part of the liaison position.

>> Mollie Dent: I think though even with the council policy, the fact that the liaison is identified to facilitate communications, does indicate that the normal liaison will communicate the council's position to boards. Now, being a -- it says it should not be an advocate for the commission. It doesn't say they shouldn't be an advocate for the council. So the liaison should not be an advocate for the commission, give direction or influence a decision by the commission. Well, I understand the influence a decision language. But it's clear all of the council liaisons, their role is to communicate to the commission what the council's position is.

>> David Bacigalupi: Right.

>> Mollie Dent: So in terms of giving direction to staff, only the board can give direction to staff. So a nonvoting member of the board would not be able to tell staff to go off and do something.

>> Member of the board, right? So --

>> Mollie Dent: But he's not voting so unless you all wanted to vote for that direction, you wouldn't -- there wouldn't really be that particular opportunity. But I'm -- you know I really don't want to try to be advocating one way or the other for any of this.

>> David Bacigalupi: Okay.

>> Mollie Dent: The policy stands for what it stands for. It's much longer than the ordinance. It's much more detailed. And it's one way to go. The ordinance is another way to go. If you had something else that you wanted to try to craft in terms of the role of your liaison, you could articulate that and we would try to draft it up and Russ could take a look at it.

>> David Bacigalupi: Island let you finish.

>> I had one follow-up. So if I had a question that I wanted to ask, let's say the council liaison is here and I want to know what the feedback of the city is, as a member of the board can I ask that question to him, or do I have to depend on the chairman to ask?

>> Mollie Dent: No, no. And the liaison would -- if they felt comfortable answering the question.

>> Sometimes we want to get the back-story on an issue, as long as we have access --

>> Mollie Dent: That is the normal role of the council liaison.

>> David Bacigalupi: Mike you were next.

>> Michael Flaherman: I actually wanted to make a motion to hopefully move it forward which would be to replace the word "member" and to also replace the word "representative" you can see that those words are used interchangeably in attachment A. Every time either of those words is used to replace it with the word "observer-participant" the next part of the motion would be to add a third numbered paragraph saying that the observer/participant shall be bounds by the council policy which is included as attachment B. And I would leave that up to counsel on exactly how that was phrased.

>> Second the motion.

>> David Bacigalupi: I have a motion and second. I hope you have that written down. Okay, discussion on the motion. I have a few board participants that want to speak but --

>> Sure. I'm not quite comfortable with the he term observer. In my minds would I like to see someone who's more of an active participant.

>> The dash.

>> Using the term liaison?

>> The dash was the observer, dash participants.

>> As we can act as councilmembers, you know, information, I wouldn't be opposed to having this a standard council liaison and then just say you know I mean we can always ask Pete for an opinion on an issue or do we feel that we need to have -- where the liaison can bring up his own questions or whatever? I mean to Sean's point I do think there's a lot of depth to the guidelines for a council liaison and I think to Damon's point the main question here is can we access the background story if we need that information? You know,.

>> David Bacigalupi: Sean.

>> Sean Kaldor: I like that approach as well saying it's a lee eight sop. If it's a liaison we don't need all that other stuff. The concern they're expressing is the full participating role having the chance to be involved. Maybe that's a thing we need to work through a bit. If he has a question of clarification he has a question of clarification. I'm comfortable with that. I'm concerned about anyone influencing one way or the other. We can see how it goes. I would lean towards saying it's a liaison, our recommendation to the council would be more to saying we would like to follow the current liaison policy, that he's a to us, to the board from the city council.

>> David Bacigalupi: Damon.

>> Damon Krytzer: I'm curious as opposed to someone who does have other issues around politics like needing to be reelected for instance. I don't know if that changes the --

>> David Bacigalupi: That's something I hadn't thought about.

>> Damon Krytzer: I mean --

>> To me it's a fiduciary status.

>> The ambiguity to that person.

>> If I could comment in the Cortex report they referenced the City of San Diego. The City of San Diego in addition to appointing independent board members and having representatives from Police and Fire they do appoint a city management employee. Not an elected official but they do have that on their board.

>> If I can comment right on that there is a big part in this Cortex report that says there should be an organization in this city that is tasked with understanding all of the decisions we're ache making there saying if you make that change it's going to have this impact and making sure kind of all that is built into our understand being of what's going on. Our staff can give us the City's understanding as well. We don't have that function now. We have retirement services and we kick over a contribution number and the city says oh, now wait, I didn't know that was going to happen. It wonder be resolved at a board level. The recommendations wouldn't make sense.

>> What do you mean?

>> They called it does anyone I don't remember right off the bat. I've got it all highlighted.

>> Which piece you looking at?

>> This is a Cortex report.

>> Sean. We used to have the director of finance sitting on the board. I thought it was very valuable with him sitting on the board. If we had a noncouncilperson, director of finance sit being here if we made a decisions, at least he was able about what the effect those decisions would make.

>> David Bacigalupi: That's true.

>> To facilitate this the sponsor should designate a specific department responsible for filil understanding the investing and funding issues cps liabilities managing pension risk and managing a pension investment program. These include asset liability, mismatching whatever, that asset department should also be able provide support education analysis and recommendations to the situations involved. That's you know kinds of a San José finance ability to interact with retirement services, at a more fundamental level to all the decisions we're making.

>> David Bacigalupi: Thanks Sean. Two people that wanted to address, Jay Wendling and then Donna.

>> My name is Jay Wendling and I'm with the retired police fire association with the city. We were invited to meet with Cortex while the Cortex report was being formulated. And one of the things that we stressed that they picked up on right away was, how to keep this board from being independence from the city council. As late as last night when the mayor spoke at one of his District 2 meetings, he again stressed the importance in his mind that this board remain independent from the city council. So we would ask the board members to keep that in mind before they adopt any other positions other than a complete independence. Thank you.

>> David Bacigalupi: Jay, let me just ask you too, did the retirees association, did you and the retirees association send a letter to council regarding this issue and understanding and the changes that were being made, how they did or did not comply with what the understanding was in the agreement?

>> Yes, and --

>> David Bacigalupi: Can you provide that to this board, please?

>> The letter was written actually by Rose Herrera. And we then talked to Pete Constant who gave us some valuable input. So again, the importance to us is, that this board be independent.

>> David Bacigalupi: Okay. And you can provide that information to this board, thank you. Donna.

>> Donna Busse: My question is probably for Mollie and maybe a comment. Even though the board recommends calling the person a council liaison, we can clarify from staff, but council does not have to accept their recommendation.

>> Mollie Dent: Well, correct. It is a recommendation to the council on the ordinance. The council can move forward on the ordinance. I also want to be clear so that the board members do understand. I want to say it again. The council policy is a policy. It's really, they can change the policy. One alternative for them was to just amend the policy, instead of going with the ordinance amendment. But we thought that it was -- they had said they wanted -- they hadn't really said but we thought it was more straightforward to bring forward an ordinance amendment.

>> Donna Busse: Okay my second question is if they change it not to change recommended by the board it is still a nonvoting member or a nonfiduciary member does the board have the ability to set policy as far as extending plan assets as far as any member may occur?

>> Mollie Dent: Yes.

>> Donna Busse: Because right now the board member.

>> Mollie Dent: The board sets the policy with respect to expenditure plan assets. That would be completely a board decision.

>> David Bacigalupi: Okay. I'd just like to address the motion that we have on the floor. I think adding different terms for the council representative, be it observer, representative, I think liaison fits quite well. It would be my suggestion is to I don't know the correct terminology, but I would move to hold off on this motion until we get, number 1, some other documentation that is already out there from the retirees association, from the two labor groups regarding what their thought was on this position. And also, maybe give direction to Mollie to write up an alternative to this, and again this is going to be just a recommendation from this board. We're not setting the law, we are making a recommendation to the council, they can go totally with it or against it. I would like council liaison and incorporating council policy. Council policy can change. They can wipe out council policy. We need to set this for the next 30 years of what that position should be and I'd like to see the relevant issues of the council policy written into the ordinance that we recommend to the board. We recommend to the council.

>> Mr. Chairman, I propose the observer participant label instead of the liaison label really out of an effort to accommodate what seemed like a desire by the city council to have something that was more than the liaison label. At the same time, I would defer to you, and to the others Vo who have been here for a lot longer about whether you think there's still enough play in this to potentially resolve it behind the scenes. And I guess one question is also, what's the time frame of this? I'm happy to withdraw the motion, if it's your judgment that there's an opportunity to do some back-and-forth discussion that might produce the same outcome without drawing lines in the sand.

>> David Bacigalupi: I think it's pretty evident by everybody on the board that we want to have that resource here. But there's the matter of an influence is very critical. But I think the ordinance could be written with the

important parts of the council policy regarding liaisons. And I just think liaison seems to be a simple term but we could change that. I mean I'm not tied to that. But maybe the ordinance could say, the council representative. And it would be written including many of these important issues that are listed under the council policy for liaisons which would give us the access to the information, give the resource that this board needs for a council representative but protects it along the lines of the Cortex report, in protecting the board from the influence and the politics which is why this whole board was restructured to begin with.

>> Mollie Dent: So I'll answer the timing question first. I think perhaps Russell can correct me if I'm wrong. But I believe council did defer this to May. Now, I don't think they picked the meeting in may yet, that they deferred it to. But you will have probably another opportunity in maize to look at an alternative and make a recommendation on an alternative, if you want to. So if you wanted to look at recommending some different ordinance to council, at your May meeting, and you could give direction in terms of drafting that, then I would work with Russ to bring something back to you.

>> So nothing on their part is going to change between now and May?

>> Mollie Dent: Between now and May.

>> David Bacigalupi: One thing the council was specific on, we'll have their ninth member. That's one thing they want to include.

>> Mollie Dent: Right and they may get a recommendation from Federated. You may hear a discussion on that from the Federated meeting. For Brown Act purposes I have to caution the members of the board that any comments back to the council on the ordinance do need to go through the board meeting. They should -- that's the way the comments should go to the board -- to the council. So -- but you do have time to suggest a different alternative to them if you want to. I would certainly with direction from the board be glad to take -- to make an effort to draft an alternative ordinance, if that's what you wanted.

>> David Bacigalupi: Sean.

>> Sean Kaldor: I think maybe instead of drafting a full ordinance we could outline an ordinance to cover what the define the role as you know just the bullet point. I don't know if they need to go give them a code and they give us a code. So my recommendation it would be as you say we'll defer it to May, I think they were expecting the ninth board member to be able to give input to this as well but to maybe Mollie, have Mollie draft out the key points of what would be covered in this code adoption to include the liaison role as well as defining a little more carefully.

>> To me it seems really straightforward. Either you're a board member with full fiduciary responsibility and accountability or a liaison. I'm not sure why we're going back and forth here. There is council policy on what a liaison does. I think we all agree, based on the Cortex report we are not talking about having a full board member from a city council perspective. So I guess my question would be is this board comfortable with having a liaison and if so why are we just not moving forward in that direction and proposing that?

>> I second that.

>> Can you rephrase that, is that a question or a motion?

>> David Bacigalupi: We do have a motion on the floor.

>> Maybe that's a motion.

>> David Bacigalupi: We do have a motion on the floor which hasn't been withdrawn yet.

>> I'm willing to withdraw that in favor of trying this approach of just guiding the city council towards the idea that we think that the traditional liaison approach is appropriate. And that they should think about that.

>> Sean Kaldor: So you're proposing a simple note saying that -- can you phrase it in the form of a motion?

>> Can I make the motion for you?

>> Russell Richeda: Does the second agree with the withdrawal of Michael's motion? You're withdrawing?

>> David Bacigalupi: Michael's motion and Dick's second is withdrawn.

>> I would make a motion that we recommend to the city council that the position be a liaison position to the Police and Fire board.

>> I'll second.

>> David Bacigalupi: Motion and second. Discussion on that motion?

>> Russell Richeda: I guess it goes without saying that accompanying that would be some suitably modulated memo/letter describing why we think the member concept is really not appropriate. Because at least it's based on --

>> Absolutely. I think many of the points that Michael made should be noted in there in terms of fiduciary responsibility. Representation as a board member. All those things in my mind are very critical.

>> Russell Richeda: At least February 2010, five councils signed a memo suggesting councilmember. we might encounter more push back than we would otherwise expect.

>> David Bacigalupi: We are giving our recommendation. Council can do whatever they want.

>> Russell Richeda: That's why I'm saying a 74thing memo, regardless of their position in February 2010 we think they should reconsider that because there are some really serious issues.

>> In terms of it being he nearly fish nor foul.

>> Mollie Dent: How about asking staff to draft a letter for the chair's signature after the staff has reviewed the minutes I think they'll be able to come up with a letter.

>> David Bacigalupi: Did idea.

>> If I could comment on that, I'd like it to come from the entire board not just from the chair, there were specific comments about --

>> Mollie Dent: No no no, I think it should come from the board but be signed by the chair. I'm sorry.

>> David Bacigalupi: In the wording, I appreciate that.

>> Trying to work with everybody.

>> David Bacigalupi: Okay, any further discussion on the motion? Hearing no further discussion all in favor opposed that passes unanimously. That was simple. Okay. Item number 3.3. Update and status of 115 retiree health trust.

>> Mollie Dent: Yes, I'll be very brief about that. We do have Ice Miller under contract to the city attorney's office to assist with establishing the health care trust. And we've had our first conference call with them, with retirement services staff and the office of employee relations and we laid out a time line for having draft ordinances by the beginning of May I believe from them so at least we would be in place to have ordinances in place by June .

>> David Bacigalupi: Thank you Mollie, any questions of Mollie?

>> Make a motion to accept as recommended.

>> David Bacigalupi: This is basically to update on status, we can note and file that. Thank you. Item number 3.4. Discussion and action regarding Ice Miller contract amendments increasing fees by \$25,000 to a total of \$85,000.

>> One step ahead on the agenda.

>> Mollie Dent: You have the memo. This is your outside tax counsel and we would like to keep them on board for ongoing tax advice as well as finishing our tax determination letter filing process.

>> David Bacigalupi: Okay, I'll entertain a motion.

>> Motion to approve as recommended.

>> David Bacigalupi: Okay I have a motion and second. Is there further discussion on the motion?

>> Russell Crosby: Who seconded? I'm sorry?

>> David Bacigalupi: Hearing no further discussion. All in favor opposed the motion carries, one absent. Okay item numb 3.5, it's the approval for the secretary to negotiate and execute the fourth amendment to the agreement with the Segal company to increase the actuarial budget for 2010-2011 by \$25,000 for a total not to exceed amount of \$930,000 for actuarial services for the period 2006 through fiscal year 2010-2011. We didn't do this last month, did we?

>> No, last month the board approved the hiring of Milliman. This is the extension of Segal's contract to get us through June of this year. We looked at what the total contract is to date and what we need to get done by the end of June 30th. So this is to give us enough room for Segal to finish their work for the current year.

>> David Bacigalupi: Senior moment on my part. This is the question I asked on the agenda setting meeting. You gave me the same answer there, thank you. I'll entertain a motion.

>> Motion to approve.

>> Second.

>> David Bacigalupi: I have a motion, any further discussion hearing no further discussion all in favor, opposed -  
-

>> One quick question, when do we start the actuary process with Milliman to start the actuarial discussions? Which month?

>> As soon as we have a contract signed and so we're in the process of working with them.

>> Would it be in July on their start date or they start working on it before then?

>> No, it would be as soon as possible, as soon as we get the contract signed.

>> David Bacigalupi: All right, next item, he 3.6, approval of lifetime reduced retirement monthly payment option to be paid to Eileen Zamora, ex spouse of police officer Gilbert Zamora, to be effective fib 1, 2011, under part 17 section 3.36.3600 of the San José Municipal Code.

>> So moved.

>> Second.

>> David Bacigalupi: Is there any discussion?

>> Can this be moved to the consent calendar?

>> David Bacigalupi: I would have no problem.

>> Richard Santos: .

>> David Bacigalupi: We'll move that type of thing to the .

>> Thank you.

>> And just to clarify, this is an actuarially approved action?

>> David Bacigalupi: This is a court order of the split and the fund is not impacted. The divorced police officer is impacted but not the fund.

>> Start to collect now, like a lump sum.

>> Yes.

>> Does somebody from staff want to confirm that?

>> I didn't hear anybody say yes.

>> Does that exclude your change of retirement date?

>> David Bacigalupi: Donna would you address this please?

>> Donna Busse: Yes I believe the answer is we're doing it according to the Municipal Code.

>> So are there formulas that may not be actuarially --

>> Donna Busse: The actuarial staff is current handling it.

>> Okay, thank you. That's what I was wondering.

>> Mollie Dent: That was a previous action item I think.

>> David Bacigalupi: Okay. So I have a motion and second. Any further discussion on the motion?

>> Well I just wondered, have a further question. So we have no -- we have no discretion in how we treat this?

>> Mollie Dent: Right now, your formulas are set out in the code and so this one will be calculated per what's set out in the code now. But you have I believe you're talking about updating your tables at some near point in the future hopefully.

>> All right.

>> David Bacigalupi: Any other questions? Okay, hearing no other discussion, all in favor, opposed, the motion carries unanimously. Okay item 3. sen discussion and direction to staff concerning negative crediting of UAAL in the calculation of annual required contributions as requested by trustee Kaldor in a memo dated March 28th, 2011. And that memo is in your packet. Sean.

>> Sean Kaldor: Speak to my memo.

>> David Bacigalupi: You may.

>> Sean Kaldor: Many members of the police department and fire department and retirees have asked the question where surplus years were used to reduce the city's contribution rate made but so the question was asked, and reviewed, the City Auditor did a report and the answer is, sometimes come back as the City's always paid its bill or always paid its contribution. But other people have commented that they've always paid their normal costs or they've always paid their liability to it. So asking the question I asked our staff, I remember they're saying hey they took a break now they're saying there's a pension deficit now that's all caused by the three things the auditor identified and I wanted to know if this was something else, I thought it was a fiduciary responsibility to ask staff was there ever a reduction. I received a report \$78 million reduction in the City's contribution basically when the unfunded liability was negative, where we had a huge surplus, that amount was used to reduce their contribution to the plan. Had that been -- had that not happened, the returns on that \$79 million would be \$120 million in the plan today which makes our current unfunded liability 44% more than it otherwise would have been. So I think it's important to recognize it did happen. There was some question it did happen or how well understood it is. I didn't receive this information in the board packet but there's ample information about detailed analysis and the credit that were given each year so I'd ask staff to go back to 'anyway 93. This data is showing it goes back to 1985. So nearly 20 years of discounting their payment towards the normal cost by the surpluses in the plan. I see that as kind of a ratcheting that we allowed, as soon as there's a positive the money gets cut out and as soon as there's a negative it's a big bill that comes due. And what I'd like to recommend is to -- it's a municipal code requirement, it's built in from all of this information here, it's a requirement that we do it, built into the code we really don't have a choice. I'd like to recommend for council to consider changing the code so that in future when we do have a surplus there will be a day some day that those surpluses simply stay in the plan until again there is a negative or a positive unfunded liability and it's used to offset it in the future. It should be neutral to the city. It prevents money from coming out, reduces contributions into the plan in good years so we really had that fund saved up. I don't believe we have too much or too little moan, it is a matter of time frame. It is a matter of

years should work out. When we did actuary studies every five years and there was a thought this build builds up every five years. Now we do it every year, we adjust the rates every year, we don't have to let it build up i'm interested in other people's thoughts and discussions.

>> Richard Santos: There's a motion and second.

>> In my mind you're absolutely right, Sean. This does go to the environment where we have good years, bad years, good decades and bad decades. And interestingly enough in my mind this ties into another topic which SRBR. So you have a period of time where the City's contribution rate may be lower than normal because of the terrific market returns, use the market overall or the plan itself and as a result, and I may be speaking with assumptions that are incorrect. But now, a way of offsetting that is, let's come up with SRBR. The city's gotten off a little easy, so let's take some gravy off the top and shift it to the other plan. In my mind both constructs are a problem. So if we're going to go in the direction you're talking about then I think SRBR needs to be thrown on the table as well.

>> David Bacigalupi: In fact it is on the table for later on.

>> But we need to combine the discussion.

>> David Bacigalupi: Okay.

>> Just a quick.

>> I had an add-on to that.

>> Regards to that the city's liability is still the liability, it's just whether it's funded or not. Whereas the SRBR has siphoned the money off, gone from the plan. That's a drain on the normal return. Whereas the city's still liability for this. I understand -- now we're saying gee we're way unfunded. It's still a liability and I completely agree with

you. I mean I used to cover corporate plans and look at GM it cost them cents a share in earnings because they stopped funding the plan. It's whether the city has the ability to do it like right now.

>> I think what Sean is proposing really represents a very fundamental shift in the whole structure of the designed benefit plan, where the employer bears the risk of of funding. And what that means is in bad times the employer has to pay more. But in theory the way it has, as a historical matter worked with defined benefit plans is that in good times, the employer gets a benefit, even a windfall. I recognize that there's a lot of political and public policy reality that goes into the mix, and human nature, where you have a problem that during the good times, if the contribution rate goes way down, the money gets reallocated somewhere else and it becomes very, very painful then when bad times reemerge, to go asking for that -- for that stream to then be diverted back to the pension system. And I actually have some personal history with this issue myself. I remember in the late 1990s, really, struggling with this issue, because I could see where I worked actually in government at the time, they hadn't paid pension contributions in at that point almost 15 years because they were so overfunded. And it was very clear to me though that at the same time, that if they were -- if they were at the point that they had at some point in the future actually asked for a bill or presented a bill for a contribution that it was going to be hugely painful for them because the money really had drifted away to other uses. And in fact actually I remember the director of finance in the company I worked for came to me at one point because I was on the pension board and said I probably would -- I'm probably not supposed to say this but I think you should make us pay something, not the normal cost, but just keep it in the budget. I remember going to the chief actuary of Cal PERS and having numerous conversations with him and he was very adamant that this skeptic was inimical about how a defined plan was structured and one of his best arguments actually was that at that point in Cal PERS the 2000 individual -- Cal PERS is an agglomeration of 2,000 individual plans for various local agencies plus the state, et cetera. That of the 2,000 something like 700 of them were superfunded oop what superfended is that into infinity no additional contributions should ever be needed to fund the plan. But each though no contributions are ever expected to be needed under the actuarial projection, there is still a normal cost that is incurred, every year. And so his argument, the actuary's argument was, it's completely nonsensical to actually say I've done the math and I don't think your government organization should ever have to pay another dime into this plan ever, but may me anyway. That it was just a really, really bad allocation of resources to do that. And I thought that was a powerful argument. And now, I guess

the one other point that I would make is that I know there's actually legislation pending in the state legislature, that we're doing exactly this with the state pension plans is that they would be required to pay the normal costs every year regardless of whether the actuary said that the contribution was needed. And so what I think I'm really saying is I think this is a very, very far-reaching proposal. And I'm not comfortable just kind of on the spur of the moment, making a policy recommendation that that's what we should do. I'm absolutely open to entertaining ideas along this line, particularly the idea that my budget director came to me with ten years or so ago, saying make me always pay something. But the idea of making the employer always pay normal cost I think is more think of a much bigger discussion.

>> David Bacigalupi: Okay, any other board members? We have somebody that would like to address the board?

>> Yes, my name is Bob Brownstein. I was budgetary director for mayor Susan hammer in the 1990s I think the direction that trustee Kaldor is suggest is a good one, if not for the City of San José, for other jurisdictions. When you have a situation in which local governments are able to significantly reduce their contributions to the plan what you wind up with is significant distortions of local government budget policy. Usually when the plan is in good shape the city is also in good shape. There is a period of prosperity, tax revenues are positive and it's in that climate in which the city is essentially securing additional resources for expansion of public services. That's a good thing, except that eventually, the cycle changes. And when it does, you wind up with very severe other kinds of public policies, because additional contributions, supercontributions have to be put into the plan in times when city revenues are low, and the unfunded liabilities are high. Looking at the city budget over the last 30 years, and I've been an observer if not a participant in working on those budgets during those three decades, San José would have been much better off if it had held to the kind of policy that trustee Kaldor is talking about and that there was restraint in the relatively good times when the plan was strong, and there would have been more resources available to offset the significant unfunded liabilities that are happening now, to assist the city budget at a time when tax revenues are facing historic negative pressures. Now, it may be that the issue is complex enough in terms of some potential future period in which the plan is so well-funded that it can go on forever without any city contributions. And if the board wants to envision that, and talk about it, that's not an unreasonable thing to

do. But in terms of the at least three decades worth of experience here, it would try to make sense to try to move towards the kind of idea that trustee Kaldor is talking about. Also let me conclude by saying, how personally pleased I am that he has placed this issue, directed staff to do work on this issue and brought it before the board. It is astonishing the extent to which the City of San José has been unwilling to acknowledge the fact that this behavior took place in the past. Despite the fact that San José has not done it to the extent that many other jurisdictions did, they took complete pension holidays, San José didn't. San José is almost unique in terms of trying to sweep it under the rug and stand on the rug after having done that. So it's good that the truth is being debated. Thank you very much.

>> David Bacigalupi: Thank you Bob for your very experienced opinion. Okay. Discussion, Sean?

>> Vince, did you --

>> Vincent Sunzeri: In my mind, I'm elaborating on everything that has been said here. Creating that rainy day fund that every city should be and every pension fund should do. I really like that concept and I think it's important for us to look at that. In the context of how overfunded and how underfunded the plan is as well, that may increase or decrease creating these corridors in terms of the city's contribution. Undoubtedly, we could send market returns have improved, the portfolio returns have improved and we've made significant contributions.

>> David Bacigalupi: I also agree with Sean, I mean I just -- you know if you have the extra money, it just I mean, history tells us that have that in place and saved it, would lessen the impact of what everything else has happened to the plan. So Carmen, you had something to add into it, and then Damon.

>> Carmen Racy-Choy: I just want to place the discussion in context. Just two years ago, the discount rate was set such as the probability over a 30-year period of actually earning that discount rate, was only 18%. And although significant steps have been taken, the discount rate has been reduced, and further reduction is contemplated. Really, the probability over a 30-year period of meeting the current discount rate is still only 25%. So the probability of actually not needing more money from the city is very, very low. So the potential of

being overfunded is there. Again, actuarial surplus is not real surplus. So we do annual valuations. The annual valuation is meant to be more as a policy check. If the annual valuation states that there is a surplus, the reality is, next decade, it will probably be wiped. And the reality is, given the current methodology, the current discount rate is metropolitan to be more or less, at the time yonder state what you really earn in good periods and it will overstate what you will earn in bad periods. On a 30-year horizon, one would probably make it. To look at the situation and say yes I'm really overfunded so yes I should take a holiday, I'm not sure that I would consider that to be real surplus. So I would say taking action based on the annual valuations is probably inappropriate. I would also saying that taking -- reducing -- paying less than the normal cost is in fact an intergenerational transfer. The city did it in the past. And the reality is, this was a transfer from one generation of workers, a current generation of workers and the current taxpayers are actually going to pay for it. So it's in a way it may be unequivocal -- I mean there's equity issues around doing it. So it's a complex issue and definitely it requires I think greater discussion. But just wanted to provide some context.

>> David Bacigalupi: Thank you. Damon.

>> Damon Krytzer: That was actually exactly my point, too. And I was -- I'd be less interested in entertaining anything that had a review of whether or not there should be a holiday in the future. And just a more binary stance of you know, pay or don't pay. I don't think actuarially, that be that's not the case anymore because one or two, big years, you know all of a sudden just knocks that you know you never need the fund away. So from a pure quantitative standpoint I don't think the point exists where the benefit of a holiday does come into play.

>> I would just also add that, you know, it's also pretty theoretical because as these funds become way overfunded there's a tendency to increase the benefit levels which also contribute to our current situation that we're in.

>> David Bacigalupi: Mike.

>> Michael Flaherman: I think actually -- let me start with what Carmen said. Regardless whether or not it's a low probability, we're actually having a discussion about what we would do if that low probability event cost to pass. I don't think that matters as far as the low probability event but Sean raises an important point as well, which is at the point you become overfunded there's intrinsically pressure to raise benefits. And I've lived this experience, actually it's incredibly hard to imagine right now but in an overfunded situation you will get hammered politically for collecting more money than an actuary says you need. And people will accuse you of doing it for purposes of setting it up to enrich benefits. In fact it will look that way, like it's just a Feifdom we can debate whether the word science should really be applied to that undertaking but they will all sit there I mean and the city will have a hundred of them and it will say that it's not needed and so you will not get credit for being prudent and you know building a rainy day fund. In that moment you will look loot empire builders who are trying to set up a scenario to massively increase benefits. And the challenge is that there is really a lot of power and a lot of responsibility inherent in being able to just hand the city a bill for a large part of its budget. And to depart from a well developed discipline which is this actuarial science stuff about how it's computed and just say well, in our infin it wisdom we decided Utah be better off paying more. It's a big leap, it really is.

>> David Bacigalupi: Thank you, Sean.

>> Sean Kaldor: I appreciate what you're saying, can I definitely see when the fund is 120% funded, everyone is going to come and say he let's decrease the plan city council can stand strong and telling them how to run their job, that's something they have to deal with it's a negotiation with different bargaining groups. They're in a situation now though where there is no money. There is no bargaining. They're talking about laying off another 400 cops, another 150 firefighters. contribution rates going from 58 to 65 to 74%, this massive structural deficit by the program that we're running here. I'm not telling them-d I wouldn't propose that we say you must pay your normal cost or -- I'm not proposing we'd move forward on settling specific guidelines but to the degree in which this issue is not understood by those councilmembers, that are setting the budgets and thinking about their costs and looking forward, I think it needs to be understood by them and that ratcheting impact be recognized for how much it would solve the problem we're in as well. I get the SRBR issue as well, when there's extra money in the plan everyone said let's look for additional benefits to hand out to people. I get that as well. We as a board can't

negotiate benefits, what we can say is what we recognize is putting the city in financial hardships by financial contributions being required. Looking at this analyzing the issue from the council level to consider whether they want to make a change is I think something we need to bring up with them and consider and do as they like. If they decide not to they decide not to. From my own standpoint, I would always want to have a little money set aside cps is ongoing costs you know that bill will eventually come due. So just so they understand what's going on I'd like to forward it to them with a recognition that using those surpluses, not using all those surpluses in positive years might be a better way to cover these difficult years.

>> David Bacigalupi: Thank you, Sean.

>> Richard Santos: What Sean proposed has not had an SRBR, the issue may have been resolved and maybe not came where it is today because of those enplacements. I know if Bob Brownstein says something it's like E.F. Hutton, you listen, it's a great contribution and that's why I seconded it.

>> David Bacigalupi: So where do we go from here?

>> Sean Kaldor: So I make a motion.

>> David Bacigalupi: Okay.

>> Sean Kaldor: Motion that the board forward this information along with a cover letter from staff, advising council that to the degree this municipal code rule has resulted in our current unfunded liability, and extend the opportunity to work with them, if they're interested in looking for ways to address it.

>> Second.

>> Mollie Dent: It's a substitute motion, because you had already made it.

>> Sean Kaldor: I think I was blabbing earlier.

>> Mollie Dent: And your second seconded it.

>> David Bacigalupi: I have a motion and second.

>> I would say that that's a much more acceptable course of action to me because it's not prescriptive about the contribution level. And I totally agree with Sean about the point I think that's at the heart of his motion which is that there's complete lack of understanding about the pain that comes from large contribution increases, and the fact that what that represents is an enormous percentage increase over contributions that were you know very, very reduced and in many cases close to zero or actually zero. In other words people don't know that they had it really good. Now they think that it's mismanagement that is the reason why they have it bad and they don't understand that it's a fluctuation. So I'm supportive of this motion.

>> David Bacigalupi: I'm supportive of the motion as well but I appreciate the experience that you bring with the fact and I hadn't thought about this when I was reading through the memo, that lining up the actuaries, I mean I could just see that happening. And I could see the pressure put on the board and everybody to spend this money this way, that way, benefits and whatever. And how that also creates negative impact and stuff. But I think this is a good motion. It just brings it to the attention of the council and I support the motion, as well.

>> Sean Kaldor: Likewise I support, I just want to clarify the documents we received today, they're going to be sent to council, these current documents, that's going to be in the packet?

>> Russell Crosby: I think if you direct it.

>> David Bacigalupi: I think that's what Sean was saying plus a cover letter from staff.

>> I haven't really reviewed though documents, we got them today.

>> What we are basically sending over to say only you should read this. Is that what we're saying?

>> Our analysis of the data shows that this practice, policy, law has resulted in this current financial situation to this degree or that degree and so you understand that is an effect of that and if you want to talk about it we're available further.

>> It's kind of a large issue, not let them say okay thank you move on I don't think is reasonable. Rest Sean was saying he didn't.

>> Practice is that a.

>> Mollie Dent: I want to kind of address a little bit of an issue here. There's a memo from our office, that's in the file. But the memo doesn't say that the code says it has to be done this way. In fact, if you read through the information, the practice started in 1987, before this -- ten years before the memo was written. And I believe that the practice, it was actually the practice in the board in setting the contribution rates. In other words, the contribution rates are in your actuarial reports. And so I think maybe the approach of saying that the practice has, look at what the practice has resulted in, is something that you might -- is fine. If you want to point that out to the council. But I believe that the documentation will show that the numbers that are in the memorandum that our office wrote are actually straight out of your valuation reports. So these are the numbers that the plan actuaries provided for contributions. Not -- not something the city provided.

>> This is what the board requested of the city at the time.

>> Mollie Dent: Right.

>> So it's really coming back to the board.

>> Sean Kaldor: That's what I want to be clear about. It is something we can address, Mollie please, I want to understand that opinion, if it's in our power we do it.

>> Mollie Dent: I didn't look at it to this point. Nobody asked us to look at it. I saw the memo that you wrote and I saw the memo from our office and I realized that when I looked at this, the memo from our office was actually ten years after the practice started. It was pretty clear as far as I could tell it wasn't. And when I read the memo from our office, I didn't read it as saying it had to be done this way. But I haven't independently researched that, either. Sceld so the memo from your office, city attorney's office December 29th, '97 says, on page 13, while the board may receive comments -- none of these groups have the authority to set the contribution rates however the board does not have the authority to change the plan.

>> Mollie Dent: Right.

>> Sean Kaldor: Any changes of the UAAL would require that the city council adopt an ordinance to amend the municipal code.

>> Mollie Dent: Right, and I don't think you're talking about changing the -- already, the council has already changed the contribution to the UAAL. Last year they adopted UAAL contributions for some bargaining units. So the negative crediting of UAAL, if that's the correct terminology, I -- I don't -- I don't read this memo as saying that it has to be credited this way. But I also don't read it as saying that it can be credited a different way. What I kind of read this memo as saying, because this memo was written to the boards, as saying well, the way that you have done the negative crediting of UAAL in the past is okay under the municipal code. That's because the board, through -- the boards accepted the reports of their actuaries, that had this negative crediting of UAAL. So I read the board's attorney as saying, what you boards did in the past was okay under the Municipal Code. And I haven't, as I say, Sean gone any further to try and see whether or not the board would have the authority to do it differently. If your actuaries recommended it differently.

>> I have a suggestion. Sean you might want to consider adding to your motion, that we commission Milliman and that might be too long a stretch to do that, for them to do a study on this and come back to this board with a recommendation. Or two considerations. That way we have some hazard concrete data to understand what the impact would be, in making changes. Because it does sound like this is circulating back to the board. Information is great but we need to make a addition at the board level of what we should be doing going forwards.

>> Russell Crosby: And quite frankly, this problem isn't going to occur again for probably a generation. It's going to be a very, very long time before these plans get anywhere near fully funded.

>> David Bacigalupi: It sounds like obviously this is going to be a long time before this really gets implemented or impacts us again. So I'd ask the maker of the motion, I think Vince has a real good idea, that we have somebody take a look at that and report back to the board before we go to the council with the idea suggested in your motion.

>> Vincent Sunzeri: I think one thing that that course of action could really help with is that I think Milliman would be able to create a brief presentation that we could actually use with the city council, and with other stakeholders and the general public, the press, et cetera, to show very succinctly and clearly, how the city and the taxpayers in the past, reaped a windfall from surplus. And that it's not just that things were normal, and that spun out of control. That's not the comparison that we're make over time, but that things were really good and now they're bad. Right? But I do think actually that an actuarial firm like that actually would have some very smart ways of aggregating and presenting that data that I think could be quite powerful. So I support that idea.

>> David Bacigalupi: Damon.

>> Damon Krytzer: There's a little bit of bias in using that as well because I'm not saying that's good or bad but I'm saying that's the ongoing benefits of having an overfunded pension plan, all of a sudden they take a holiday. Wow, great, we just hired whatever, 200 teachers and built a school and we have to keep paying these teachers. It would be good at some point, and this is getting a little deep now, maybe it's not really reasonable, to

understand what the bevers benefits were in the years that the payment wasn't made and maybe have this discussion with someone from the city involved as well. Before or after, you know, we have this actuarial study done. Because we do have this benefit issue too, as soon as things are overfunded, it's a big drag and frankly no mayor's going to get elected whether or not that's our issue by keeping this money in the plan when -- you know and saying look, we can't afford books in the schools. I mean I'm not really sure -- I guess I'm just bringing this up as a point and trying to figure out if there's more of a sustainable way for us to have this discussion than just putting a bunch of numbers in front of someone that we know aren't going to be able to be held to at some point in the future.

>> David Bacigalupi: Okay.

>> I think until we get our arms around some numbers we don't know what the discussion is going to look like.

>> We know some of the numbers right?

>> We have historical numbers but we don't know about the discount rates that may change as well.

>> But if the market's not going to be up -- we're going to be 8.5%, 9% assumed rate of return, things are going to be different. to have specific numbers I'm a little indifferent as to whether we do this before or after so I'd be fine with doing that as well. I'm just saying we have the spirit of the issue and if we're off by \$50 million, \$100 million it almost doesn't change the conversation, right, for the future.

>> But what is the dollar amount? What is the funding level? Is it normal --

>> We're saying should it be funded, is it overfunded or not, it's a more basic question. We're going back, not looking forward. Wee basically saying you should have done something differently and we don't want you to do that again, that's the spirit of what we're saying and we could spend 100 grand in fees to do it or we could have the discussion first and then try to do that when it's a little bit more concrete.

>> To Damon's point we can't change the pass and we can't go fix what past boards have recommended to the city. But to Sean's point in terms of noting for future, I think like Russ said it's going to take a long point before you confront that issue.

>> So I still can't support -- I guess my last motion is send it to city council, make sure they're aware of it, be clear, the offer is to them, if actuary studies are needed, we'll do actuary studies, if legal analysis is needed we'll do legal analysis. This is past practice, this is the groundwork for it, based on current estimate from staff this is roughly where it was, here it is so everybody ask on the same level of information at the time. If they're adamant, they benefit in the good times and they have to pay the cost in the bad files, then that's their decision in plan construct ultimately.

>> David Bacigalupi: That is still the motion on the floor.

>> And my final interest would be for Carmen to comment about this and your thoughts regarding this topic.

>> Carmen Racy-Choy: By the way, this discussion is normal for all pension plans. I don't know very many pension plans that haven't debated this issue. I think rationale behind the current policy is, since the city bears the investment risk, the thought is that they should benefit in good times. So that's the rationale. In reality, though, ultimately the employees and the taxpayers are bearing the risk. In bad times and in good times. In good times, more firefighters, more police officers get hired. And maybe some of the savings of the money that would have gone into the pension plan go into schools and so forth. However, in bad times, fundamentally the money dries up and people lose their jobs and so forth. So really, ultimately people are paying the price on both sides. So I've tried to provide the rationale behind the existing policy and again I totally understand the rationale behind changing it. There really isn't an easy solution. There isn't necessarily, right and wrong. These are the pros and cons of both approaches. Asking the city to pay the normal cost may make sense theoretically. there is also an issue with the fact that if you don't pay the normal cost it is in fact an intergenerational transfer from one generation into another. It is a winds fall that somebody is taking at the expense of somebody later on. There's

really, there isn't necessarily, I don't know if I've provided helpful comments but there isn't necessarily a right or a wrong.

>> Do you see the benefit of having Milliman do a study, or is that trying to negate what we're doing here?

>> Carmen Racy-Choy: To the extent you have questions or you want to ask Milliman's opinion, we can definitely have them by telephone or in person come and talk to you. They have essentially discussed with most pension plans. However to do a study I'm not sure what is it they would look at. We know the impact of the contribution holidays that were taken. We know how much they would impact the current contribution. I'm not sure they can tell you something more. If, however, your people their input would be needed in helping craft, maybe guidance to the city, I think that might be helpful to just bring them on, and sort of hear their opinion on the matter.

>> David Bacigalupi: The only thing I would add is Sean's motion is just to bring this to the city's attention with what we've got. There's enough here to understand the problem then created part of what's going on now. And do you want to work with us and see what we can do about changing it? Council says no thanks, then we haven't spent any money going up an alley that we don't need to. I think what we're doing by Sean's motion is opening that door.

>> Sean Kaldor: Might be an opportunity for the City of San José and this plan to kind of set precedent, what everybody else is doing. maybe we innovate but that's all up to them.

>> David Bacigalupi: If there's no further discussion, did anybody need the motion read back?

>> Sean Kaldor: Someone's going to tape on that.

>> Russell Crosby: For the board to forward information cover letter developed by staff to the city council, and highlighting the degree to which this calculation rule contributed to the current situation.

>> David Bacigalupi: That from your own notes, hmm?

>> Sean Kaldor: Again to be clear that we're available if they want to work through to come up with alternatives or further analyze the impacts.

>> David Bacigalupi: Okay. Hearing no further discussion, all in favor? All opposed the motion passes unanimously. Thank you Sean. Okay, next item on the agenda, item 3.8, notification of board decision regarding the recommendation to the city council for the 9th board member. As of our special meeting yesterday, this board unanimously recommended candidate Andrew Lanza to become the ninth board member. That is being forwarded to the city for their action. So that will be note and file.

>> Sean Kaldor: Will there be a call made to Mr. Lanza advising him of that?

>> David Bacigalupi: Yes.

>> Russell Crosby: We'll calm all of them.

>> Richard Santos: Dave, can we take just five?

>> David Bacigalupi: Okay, I got a request, why don't we take a five-minute break. [ Recess ]

>> Conrad Taylor: Convene the meeting. Chairman Bacigalupi had a meeting he had to attend to. Old business. 4.1, discussion and possible action regarding supplemental retirement benefit reserve, SRBR. Letter A, letter from Moscone Emblidge and Slater, LLP representing the association of retired San José police officers and firefighters regarding the board's administration of the supplemental retiree benefit reserve. B, letter from SJPOA regarding demand to meet and confer and potential grievance over city's unilateral suspension of SRBR payment and retirement board's failure to transfer requisite excess earnings into SRBR, and C, letter from Jay Wendling

president of the association of retired San José police officers and firefighters regarding SRBR. Background information on ssh, memorandum from City Attorney Richard Doyle to city council dated November 5, 2010 concerning proposed ordinance and resolution related to suspension of are distribution of SRBR benefit payments. D two little I's, legal opinion from conflict counsel Russ Richeda dated 11/22-10. D 3 little I, legal opinion dated November 23, 2010 from senior deputy City Attorney Mollie Dent. D little ford SRBR suspension memo from Alex Gurza, office of employee relations, dated October 29, 2010, City Clerk Lee price dated October 21, 2010, mayor Chuck Reed, October 23, 2010, City Manager Deb Figone, dated, 10-22-10, resolution number 71870 and resolution 70822. And V, staff memo dated 12-13-ten letter of Segal dated 10-28-10 staff memo dated 11-23-10 and resolution 3683 for transfer of SRBR funds.

>> Lot of reading Conrad.

>> Does anybody want to discuss it?

>> Every year a certain amount of money is put in to fund that and then returns on that above our expectations a piece of the returns above our expectations are paid out based on a formula. What's happened is, due to financial environment, there was concerns about paying a supplemental reserve when the plan is such at large levels of unfunding or large unfunded liability. City council passed a Municipal Code change or an ordinance change that says we are not to make any distribution. So we ultimately funded, we took the money from our pension plan into the supplemental retiree account which is still part of the plan, and that move does not affect our unfunded liability and does not affect the assets of the plan and we've not made any distribution of that. At the time we had two legal opinions about whether we need to make a distribution or whether the City's municipal code change would not permit us to make a distribution. From the city attorney's office Mollie Dent representing us said that we are not able to and as I understand, I don't want to put words in your mouth, Russ but in your analysis at that time, you said we could but once the code had taken effect, it would not be permitted for us to make that distribution.

>> Russell Richeda: I didn't make any arguments on the latter points Sean. I'm ready to address it today. But Mollie did address that point in her memo.

>> Sean Kaldor: Okay so now we're at a point after the code has taken effect, the code was a change to the plan. There should be no distributions to the plan until June 30th and what we have are the beneficiaries of that SRBR, people of the vested right, coming to us saying we need to make that payment. So that's kind of where we are.

>> Conrad Taylor: Mollie.

>> Mollie Dent: I would add only that the ordinance that was adopted by council to suspend the payment for the remainder of this fiscal year, the council did -- that has been referred to you for study and comment back. There is a process for even when they do adopt an ordinance, for to you provide comments back to them on the ordinance. So if you want to --

>> Sean Kaldor: And we have not done so.

>> Mollie Dent: And you have not done so. That is still an outstanding issue if you want to provide comments back to council. Board member Kaldor is correct, the earnings transfer now, if you're looking at the Moscone letter, the earnings transfer has occurred that was done. And the council ordinance that was adopted, is just for the remainder of this fiscal year. So effective unless council does something else, effective July 1st, it would go back to the prior code reading.

>> Russell Richeda: Conrad, I don't know if you want my two cents on where I think the issues are forward. Now, I think the only -- the plan has been changed by the council. They're suspending the SRBR for the rest of the year. So there won't be a an SRBR descrirks for the rest of this fiscal year. Mollie in her opinion has concluded that no participants have a vested right in that distribution. I think that's clear, I think there's probably and evening though the law is not certain, the vested rights doctrine in a nutshell for the new members is a fairly common public sector pension legal principle, throughout the country. And it's developed in the last 50 years and can be crudely summarized by saying that the plan of benefits in existence on the date that the employee is hired, that

that employee has a vested right in those benefits and they cannot be lowered during the time of that employee's employment. They can be enhanced and that employee has a constitutionally vested right in those benefits. It's perhaps an odd doctrine in the current environment but that's the doctrine. I have issued other material to the board in the past saying it's not quite clear if there is such a doctrine under the contracts clause of the federal constitution. But there is clearly that doctrine under the contracts clause of the California constitution. That's just a quick background. But what do you have a vested right in? You have a vested right only in the terms of the plan. So the plan in 2002 was amended to add this provision. This provision only talks about that there shall be, A, distribution each year prior to the council's suspension. It doesn't say the amount of that distribution. It doesn't give a mechanism for calculating the amount, presumably it has to be more than just a de minimus, you know, a nickel probably wouldn't have satisfied it but it's not clear what would have satisfied it. But that's all you have the vested rights in. And only those employees who were hired after 2002 would have a vested right. I'm sorry, not hired. Only those employees who were active as of 2002, and then in particular, retired between then and now, would even have a plausible vested rights argument to say, you have to distribute something to me every year. So it's a small subset of individuals, or comparatively small subset of individuals. And it of course maybe most dramatically does not deal with the individuals, the long time retirees whose retirement benefits are much lower than those individuals who retired after 2002. But the plans -- whatever a distribution might have meant in the preamended version of the SRBR provision is, in one sense, been outmoded by events. The council has determined by amending that provision in the Municipal Code that there's not to be a distribution during this fiscal year, I'll say. Now, do you have -- but then someone could raise those individuals who claim they have a vested right, that that plan amendment was not legal. So the legality of it is perhaps up in the air, though, and perhaps that's the import of some of the documents you have in front, at least the Moscone letter. Even conceding that that's an issue, what role do you have as a board with respect to plan amendments that at least some parties are claiming are illegal as violating some broader principle of law that's applicable to the plan sponsor and applicable to this board? Well I think at least you have a fiduciary duty to comply with the law. And in some cases then, I think you might have a corresponding duty to determine what that law is. Analyzing or making -- drawing an analogy to private law trusts, let's say a family trust, there's a trust agreement, the trustee, knows he has to administer that agreement. Trustee has a question about what it means, not necessarily the legality but just the meaning of it can seek clarification from the superior court, is a logical answer for you but not one I'm going to

recommend to you an more immediate reality is what happened in Orange County. You may or may not be aware that the county of Orange about ten years ago adopted the 3% at 50 formula for deputies, very expensive but they did it through an impeccable process. They crossed every T dotted every I. They knew what they were doing. Then nine years later they decided oops, not the way to go. So they initiated litigation to say they violated relevant constitutional provisions by adopting that -- agreeing to that benefit formula and they want their decision resintded. And there's been litigation before the Cal Supreme Court on that precise issue. That's the background. What quandary, what issue did that leave the Orange County retirement board? A much more enhanced version of this issue. Because the Board of Supervisors said that 3% of 50 formula doesn't apply anymore. Now, the retirement board there had is the same issue of trying to decide well, what are we supposed to administer? Are we supposed to administer the 3% of 50 formula, are we now supposed to administer the prior formula for deputies that wasn't so lucrative that didn't generate the same results, that retirement board decided not to participate in that litigation. And instead it's been the deputies first the county for the last several years. I think you have the same decision here. I think you -- you have to be persuaded first, there actually is a vested rights and that the council action has been taken in violation of that. At least to those group of people that you think are relevant. That however, hasn't even been done. And if you want to proceed with that, that would be step 1. But step 2 which may eliminate the need to do step 1, is you are going to have to further decide, if you're the appropriate body, to contest this issue, assuming you are satisfied that it's illegal. And I am not sure personally if you are the appropriate board, the entity to raise this issue. I think you -- I think you can if you wish. Assuming you find it to -- that you're persuaded that it's illegal action. I think you would have the authority to do that. But I think for you, it's a fiduciary issue, and as always, you have to weigh the -- what you conceive of as the relevant fiduciary factors. To me, some of the relevant fiduciary actions is that this is temporary, six months. Number two, that you've been participated or you've been invited to participate in the process of coming up with a revised SRBR, and number 3, and this is maybe an equity factor, the only individuals I think even under the most robust interpretation of the vested rights doctrine who would benefit from litigation in this case and overturning the council's suspension is those people who have retired since 2002. Not the ones who retired before then. And therefore, the ones who arguably are getting the most enhanced benefits, rather than the individuals who retired 30 years ago and maybe are receiving a much less robust benefit. So you might not feel that this was an appropriate body. This is an appropriate expenditure of trust assets to teal with this issue in the con-- with respect

to that class of individuals. So I at least would think you have no fiduciary obligation to pursue this litigation, even if, and again it's still and if you are persuaded that there has been a breach of vested rights by the passing -- by this suspension. It's a long-winded explanation but that's where I come out.

>> Can anyone say how many individuals there are in this class who are affected?

>> Mollie Dent: I wanted to just point out, if you in my memoranda, the false of the vested rights is on page 5, in the paragraph right above the conclusion. So we did say that retirees who retire between January 1st, 2002, and June 30th, 2010, have a potential vested rights claim. So that's what Russ is speaking of. That's the only group that even have a potential claim. Russ is correct, and Sean is correct, that our office concluded that there wasn't a vested right to a particular distribution in a particular year. So our office, then, at the very end of the memo on page 5, we said suspension of the distribution as directed by the ordinance will not violate any vested rights of employees or active retirees. So we looked at it from the standpoint of what's the universe of people who might have a vested rights claim and what would their -- what would they have a claim to? And because of the issues with how the ordinance is worded, in terms of what the amount of the benefit should be, and how it should be calculated, and because of the distribution resolution itself, which very much favors older, longer-term retirees, you have a class of people, those who retired between 2002 and 2010, who, even under the current distribution formula would have received the very least amount of money. And, under the current distribution formula, the council had the ability to totally take that money away from that group and give it to a group in whom the benefit wasn't vested at all.

>> I'm just trying to understand, how many people in rough terms potentially would have standing in this action?

>> Eight years how many people retire a year?

>> It really varies.

>> Something less than 800.

>> Is there anybody in this audience who authored one of these letters? I'm just trying to get some feedback about whether there's anything out there who is on a path to actually bring a legal action. But there's nobody here to really address that.

>> Mollie Dent: I can -- I think that I can -- I don't think we've had a claim against the stie. I think is there -- there is someone from OER. I suppose they could probably say whether or not they have taken the union up on the meet and confer issues.

>> Russell Richeda: And with respect to the retirees I'm not aware of any letter from any legal counsel of the retiree association authored after December 29th. It's been quite a period of time.

>> And does anyone on the board who is associated with one of the employee unions have anything to say about whether there's anything percolating that they'd care to share?

>> I wouldn't want to speak for them and I wouldn't know. I'm not an elected member of any other boards. I think there's an openness to look at the formula. And come up with something that would satisfy the concerns of the council and the retirement board and the members of all the plans. But I don't know anything other than that.

>> I guess my reaction is along the lines of what Russ and Mollie are recommending is that we are in a quandary and the people who are really in the best position to pursue this are those who are potentially harmed by it. And that the fairest thing for everyone would be probably for them to act on that consistent with their rights.

>> I would agree with Michael's comments, it's between the city and the retirees as far as legal discussion. But it sounds like the city council would be receptive to some feedback on the actual formulas and our thoughts on the distribution of the SRBR. Sean and I have casually discussed this when we were at the Stanford thing. Mr. Wend Ling retired the longest, so it dogs seem to me that spending some tinge on the actual formula for the distribution might make some sense and then just forward that information to the city council so that when they are

reconsidering it in June, distributing money from the SRBR, here's the formula that we would recommend. And that might make them a little more politically hospitable to the idea of distributing some of that money.

>> Conrad Taylor: Damon.

>> Damon Krytzer: In some extent why it was created to be a dying issue as well, the people it was created for, I may be wrong --

>> Bad use of terms.

>> Damon Krytzer: Fair enough. I didn't mean it that way, I just meant it's an issue that's going away simply because we have a 3% inflation adjustment, right, and this is not something that people who have retired in the recent past are really experiencing. The analysis is that the plan was established based on distributing excess earnings and there's quotes around excess, right? This is exactly contra, to the discussion we just had, whether or not the city makes these payments on an ongoing base when the plan is quote unquote actuarially overfunded. All we have the ability to do is adjust the formula and if we can adjust the formula truly to reflect the spirit of what this is supposed to do so we don't have to address this issue down the road again, or if we can you know open up the discussion to amend this entire policy.

>> What I would like is I would like the labor organizations to participate if we're going to adjust the formula. That way we have an idea. We don't want to be adjusting a formula and all of a sudden it's in correct and we would have the labor organizations say no we disagree to it.

>> Mollie Dent: Let me explain that if you did want to look at the formula for distribution it is embodied in a resolution that is adopted by council. And so for this board, I believe -- the ordinance reads that the council and the board both must agree on the --

>> We make the recommendation to the board and to the city council?

>> Mollie Dent: Yeah it's not of a -- with this particular issue with the SRBR I think it's something that is supposed to be agreed upon by the board and the council. But don't even have the distribution resolution in your packet today.

>> Russell Richeda: It is but it doesn't matter.

>> Mollie Dent: Okay, okay, so it is in the packet I'm sorry it's tucked to item little 4, Mr. Gurza's memo. But you probably don't have a lot of the background information on the distribution formula in front of you. But the -- if you wanted to change the whole declaration of excess earnings and the whole transfer of excess earnings into the SRBR that would take a code amendment. That's not -- the distribution resolution just is who gets, and how much do they get.

>> As a member of the retired Police and Fire association, I'd like the meeting here to be aware that we are talking with the city council members, and local 230, and the POA, our parent organizations, about working for a different point system for distributing. We understand that it's not a politically good thing to offer somebody who's got a \$104,000 pension to get an extra SRBR check, even though it's excessive earnings on his money or at least partly his money. But we try to work with the city, to get through this thing. So what was suggested is in progress.

>> Conrad Taylor: Thank you. Dick.

>> Richard Santos: I think what I've heard is what you just suggested also, that when you look at it and have everybody come together, I think the intent was, well, my understanding was, when people left it was to protect the people who had less. And unfortunately, the formula got misinterpreted or whatever have you and it got out of hand. I think if all parties get together it would be a lot simpler and go back to that and everybody is going to be happy in terms of whatever this money can be -- surplus money can be given to people who need it the most. And like I say if the labor groups come together with everybody and work that out we might be able to solve this a lot more faster and with a lot less pressing headaches and so on.

>> Hi, Aracely Rodriguez from the office of employee relations. I just wanted to point out we do have an agreement with local 230 that includes a side letter on the SRBR program. We do have that side letter, we can provide you with a copy of that. Any subject that is a mashed of meet and confer process and the City Manager is a designated person for that who has delegate they'd to Alex Gurza and the office of employee relations. So while there are discussions going on with the city council, anything that's subject to negotiations would have to go through the negotiation process through the office of employee relations.

>> Conrad Taylor: Thank you.

>> So what I see here, this is item 4.1 Di, the letter from the City Attorney Richard Doyle, it looks like this board actually has the power to determine the methodology. That's clear. We have a lot of flexibility as far as the methodology of distribution, is that not correct?

>> Mollie Dent: Not the methodology. The methodology of distribution is set out in the current resolution and then it's been suspended for this year. What the memo says is that the amount that is to be distributed in a given year isn't set out in either the code or the policy.

>> Russell Richeda: The code originally, the code provided that the board was originally to develop it and then submittal to the council for approval and that's all been done. Now the issue is not specifically addressed in the ordinance is how do you amend it? Whether we develop it, whether it's through discussions through OER et cetera. But we had an initial role back then that's clearly spelled out. Our role now is a little more amorphous.

>> Mollie Dent: Actually the resolution spells out a role for them. So you do have a role in the redevelopment of the distribution methodology. Do you have a role in that.

>> That they're looking for us to recommend changes?

>> Mollie Dent: Either to recommend or look at what they come up with and say whether you agree with it. So you could wait and see whether someone brings something forward to you, and then have your input or can you have a discussion here and give other -- give those folks your input on what you think the distribution methodology should be.

>> So there's two parts, there's the distribution methodology and there's the actual excess earnings, are we not talking about that portion or are we talking about both?

>> Mollie Dent: The excess earnings has already been done, what is not explicit in either the code or the resolution is let's say nothing happens and we get to July 1st of this year. And there are excess earnings next year, okay? In November of next year, there are excess earnings, and you're in a position next year to be able to make a distribution. What isn't clear in the code or the policy is, could you just say we're only going to distribute \$50,000 this year, we're not going to distribute everything, we're only going to distribute partly of it and we're going to distribute that part according to the methodology? So that's the piece of it, that's one of the reasons why it was so difficult to come to the conclusion that there was a vested right. Because if you really control how much can be distributed every year you know there isn't much of an expectation as to a particular amount and a particular individual. But the conclusion in our memo was that up to -- there is a maximum on the amount that you can distribute, but there's not a minimum on the amount that you have to describe.

>> Russell Richeda: And my little gloss is slightly different. Even though Mollie is exactly right, there is no mechanism either in the municipal code or in the resolution to determine the amount of the annual distribution, but putting aside the suspension ordinance, the municipal code requires a distribution. Well, what does that mean? Well, you have to interpret what that means. I think it means you make a reasonable determination, you make a determination of a reasonable amount to be distributed based on the facts and circumstances before you. And there's a range of reasonable amounts. But there's also amounts that are unreasonable. And I go back to a penny. Let's say you had \$10 million you possibly could distribute and you decide to interpret, distribute a penny, I think that would be an abuse of discretion. If you decided to distribute 100,000, for whatever reason you adopt, that would be reasonable or within the range of reasonable solutions, in this whole complex

mechanism, I assume it was delivered though I don't know why that they didn't set forth any way to determine the amount of the annual distribution. So I conclude they have left that up to your discretion which you have to exercise reasonably.

>> So I'm still back up here because if I recall the very first meeting that we had, we were having this discussion about whether to actually distribute or transfer I should say the funds. And did city council also -- they did not?

>> Russell Richeda: No.

>> Mollie Dent: They did not take any action on that. So the funds, in a subsequent meeting you did transfer the funds.

>> Okay, okay. I mean part of my concern here and this is a bigger issue, we don't decide benefits, we don't negotiate benefits, it is not our role at all. But our overarching role is to act as fiduciaries, so what's concerning me is taking these distributions and distributing them at a point in time when this plan is greatly underfunded and I understand it is in a separate -- I believe it is a separate corpus, even though it's all under the retirement umbrella, that concerns me because our obligation is to all beneficiaries.

>> Russell Richeda: But in the Federated SRBR, it is discretionary, distribution is discretionary. In that case I think it's discretionary on the part of the council. For reasons unclear to me when this was put in, in 2001, the discretion that's implicit in what you're saying was not accorded to anyone. It wasn't decided in here that golly if we're in a ridiculously underfunded position and would be madness to make any SRBR distribution then we don't have to do it. That isn't the policy call they made. They made the determination there has to be a distribution. I would think when you're exercising your discretion you can look to the unfunded level of the plan. On the meks of this this fund is off in left field and doesn't have anything to do, and correct me if I'm wrong, with the basic unfunded nature of the rest of the system. So even keeping money in the SRBR doesn't help. Because it's just off by itself and not included in the actuarial calculations of the plan, unless --

>> Carmen Racy-Choy: I just want to clarify. The action of transferring money into the SRBR affects the valuation and affects the plan and I believe you don't have discretion over that component. The action of distributing money that is sitting in the SRBR fund does not affect the unfunded liability because it is in a separate account and that's the portion you have discretion over.

>> Conrad Taylor: Mike and then Sean.

>> Michael Flaherman: It is my experience based on my concern and what I've seen in the correspondence that we should let this discussion between the groups and the city roll forward and seize what comes out to the extent that we have discretion, within reasonable bounds I'm pretty confident that if something does come out that it's not going to be an unreasonable solution but suspect it would actually be something that we could embrace. And I think that could really get us out of what is otherwise a fiduciarily a conundrum who should be favored to what extent .

>> We get to see that result anyway before --

>> Correct.

>> Michael Flaherman: So to me that's the best action.

>> Conrad Taylor: I concur with Mike. Sean.

>> Sean Kaldor: I agree with that. I think if I can encapsulate it in a motion, I'd move that if the bargaining groups and the city or OER or however that works out, is unable to reach a solution, that we request their input on a revised distribution model and that we consider their input and with the intent we may make a recommendation to the council to change the distribution model. Hopefully they can work it out with the city on both the funding and the process but our role in it would be to ask them for their input and that may be another means of resolving that.

>> Conrad Taylor: Is that a motion?

>> Sean Kaldor: That's a motion.

>> Second.

>> Conrad Taylor: All those in favor of the motion, opposed, the motion passes. 4.2, consideration and discuss additional information regarding disability determination process, continued from January 6th, 2011 meeting, item deferred from March 3rd, 2011 meeting. 4.2A updated information from the city attorney's office, 4.2 B presentation regarding the role of medical director. 4.2C letter from Sam swift, attorney dated March 23rd, 2011 and 4.2D staff memo dated January 25th, 2011 regarding disability process deferred from March 3, 2011. Mollie.

>> Mollie Dent: Well, my memo is just really brief. You all asked for additional information on what sort of checks and balances the plan has in it for after a retirement is granted so I really just set those out for you. And I'll be happy to answer any questions on that. You're going to be receiving a presentation from Dr. Das I understand. But if you do want me to address attorney swift's letter I'll be glad to. I see he's not here in the audience so I'll leave that up to you.

>> Conrad Taylor: Sean.

>> Sean Kaldor: On these two points about the earnings offset and reinstatement, is this current practice within the plan, do we do this? So they submit to us an earnings statement every year and we reduce their payments by that amount?

>> Donna Busse: Up to what they would have made. If you just reduce (inaudible).

>> Sean Kaldor: Okay, thank you.

>> One question. What's the difference between in terms of financial, financial impact for nonservice and a service disability?

>> Mollie Dent: Oh you mean benefit formula?

>> Is there any change there?

>> Mollie Dent: We have a summary of the benefit formula that is actually at the end of the valuation report. The benefits get kind of complex. It is -- in general, the service retirement formula is going to be a little better than the nonservice retirement formula. More favorable to the employee who was injured on the job than the employee that was not.

>> Is there a difference in the tax benefits as well?

>> Mollie Dent: Yes, I covered that my original presentation, the service retirement is nontaxable, whereas the nonservice retirement is like -- it's totally taxable.

>> Donna Busse: Generally (inaudible) the real impact is anyone who has a nonservice connected disability before they reach 20 years of service. But after 20 years of service both formulas are going to be the same as a service retirement. The greater advantage as Mollie said is the greater is the service connected disability.

>> It may be helpful if we could impact is on the plan for these different types of disabilities. Somebody could send us a summary in terms of that.

>> Mollie Dent: We could send a summary right from the -- there's a summary attached to the financial.

>> Do we happen to have any statistics on the disabilities that are running through this plan compared to other cities?

>> We do.

>> Was that provided to us in the past?

>> The city commissioned a study with OER.

>> Russell Richeda: The board commissioned a study, there are two studies, the city commissioned one and the board, I forget, ten years ago, in some sense they're a little obsolete.

>> Sean Kaldor: They compared our percentage of retirees that were disabled, acceptance rate of each of these plans but it's kind of a sporadic group of San Diego, L.A., San Francisco, I don't know the universe.

>> Mollie Dent: There is also a disability audit going on with the City Auditor's office. It is on the auditor's work plan.

>> Russell Crosby: And in discussion with the auditor that should be available to you before your next meeting.

>> Those two older reports that were done from ten years ago?

>> Will that include that information in terms of the number of retirees and then the number that are filing for disability and then approval rates for those, I mean the full made trix?

>> Mollie Dent: I think -- I'm not going to say exactly what statistical information will be in the auditors report but it will have a lot of statistical information in it.

>> It will be interesting to see the historical data versus the data that's being done by the City Auditor.

>> Russell Crosby: At least in the information floating around the City Auditor's report has historical data over time.

>> Mollie Dent: They tend to do that.

>> Is there a comparison to other systems?

>> Russell Crosby: Yes there are.

>> And staffing levels, I know our staffing levels are short compared to Police and Fire.

>> Mollie Dent: I don't know what's exactly in the reports at this point but the audits should be out for public review by your next meeting.

>> Russell Crosby: Correct.

>> Mollie Dent: Okay and then if there's additional information that you want from staff that isn't in that audit report and you know updates the historic information, I think you could look at it at that time.

>> Russell Richeda: I think you would be interested in the tower Spurn report, a lot of it reflected those factors that you are talking about Conrad.

>> Conrad Taylor: Do we have that report?

>> Russell Richeda: I don't know.

>> That was the towers what? Towers --

>> Russell Richeda: Paren .

>> Conrad Taylor: Okay do we have anything else on that? 4.2A if not we'll go to Dr. Das.

>> Dr. Das: I don't have this (inaudible) I believe there's some extra copies for the audience. If they want it. By the way I just want to thank you for my space on the agenda. I truly appreciate being at the beginning. [ Laughter ]

>> Russell Crosby: Point made.

>> Dr. Das: Anyway what I've tried to do is just give -- kinds of review some of the definitions that we had regarding the municipal code and if there's any -- I think this has kind of been beaten a little bit so if there's any particular questions about the municipal code definition of disability we can discuss.

>> Oh, yes, this is the whole incapacity, inability, the name we're using on our forms, the whole thing. What are we looking for? What's -- what's the rule?

>> Dr. Das: You know there's nothing spelled out or written as far as what incapacity versus and so we're trying to interpret what an incapacity is and me being a doctor I look at it from a doctor's standpoint in terms of, you know, it's something that you cannot do, period. And so what they're saying is, physically or mentally incapability of doing this. And so that to me infers that there's a medical problem that prevents you or stops you from doing something and that there is a particular specific reason why you can't do it and there's a medical basis for that reason.

>> If it causes excruciating pain, does that mean you can't do it or it causes pain?

>> Dr. Das: That's a definite maybe. I'll address that as well. That is the crucial point obviously, we try have something objective to refer to to make sure we're using the same standard for everybody, to be fair. Because I think if we just rld exclusively on that particular parameter, we would lend ourselves into trouble as far as being able to quantify or exactly what is the basis for this person's disability. I hope I will explain this a little bit further along. If this were an exact science we wouldn't be having this presentation. It is not an exact science so we do the best we can with the information we have.

>> Before you get into that I think for me at least and it seems like it's kind of a recurring theme, in the disability, does something happen, there was something acute, something happened at some time in the past and now for some reason it's debilitating.

>> That's tied to the job too?

>> Something happened in the past, there's been treatment treatment treatment treatment, all of a sudden now it's showing up as a disability. Not directly --

>> Dr. Das: I'll kind of address that, I think later in my presentation we also address that that is one of the conundrums or one of the difficult that we see in trying to determine, number 1, what's the progression of the problem, you know, and there are certain examples where it's reasonable, okay, very obvious. Then there's other ones where it's not so obvious. And that's where we have to kind of struggle with it. And that's why I think I can address that later in the presentation because that's one of the points I try bring up for discussion. I don't honestly have an answer for you.

>> To that point which you're not going to address maybe somebody can. Clearly there are some specifics to being a firefighter, being a police officer, that are different than being a stock or bond trader. Medically it may or may not also address whether or not you can do certain things and we don't have that basis sometimes. About.

>> Dr. Das: It is physically unable or incapable? You know because with the average 60-year-old guy who hasn't been doing the job for 30 years been able to do it XYZ and so what's our reference? That's kind of the issue in terms of trying to take out -- try to explain what's aging vs. what is, and the word that we use is cumulative trauma, which isn't really a medical term, it's a legal term but anyway, Russ.

>> Russell Richeda: I'm really responding to Sam's question but it's come up twice. For 20 years this sentence has been a dead letter in the definition. It's not as if there's been a constant analysis in each disability retirement, my goodness is this an inability or incapacity? It's not even been dealt with and I think it's up to you to interpret this. I would say inability just means, let's say you have a minimum qualification for a job and that includes includes you don't have a felony conviction. I do have a felony conviction. Or you do or don't have a Heinz. I do have a license. Or qualifications, you have an inability to do the job. All this is trying to do is to stop me for applying for disability retirement, I can't do the job because I don't have the license or I have the felony conviction. I think that's the only reasonable way to interpret this. I think otherwise you would have a semantic impossibility. It's never been raised prior to you coming on board. Hundreds of disability applications have been processed and evaluated on this board while I've sat here and it has never been an issue. You focus on incapacity. You focus on the things Dr. Das is doing. You forget about this and the only way I can rationalize reading out provisions of the code because you're not supposed to read out provisions of the code, you're supposed to apply it all, is to interpret it the way I have. Way in the far distant past is there are a couple of guys who tried to gain the system, saying I'm incapacitated because I don't have the license. I know that doesn't even seem plausible. But we are stuck with a very unique sentence that is not common in other disability retirement provisions for other retirement systems and it is just logically nonsensical unless you interpret it or in a common sense way it's nonsensical. And I think it's just going to drive us nuts and not yield any better outcomes. It has to be put in a little corner all by itself.

>> I think just having the discussion will give us a common starting ground for interpretation. So you know people aren't looking crewing across the table saying you're crazy, I don't understand what you're thinking.

>> Mollie Dent: So I've only been working with the two retirement boards for about three years. And the way that this has pretty consistently come up and it's really come up more with the Federated board more than it does to this board to be honest with you but the way that this has consistently come up is not with the incapacity versus inability issue, the way it really has come up is with the way in which Dr. Das has presented it, which is why exactly does this person have the medical restrictions that they have? Do they have the medical restrictions that they have because they truly cannot perform the job or do they have the medical restrictions that someone has given them because it would be uncomfortable for them to perform the job. Let's go to the opposite extreme. In the three years I've been connected with the board the issue has come up but not exactly in the language but exactly in the manner that Dr. Das has presented them. So I think if you walk through his presentation it actually helps more than looking at the code helps.

>> Russell Richeda: But I think notice what you're doing and particularly the distinctions Dr. Das is going to draw, is you're just deciding incapacity. Is it just uncomfortable for the person to get out of the chair or is the pain so excruciating that he is incapacitated? Notice, narrow focus on what you're supposed to do.

>> Sean Kaldor: So everything we're talking about is really incapacity, whether you're incapable of performing the duty comes down to how severe the pain is, you get a little finger pain, you're not incapable of doing the job, it hurts, versus an incapacity, I can't physically move my -- we're all talking about incapacity, inability will scream out, what are they asking for?

>> Mollie Dent: It doesn't say inability, it says near inability. That's what the board is supposed to be looking at is the person incapable of performing, are they incapacitated? I think if you walk through Dr. Das's had a difficult job I think probably picking through, but anyway, it's probably more helpful to look at what the issues have been, which are, are the work restrictions prophylactic versus preclusionary.

>> Let me bring up one last point and I promise to let this go. There's also a difference when it's a change in status from a retirement to a disability, too. In my eyes. You know, why now? You know why, when somebody was on the job, was it not an incapacity, and now, looking back, it is?

>> Russell Richeda: Damon, for me that's always a fact, question for you to look at. One thing that should sort of trigger in your mind is, or go off is, this person worked full duty until their last day? Now they're coming in and saying they were disabled? Because remember your focus son their last day of employment. It's not whether they become disabled afterwards. And obviously, that is a factor against their application. And you have to decide whether they've explained through credible evidence that you believe, that yes, they worked there, that they were in incredible pain. Individuals have come forward to do that, they bring their supervisors and describe their sick leave and they explain to you, yes, in a formal sense they worked until their last day, the pain was awful, the sick leave, the aggravation it got worse and worse, I just tried to do my gosh the city, I felt I owed it but I just couldn't bear the pam anymore. Factual information for that application, they persuaded you that they worked until their last full day of employment doesn't end the issue. You are persuaded by other things they tell you that they were disabled.

>> Why isn't that binary? Why doesn't that end the issue the fact that they did work until their last day?

>> Russell Richeda: The way I explained it to you --

>> That you were shocked that you were on No. the last day.

>> Russell Richeda: You are on heavy medications, barely dragging yourself to work you're not doing --

>> Dr. Das: Why you have a benefit for a disability is because your earning was affected am I correct? Is it just because you get hurt --

>> Russell Richeda: No you're saying because you worked on your -- you were in full duty to your last day of work that by itself establishes that you were not incapacitated. It's an inquiry of incapacity and I think it is a strong factor right off the bat indicating the person is not incapacitated on his last day. What I tried to indicate is facts that

up for you to consider and often it's just oral statements from the applicant. But at least it's not so far we don't have a per se rule that if you worked on the last day, then we deny your application. It would be easy if we did.

>> Then we're instilling the wrong culture as well. There's unintended consequences of doing that. Okay, thank you.

>> Conrad Taylor: Dick has a question then back to --

>> Richard Santos: It's more of a statement. When you look at a disability it's based on the medical evidence only. I think these words like incapacity and inability it gets confusing. If the dock for could just put definitions instead of just getting the facts down.

>> But it's not written that way, right? The facts are has a torn ACL. I did two iron men on a torn ACL.

>> Richard Santos: Remember last meeting, I made a suggestion they shouldn't have create itch writing because one of you was saying one thing and later on it came out, I have another individual that said something about a bowling ball and made the whole discussion go somewhere else. I know this person for 28 years. They worked at the firehouse that had the most calls and so on so on, injured numerous times. That one item stuck out to one individual here.

>> That was me.

>> Richard Santos: I understand.

>> But my point on that point was if an injury occurs 15 years prior and you work full duty for 15 more years, then how am I supposed to interpret that as being the causation of your current disability if you were able to finish out a 30-year career. Rth as I was saying the creative writing. Based open the medical evidence it's up to the doctors to

put down better explanations of the injuries and so on. But I think you know it's discretionary. Each board member is going to take a look at this differently but some of these words are to me confusing.

>> Russell Richeda: Sean, going on with what Dick said, there are recognized categories. They are fairly vague, but aggravation is the one term so even if it happened 15 years ago, and you're going to have to make these very difficult factual calms, it is possible to put the label as long as there's evidence that you find persuasive that that initial event through just normal wear and tear of life not of work, aggravated the conditions so that 15 years later it finally came into dreadful fruit and he can no longer do the job. But aggravation I think is tough to prove but it is a well respected legal category.

>> It's a legal category.

>> Russell Richeda: Dr. Das, you'd have to look to Dr. Das for the evidence. It is a concept that could be made, and given factual situations, and then you turn to the medical evidence like Dick says to see if there is something to support aggravation or you ask Dr. Das. And say in this case Dr. Das does aggravation make sense and Dr. Das will give you his in-depth informed -- but you can't just automatically say, it happened 15 years ago, therefore, no possible way. There is a possible way. But it's a very hard way.

>> I'm not saying that.

>> Russell Richeda: I didn't mean to imply that you were.

>> I think also a thing we're probably grappling with also is looking at the natural aging process which is a separate process.

>> Richard Santos: Appreciation.

>> Russell Richeda: Somehow you have to analytically distinguish those two processes, based on the written reports and based on the response by Dr. Das. And I think that's a very difficult assignment.

>> Mollie Dent: So I still think Dr. Das needs to go through his presentation.

>> Conrad Taylor: Dr. Das.

>> Dr. Das: Go on to my presentation.

>> This speaks to the level of confusion the board -- Dr. Das really I think as Mollie said hopefully we explained the dichotomy a little bit further down on the presentation and I think one of the points that Mollie brought up was the whole inability issue that Russell kind of expanded on on the Federated side, if it becomes a license or something like that because in the Police and Fire side there's not really a modified job available. But on the Federated side if we can place somebody in a job but he doesn't have the qualifications for it, does that mean that he's disabled? And I think that's probably what both Mollie and Russ were alluding to. So down the MMI which I'm hopefully is a limb more controversial, but when we talk about extended and uncertain duration. Essentially that is MMI, when somebody has something that's like a chronic disease process, they're not expected to get better, medication may help them or they may get worse but that's maximal medical improvement. It is not typically the type that we see here with the -- in the retirement system because those are more nonindustrial types of problems. So trying to kind of review the criteria for what would make somebody maximally medically improved and in terms of what -- who is disabled. Number 1, someone who I'm regretting this choice of words, unable or incapable of performing his job duties. But essentially from a medical standpoint I think that that's -- that's a reasonable choice of words, whether you want to say incapacitated or incapable. At least the first six letters are the same. Then the other issue is, is someone going to get better? Now, with additional treatment? So -- or if someone has a chronic disease, is it likely to remain stable or worsen in the future. And this is basically this person's MMI. So is a person disabled? Have they -- are they as good as they're going to get? And so examples of uncertain duration, or pavement anatomic problems, someone who has had a stroke. There's no way they're going to get better with treatment, at least currently, absolutely no way. Amputation, they can get a prosthetic,

they can certainly do quite a bit with a prosthetic, in fact I hate to say this, there is one instance of a firefighter, below the knee amputee, not an above the knee amputee, that is a situation that did come up within a couple of years. Examples of permanent or uncertain duration, multiple sclerosis, does anyone want an explanation on multiple sclerosis or do you want to get lunch? People are able to maintain stability with medications but generally decline over a period of time. And that would be something that fit into the permanent or of uncertain duration. Now, in terms of trying to distinguish between someone who should -- who cannot do something versus, it's a good idea that they don't do something, we kind of try to dichotomized, versus prophylactic versus restrictive preclusions is it a good idea for this person to continue doing this? As a physician when you come to me and say Doc, it hurts when I do this, my answer would be, don't do it, give me 50 bucks. I guess -- everybody's hungry. So that would be a prophylactic restriction. And if someone had something that it was -- and if I felt that they had a problem, that would continue to get worse that continue to do that in terms of experiencing pain, it's a good idea not to do that. Does that mean you absolutely can't, no. That means it is my recommendation, as your doctor I would fully support that and advise you of that. Now we get into the realm of doing the disability evaluation where I'm trying to be an independent, objective evaluator, and --

>> If I could interrupt and understand the boundary of that. Suppose someone had a latex aerial 80 and worked in an industry that was severe, wouldn't it in a sense be prophylactic to say to them, you can't work there anymore? What you're saying or would they be disabled?

>> Well, shons honestly if the employer can accommodate and now a lot of times -- I'm not hitting the spirit of your question because the spirit of your question is --

>> You can duck it by saying you can get around it.

>> Dr. Das: You can get around it. But what about protecting a person from a problem that could kill them. A peanut aerial 80.

>> The city peanut place.

>> Dr. Das: The city peanut place where they're manufacturing stuff and there's no way around it. Now I think maybe that would also be a legal issue in terms of the unable versus incapacitating.

>> There is a fuzzy line somewhere?

>> It is a fuzzy line. This is where we have a board making the decision. I don't have a great answer yes or no. The best I can give you is it depends. This person obviously has a medical problem that stops him from being able to do the job. And I absolutely preclude him from working in that situation because it would affect his life. Now does that mean that he -- well actually you know I take it back. He captain do it, he's -- can't do it, he's going to be dead.

>> A real world example is a firefighters sustains ten pound helmet, the doctor tells him, if you take one more good bump to the head it's going to break your neck. He says I can still move I can still do the job but if the slightest thing happens I'll be in a hospital bed the rest of my life. Is that preclusionary or prophylactic?

>> Dr. Das: See in my money it's prophylactic, that's an incorrect assumption the physician has given him this information. It depends. If he has profound stenosis ooms he is going to have a spinal cord injury I would absolutely defer. But if a person just has neck pain and bulging disks present --

>> That's different.

>> Dr. Das: Absolutely. Hopefully later on in the presentation we'll kind of review that because there is a lot of fuzzy factor, fudge factor and there's also a lot of subjective vs. objective. And that's why we try to rely on the objective as much as we can because then there's a strong basis for the person's symptoms. If somebody had no mechanism of injury, no pathology and yet they say it hurts like crazy and it's severe do you accept that and say on the face value, it's obvious that you have severe pain. Now if someone has lots of pathology -- let me finish up the presentation because we kind of go --

>> Conrad Taylor: Let him finish. Go ahead Dr. Das, go ahead and finish then take the questions. Then we can -

>> Dr. Das: Okay I'm open to either way. As we go into preclusionary, in terms of if there's anatomic or functional damage, essentially we talk about amputations, we talk about severe disk herniations, interruptions in terms of a pinched nerve stopping you from doing something in the muscle, those are obviously anatomical restrictions, and we were all talking about the gray area in terms of is there an anatomic abnormality, or something that can appropriately cause severe pain or rheumatoid arthritis sure they can walk but they're in severe, severe amount of pain. Cancer, people can do a lot of stuff depending on their range but also there's a severe amount of pain. That is where we talk about the prophylactic ones. But there's a strong medical reason why these people can't do X, Y or Z. Moving on a little bit, part -- hopefully to clarify and not make things more complicated, I had the -- developed these forms so that the current treating physician would make a determination about whether this person is, 1, MMI and two, give us from the doctor he feels is relevant their permanent work restrictions. The idea was number 1, let's find out if their doctor feels that anything else can be done and number 2 what does your doctor feel about your work restriction and then number 3, why, okay? Why is this person disabled? So it makes life easy, if there's a specific problem and the doctor can explain it easily and well. My theory was, that all you needed was the forms. You didn't need the rest of the medical. But -- and that was kind of what my goal was. So in the -- some of the things also that I kind of noticed when I was doing some of these is that on one side, the person, the treating physician would say oh yes, this person is MMI and on the next phase I would see the workers comp reports coming in after, saying we want to do surgery on this guy and it's going to make him better.

>> From the same physician.

>> Dr. Das: From the same physician. There were two reports going on, retirement medical and real medical. I felt that had to be reconciled to some extent hopefully get with this. And then in terms of let's say they are getting additional treatment like let's say they're getting medication, pain medication. That's not going to change anything. So meaning, there's no reason to expect that this person's going to get a lot better if they're taking

palliative medication, if they're diabetic and taking medication for it, there's no reason that oh yes, now they're going to get more functional after taking it. That's why I kind of wanted to look and see what is the additional treatment being given and was it expected to make things better? So in terms of the work restrictions I asked the physician to kind of determine whether they are prophylactic or preclusionary and if they are preclusionary, tell us why. What is the anatomy, what is the test? Explain it a little bit, not just tell me yes, they are but this person has this specific abnormality that is responsible for this specific problem and yet it precludes him from doing this? Okay. Now part of the controversy, the difficulty in terms of reconciling the retirement reports in the past, and most -- the majority of what we see are work related injuries, they're treatments under the workers compensation system. And people receive restrictions under the workers compensation system from their treating physicians. And there typically is a difference between the ones that I submit for board review and those provided by the treating physician. And it doesn't mean that -- how do I -- and in one of the things I wanted to convey is, just because there is a difference does not mean that both of -- one of us is wrong and one of us is right. It's just different -- there's different basis for the restrictions. And workers compensation and typically on the employment side, you rely on the patient's symptoms and his ability and what he says he can do. If someone says it hurts for me to do this, you take that into account when sending him back to work. And that is something that your typical doctor does, when he's treating you for a problem because he doesn't want you to get worse. Okay? And the best, most reliable source for the treating doctor is the patient. In terms of an assessment of what's going on with him. And in the past, in workers compensation, work restrictions were a means of deriving your permanent disability benefit. That's no longer the case. It's based on the AMA guides for permanent impairment ratings. So therefore when we see reports and everything now from the treating doctors we don't always get restrictions. Because when you get work restrictions and impairment ratings it complicates the process. So typically a lot of them just give you an impairment rating unless they are specifically requested for a rating medical reports in workers comp side. So for retirement side what do I rely on to make the restriction? Mechanism of injury, pathology and the correspondence between the systems the person describes and why do I rely on mechanism of injury? You know, sometimes there's not always pathology. Someone's involved in a severe motor vehicle accident, they have severe significant problems after the motor vehicle accident. It's a high velocity, high -- traumatic event. Is it reasonable for this person to have problems? Or in the intensive care unit let's say? It's reasonable for them to have symptoms even absent the pathology. By the same token people can have lots of

pathology, degenerative changes. As we get older. But there's not really a smoking gun in terms of the mechanism of injury. So yes, the issue is, whether that pathology is responsible for the reported symptoms. People can have herniated disks in your 30s and 40s and just because that's there does not mean that you have a limitation or are you have symptoms that are due to that. Am I -- is that kind of straightforward or confusing or -- okay. So moving on. Basically the issue is, that you cannot rely exclusively on imaging findings or something like that to describe functional deficits. I mean it goes back to on the flip-sides of it, if we're going to hire you and we find these same studies, same pathologist or ujing findings we can't say oh yes, we cannot assume that you cannot do these because of these. We have to rely on what the person can do. Not what the imaging studies show. So that's kinds of -- that is why we also rely -- that is why I also rely on the mechanism of injury to kind of infer what's going on, it's kind of infer the degree of damage. Some of the are talking about what board member Krytzer was talking about does that mean that is a contradiction in terms of why does someone all of a sudden stop being able to tolerate performing the activity? You have to look at that. Second issue. Let's say someone has degenerative findings for five, ten, 15 years, and then there's no issue, up until 15 or 20 years later, and those are the degenerative findings. Does that mean that the person does not have a problem? I don't think so. The person does have a problem. You can -- you just can't rely on those exclusively. You have to rely on the entire medical situation. I hope I -- those are some of the difficulties that you have in terms of trying to determine what -- what is going on with the individual. That was kind of confusing but you kind of get the gist of what I was talking about or -- okay. Hungry, too. So anyway, as far as work relatedness or causation the easy ones are the acute ones where people have a fall or a crash, and then you try to figure out whether there's something that's torn or broken. It gets more difficult when we talk about cumulative trauma or things that contribute to a person's problems. The issues we're concerned about are aging, outside activities or other medical problems that can contribute to a person's problem. And what do we have to rely on in terms of epidemiology, trying to look add see if there's a relationship between these particular activities at work and particular disorders. Now are these studies absolute gold? No. There is always limitations to everything but it's the best that we have. On one of the huge assumptions that's always made is, in terms of work relatedness is carpal tunnel syndrome. But there have been no studies that have been able to show a direct link between carpal tunnel syndrome and computer use, they've all shown there is no direct use. Does that mean that carpal tunnel syndrome is not work related? No but they've specifically shown that there's no relation between carpal tunnel syndrome and computer use. Bus if you look at

the lay community and average doctor of course carpal tunnel syndrome is related to computer use. And so I think you have to -- and so that's why you have to look at the specific job task force and activities that this that individual is doing. I treated carpal tunnel syndrome for a long period of time and I did find carpal tunnel syndrome in individuals that use a computer when there were specific risk factors present. But in general the studies show that there's no relation between the two. Same thing with heavy lifting and degenerative disk disease. Epidemiology has shown that however it hasn't shown that there's a direct relationship twin degenerative disk disease and heavy lifting. That's a common assumption all the studies specifically point away from it. So kind of trying to skip ahead. The whole issue is in terms of trying to look at work relatedness and what are the contributing factors. Something like we already talked about degenerative disk disease but how about knee osteoarthritis. That is a problem for a lot of people that we see. People can have meniscal tears, going back to cumulative trauma someone who injured themselves years ago. You can have a meniscal tear, a meniscectomy, have degenerative arthritis after that particular injury. And that's a well-known relationship. And so that contributes to someone 15 years later saying, boy, I can't do that anymore even though they've been able to do it for 15 years prior. That to me is a fairly obvious situation. When it comes to repetitive stress which we really don't have to typically think of in these positions because we they of repetitive stress is being more on an assembly line or typing, those are usually muscle pain or tendon type issues, as opposed to the disk problems or anything like that.

>> Dr. Das just because it's not addressed later on this 1% contribution?

>> Dr. Das: Oh sure.

>> That's workers compensation not us rice?

>> Dr. Das: It's a legal issue but 1% contribution is just from workers compensation and I always get confused about 1% contribution to pathology or 1% contribution to symptoms. But anyway.

>> Thank you.

>> Mollie Dent: And remember that --

>> Not saying that -- oh sorry.

>> Mollie Dent: This is only related to whether or not the disability is service-connected or not service-connected. The causation issue has nothing to do with whether or not -- you can have a nonservice connected disability retirement.

>> And this 1% says if 1% of the problem comes from work then you can count it as --

>> But --

>> Not for ours but.

>> Dr. Das: And workers compensation that's why it's a very broad definition. And that's why I was saying talk about symptoms versus pain because -- or symptoms versus pathology because some people ends up getting treatment for pathology that's completely unrelated to the risk factors in the workplace. And that's kind of on workers compensation that's one of the things that's a little bit difficult. So anyway I mean in summary basically I get the medical records from workers compensation, review them, get the forms from the doctor, do an evaluation with the person, and then I determine restrictions based on my review of the medical records and try to struggle with the issues in terms of what's prophylactic versus preclusionary in terms of trying to reflect what the municipal code requests. I'm sorry if it was long-winded.

>> Conrad Taylor: I know you had a question, I apologize.

>> That's all right. Going to Damon's question about working for ten, 15 years and then you go at the very end you claim you have a service connected disability. If someone has an injury, ten years ago and it's considered to

be a prophylactic injury and they're prescribed to not do one particular activity but they can do all their other job functions, how do we know now whether at service connected disability, they did perform the function they were advised not to do or there was an outside activity that attributed to this excruciating pain that they're now in?

>> Dr. Das: That's what we struggle with. As far as outside activities, it's very difficult to get that history unless it's in the medical record. Like, if you know a person is a baseball pitcher and rotator cuff tear, maybe you can infer there's some issues. But honestly there's enough risk factors for a that I'd kind of dismiss it to be honest with you. But in terms of trying to say this person had a rotator cuff tear, they had a repair they are doing well for 15, 20 years, now they're complaining about shoulder pain then I would start looking at the pathology. Is there a tear? Is there something different now than there was before? So you try to do a little bit of investigation to determine does the pathology correspond and does it make sense? And like I said the problem with this is a lot of times the pathology does not correspond to your level of function. There's a motivation issue involved that when people are determined to do something they will do it but it comes down to in terms of is it reasonable to expect them to do it? Like someone with a knee arthritis that's a good candidate for a total knee replacement. They can certainly do a great deal, but it's obviously that they've got a problem, it's obvious that they had an injury. And there is a certain point where you can't do anymore. And the pathology corresponds to the symptoms. And I think that that's kind of one of the better examples I have. Is that helpful or -- okay.

>> I have a question. In terms of aging, how do you factor in aging? Because we seem to have a hot of cases where there have been 27 or 30 years of service. And to me, off the top, it seems to me like well you know a lot of this is the age. Your deterioration with age over time.

>> Dr. Das: You know it is kind of difficult. To me it depends on the injury and it depends on the pathology once again. If there are risk factors in the workplace for those particular problems I don't take into account aging that much to be honest with you. Because it's a very difficult thing to factor in. And a lot of times it's not really relevant to function. Meaning that you know, can you lift 20 if pounds, yes. Can you lift 50 pounds 25 times now that you're older maybe not but you can do it ten times. So there's different kinds of -- there's different things to that --

>> Sean Bill: How 20 times or whatever. And neither can 90% of your peers.

>> Dr. Das: Right.

>> Sean Bill: So how do I factor that into making a decision?

>> Dr. Das: That's where I come up with the restriction and rely on pathology, honestly. Because that's -- if you come to me as a 50 or 55-year-old without any pathology and say you can't lift 55 pounds, I'm going to say so what. If you let's look at the type of pathology and let's figure out why. That's why we try to look at the objective that corresponds. To be honest with you and try to figure out what's age and due to inability versus you know a medical problem, that's difficult but we try to sort it out just by reviewing what the pathology is. That's why I talk about the generation versus something that is actually due to a particular task or activity. And there's going to be considerable overlap.

>> Conrad Taylor: Okay, any further questions? Sean.

>> Sean Kaldor: So on slide 5, prophylactic or preclusionary, you say prophylactic is not a basis according to the municipal code, is that correct?

>> Dr. Das: You know what? I don't ever like to say in absolutes. Prophylactic, how do I put it William there are some prophylactic preclusions that are preclusionary there are other prophylactic restrictions are prophylactic. For example, the nut allergies or the latex, it would be to prevent further injury but at the same time, if they were to do that they would have severe consequences.

>> Sean Kaldor: Okay.

>> Dr. Das: It's a gray line.

>> Sean Kaldor: So second part of that goes to the forms that they're -- that we're giving to the doctors to give to us and that's a perfect example of one, in the request for permanent work restrictions we don't use the word preclusionary or prophylactic. We talk about an inability vs. an incapacity. We give them the option to check some of these boxes and some of these boxes would mean they're not eligible for disability. Why do we have this on the form? For the MMI I think it should say, patient has reached MMI and maybe has declined other improvements, M maybe increase their impairment but or increase their level of function but not improve their impairment, it doesn't -- I can't interpret that into whether --

>> Dr. Das: That is more for me than it is for you to be honest. Impairment is a different meaning than function. When they're trying to figure out what the permanent disability is I want to try to pin them down specifically in terms of are you giving them treatment that's going to make them functionally better or are you saying the disks are going to remain functionally the same? I use that to try to infer, is this better than -- I don't make a big bones about it but if it did come up I have an answer for you in terms of why is this better than getting medication or what's going on with this person? Why is this -- yeah, it's more for me if you have questions if that makes sense.

>> Sean Kaldor: You give this person kinds of a you say this person has a work restriction and it is X. A one page summary from you that would actually say body part X this patient has reached maximum medical improvement and there's a preclusionary restriction, you interpret whether they say prophylactic or preclusionary, you determine it based on the restrictions we need here work attribution, I think that's why we still need the background information what does that mean? I got to go back and look at everybody around that. I don't know if that would help the process but a more detailed one page summary from you for our definitions would be helpful.

>> Dr. Das: And I would love to kind of explore what would work and be workable for everyone in terms of serving your needs, yes. That would make things simpler. That's why I try to get it from the treating doctor first and if I can't get it from the treating doctor I have to kind of dive into the medical records, yeah.

>> I've seen a couple where we also have prophylactic and preclusionary. How are we supposed to interpret that when someone's stuff comes back with both?

>> Dr. Das: Actually, honestly, that's absolutely reasonable. Because there's some things that this person absolutely shouldn't, can't do and there are some things they really shouldn't do. And it comes back to me being your doctor.

>> It's kind of like you would want to go with the preclusionary weighting?

>> The problem is they never say here are the preclusionary restrictions and here are the prophylactic ones. I think you would have to conclude what would be preclusionary based on the pathology involved. That -- if you can help me design a better form to kind of address that, but physicians complain about them even as limited as it is.

>> Because Sean is right too, we often get kind of a menu of left showered, right showered, lower back and there's like six or seven different parts and you know I suppose if one of them is truly preclusionary, that's the answer. But to have to pick it from a menu -- if not this then this then this then this is confusing.

>> Dr. Das: Okay well, I mean I'm-d.

>> Not your issue I'm just --

>> Dr. Das: If I could do anything to make it easier, I do stuff to make it easy for me, that's not necessarily my goal, my goal is to make it easy for everybody else. When address each one and it's different doctors sometimes treat differently body parts and that's why I have it done that way. It's just more of a practical standpoint. It would be nice to have just a set of restrictions that applied to the person, I agree but --

>> Conrad Taylor: Any further questions?

>> Is this for action or just for report?

>> Russell Crosby: Information.

>> I think it would be helpful to think about some kind of work group, whoever's interested in it, meeting once or twice, saying here are the forms, this may be a simpler way to summarize the information.

>> Dr. Das: What I would do, make it easy for me to get the information and then give me another way to present the information that's easier for you.

>> Russell Richeda: Sean, I don't know what you've experienced. I find the hardest thing is service connection. Because usually there will be a restriction and particularly if it's always for firefighters and then still fairly coming from the police, you'll have a report that says we can't accommodate it that solves everything.

>> I would give one page, rather than a big fat packet, each question on each body part.

>> Russell Richeda: I think it would be helpful for you to be told on what page Dr. X talked about causation for that body part. Then it also gets more complex where you have conflicting or medical evidence that's contradictory. He can do the job, you know, this body part should not stop him from doing the job and the other doctor said oh no just the opposite. But you have to be able to read that stuff and evaluate it.

>> Another comment, I think changing forms may or may not help because it seems to me that we see the same doctors' names over answer over and over and to me that makes me skeptical by nature. I'm a skeptical person by nature, being a bond trader. But when I see these same doctors continuously over and over and over, my guess is they're going to fill out and check the box for whatever the patient wants.

>> It might be something that Dr. Das looks through all the supporting documents this stuff and then he's our physician, he gives us an interpretation, we can still go through and say yeah, I don't buy it but he says our

definition of preclusionary is this and based on what they're saying back here I'm going to say it's preclusionary or prophylactic.

>> I would say I have a lot of confidence in Dr. Das's analysis from what I've seen so far.

>> Russell Richeda: Notice Dr. Das doesn't help you on causation.

>> Put it on the applicant and have them make their case.

>> Conrad Taylor: If I may, one of the trustees need to leave early so we'll come back to 4.2.

>> Early? [ Laughter ]

>> Conrad Taylor: Jump down to consent calendar. Items 6.1 through 6.6. I'm going to come back to -- we'll come back to the latter part of 4.2. I'd just like to get a vote on the consent calendar. I'm going to hear it as one motion unless any item wants to be pulled.

>> Just to pull 6.6C, take two seconds.

>> Conrad Taylor: Any other items? Go ahead and pull 6.6C, report on accounting for occupy-owned building.

>> We can address that real briefly. I'll make a motion to accept the consent calendar with the -- with item 6.6 C removed.

>> Conrad Taylor: Okay, all in favor? Aye, the motion passes. Okay, we'll come back to 6.6 C. We'll now go back to I think we're done with Dr. Das. Dr. Das thank you very much. I appreciate it. We still have two more under 4.2, we have 4.2C. Mollie did you want to address I see Sam Swift is not here. I wish he was here that way he could address his letter.

>> Mollie Dent: I just had a real brief comment on the letter. And I think Dr. Das responded to it a little bit. The forms that attorney swift is referring to in the letter are forms that go back to Dr. Das to assist Dr. Das in making his recommendation to you. There's a lot of information asked for on the forms and I really don't think the use of the word "inability" vs. "incapacity" on the forms is the sum and substance of those forms. Dr. Das did craft those forms with input from the attorneys for the applicants and input from our office. And the form is again it is mainly something for Dr. Das. It is in your packet and you all can ask Dr. Das to provide additional information to you, in any format that you want him to. But as the ultimate decision makers on this, you also have an obligation to look at the medical records to look at the evidence that the applicants are submitting and to listen to the applicants and to listen to their attorneys. So it is a big job. It is a big job and you can have staff or you can have Dr. Das assist you in you know looking at the information. But ultimately you are the decision makers and you need to look at all of the information even in its raw form so to peek. So that was just my response to the letter. I don't think that there's any urgency about anything on the forms. You can still process disability applications. The letter says there's urgency. I don't see any particular urgency.

>> I'm personally against giving the doctor's quote unquote guidance in distinguishing the lack of capacity and effectively doing our job and making the interpretation. That's it.

>> Conrad Taylor: Sean?

>> Period. My inclination would be that we collect all that information and someone, and Dr. Das seems the most capable to say does the person have preclusionary restrictions, he can itemize, we are all doing the exact same work taking the one body part, the shoulder, yes was it work related? Someone could compile that for us, can file, there's only one mention of it, or is that sufficient? There's ample evidence, I think it would be a more scientific process and the work could be more consistent.

>> Conrad Taylor: I guess that would have to be getting involved with Dr. Das, get hold of him and get a committee and get that going.

>> Sean Kaldor: I'll propose maybe a little task force to work through this.

>> We are at some point going to address the -- we were going to address the process. I'm sorry, that's next. Never mind.

>> Conrad Taylor: 4.2D I was going to suggest since Michael is gone we're going to have a new trustee board and Dave is gone, I'd rather have the whole board sitting on the -- I know I hate to postpone this again but note, just regarding the disability process, I'd rather have a full board sit and go through this rather than, we have three bodies that are missing right now and they're going to want to hear the whole speech all over again. So if we can postpone that. 4.2D for next month.

>> Motion to defer.

>> Conrad Taylor: We have a motion on 4, all those that are agreeable? Motion passes, thank you.

>> Richard Santos: (inaudible) staff appear something, how does that normally work? The letter that Sam Swift sent to Dave Bacigalupi, does that come up next did you say B or D I can't remember.

>> Conrad Taylor: No, we've already discussed the letter from Sam Swift. Mollie discussed it.

>> Richard Santos: She addressed it. My question is when it's sent to the chair does staff prepare a apply?

>> Russell Crosby: No, it becomes an agenda item. It was sent to him.

>> Richard Santos: So for whatever -- okay.

>> Conrad Taylor: Okay, moving to item number 3.1, staff presentation on the equity and investment structure. Why don't we do that -- that way we can -- 6.6.

>> No issue, I want to be clear, this is about us residing in board-owned building and I just wanted it clarified. There is no issue then with us being in that building, and we pay appropriate rent there?

>> Russell Crosby: Correct.

>> That's all I have thank you very much. It was just raised as an important issue, I just felt it was important to mention.

>> Richard Santos: What time's lunch?

>> Conrad Taylor: Motion -- do I have a second?

>> Second.

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

>> I have one comment. On 6.6 G on the report of investments I almost would like to see that kind of the first thing I open when I open the packet. Because the portfolio is kind of the primary function in terms of trying to maintain returns. I thought that was kind of funny looking through my stack at the very last page was the update on the portfolio. Which is the 2.7 billion or whatever. I think just from a -- to get us engaged in the investment side, put that thing right on the front page and you can do a quick recount, we gained or lost this much and you know if there's any reports from staff in terms of any changes in terms of investments or anything, we can just do a quick five-minute overview.

>> Sean Kaldor: I'd support that, showing six or 12 Moss month, not just last month, it's hard to keep in mind, we gained 200,000 but lost three or four million in the past three or four months.

>> Conrad Taylor: If I might suggest, 3.1, investment structure, I hate to do this to you Carmen, I hate to suggest that we defer it again, we have three trustees present, that we have them present, especially when we have a new trustee next month. I think that would be better for everybody to be present and I'm sorry to do that.

>> Carmen Racy-Choy: Sounds good.

>> Russell Crosby: Perhaps if there are any questions or any comments that anyone, you've seen the bulk of the presentation. There were a few additional pages and recommendation that were inserted between what you saw and what's been passed out today. But if there were any comments that anyone wanted to make or any issues that came up as you were looking through it. We could handle those quickly and then get out of here.

>> I am curious --

>> Conrad Taylor: Go ahead Damon.

>> Damon Krytzer: If we got a response to the private equity issue .

>> Carmen Racy-Choy: I have been on vacation for the past three weeks so I wasn't able to follow up. I know we made a request to NEPC and they are coming next month to present the performance, their kind of upgraded performance reporting and they've brought in their private equity experts to make the presentation. So that individual should, hopefully, have the answers for us and if not, staff will take it from there and try to gather whatever additional information we'd like to have.

>> Question I had, I missed the last meeting so I had a chance to watch the broadcast in replay. And listen to your presentation which was very thorough. And I didn't catch all of it. But in looking at the manager's -- curious if we do currently have any of our merges on the watch list or on probation?

>> Carmen Racy-Choy: I believe we do however we've gotten as of the last investment structure we had a very significant amount of managers on probation and on watch list. We've moved to a very significantly passive approach in a lot of the bigger areas such as large cap. So we've -- I think we've really wilted down the list. I do believe some of them are on the watch list. I can't tell you the names off the top of my head. We can bring that forward if it hasn't currently been provided.

>> So in the next meeting I'd be curious to know which of those managers are on the watch list or on probation, and which direction we're heading on passive or active in more detail.

>> Carmen Racy-Choy: Sure, that is covered in this presentation. Also we would like to suggest that the board heads towards global mandates. And the moment you start investing in global mandates where you're doing U.S., international and emerging within one manager this is going to mean that we're going to have to replace a lot of the existing managers. So I would probably suggest that once we have that -- this discussion and kind of discuss why adding global mandates in certain areas makes sense, that that's going to mean a total changing of the managers that are currently on the list. So that's going to potentially mean a lot of those on the watch list are going to disappear.

>> I think that would be wise to throw in a global mandate and then I would also say it would be helpful if we could hear a little bit about what you guys are seeing in the hedge fund space and if we could maybe as a board discuss the idea of rather than having a specific carve-out of 5% for hedge funds, we are going to go best in class reach assess class, if it happens to be hedge fund fixed assets or commodities, whatever, we're not going to limit ourselves to that 5% cap.

>> Carmen Racy-Choy: Absolutely. I'll take you to the last slide although I won't cover it, the last slide in this presentation suggests relaxing the long-only constraints on equities. And what it suggests is that there's significant value added in doing so. Now, we're only showing the equity space, just because if relaxing the assumptions on commodities and real assets makes a lot of sense but there's a lot less data that supports it. So we're --

>> If you hit the end button, it will go to the last slide.

>> Carmen Racy-Choy: If I can find it. Okay, I think we're there. Basically, this is from Mercer Jin beingdy which is our asset database. What this slide shows is the value-added for the U.S. equity long short space, so what that actually means is these are managers which the long only constraint which is current the constraint in every asset class other than hedge funds is relaxed, allow the manager to sell short the added value at the upper quartile is 8.5%. And even if you look at shorter periods the added value is very, very significant, even if you are at the median level. So definitely we are suggest moving in that direction makes a lot of sense. In other asset class where that also makes a lot ofence is ream castes, specifically commodities, there's even more value-added in that space. However, the data there is -- the database only includes 10 to 15 managers, so it's a bit -- it's not as reliable hence we didn't show it. We are definitely moving in that direction and --

>> I think that's probably one of the most efficient ways you can increase your returns without hurting your risk profile they have relationships with that they think stand out or do you think you're just going to kind of go with the Alborn and do your own thing and find managers?

>> Russell Crosby: I think we would like to have that conversation with the board and certainly the staff is leaning towards the Alborn type ental I think.

>> Carmen Racy-Choy: Absolutely, nonhedge fund asset classes, we come up with a list of managers that we would like to perform due diligence on. We also obtain lists from the consultants of both pension plans. We feel that the more bright minds contribute to this, the better the answer is. And then we perform due diligence on the

best picks from the three lists. So for hedge funds we'll probably use the same process in that staff would like to have access to the Alborn database and I believe you approved at the last budget meeting the process for us to have access to it. So we would like to be definitely actual partners in the due diligence and I think that will strengthen the results.

>> Russell Crosby: And that's a model that's used by a lot of large plans to -- you have your general consultant doing the general work but someone like Alborn off on the side doing the specific.

>> Something else that would be valuable, we're very granular, that's great, I like that data, but to step back arounds the investment asset classes how does that model to returns, Monte Carlo type particularly as we analyze changing the discount rate in this plan as well.

>> Carmen Racy-Choy: That analysis is done as part of the asset liability study. At the last meeting we gave an overview of the results of the last asset liability study and we suggested that since it's two years out of date, that it be redone.

>> Vincent Sunzeri: Okay.

>> Carmen Racy-Choy: That's typically what's done in the ALM. We asked next ALM. Once staff sees the report then we'll be in a position to put it on the agenda. So this is definitely work in progress but we thought we would give the decisions behind the investment structure, because typically when you redo the ALM the next step is very quickly thereafter to redone do the investment structure as well. So we thought we'd bring the investment structure decisions forward, for your review. This way when the ALM is done we can tackle the investment structure at the same time.

>> Conrad Taylor: David Damon.

>> Damon Krytzer: So we haven't obviously selected a risk model, a risk allocation yet?

>> Carmen Racy-Choy: No we've had discussions with certain board members about what is it they would like to see and there are two really leading competitors. The next step will be to basically try and talk to the two providers and see what the capacity of those two softwares are and from then on, we turn around probably do more detailed-type analysis I think of what is we'd like and ask them to comment on what is it they can do. And what the fee for that would be. So I think the next step is to really contact the providers, explain to them what it is we would like to have and write a detailed, you know 30, 40 page description of the type of risk analytics both on the risk and writing to what is it they can do.

>> Well it seems like we should not trying to delay it but we should probably have that in place before we relax the long-only, you know I mean before we do a lot of this stuff as well so we could stay consistent. We might do something and decide it's a good idea but all of a sudden our new risk analytics would say you know what that's not particularly wise for us to do.

>> Particularly in regards to some investments that might not be so illiquid.

>> Carmen Racy-Choy: I think probably the two go hand in hand. You wouldn't make the investment until you have the risk in place I think that happens in part why hedge funds, the best time to do it ask when we have if risk in place. However from an lampletM perspective, make the decision to proceed without necessarily ALM takes quite a bit of time to do and then you know it typically comes to the board over multiple months. You don't necessarily want to wait to do that until after the risk system is in place.

>> I'm not saying that but we're going to optimize based on our risk model. To Vince's point you don't disagree with this at all. But this stuff takes a lot longer than we all want it to if you are going to optimize it there's liquidity issues all at one time.

>> One thing that might be of value, I know we have new trustees, that's one of the reasons we don't have subcommittees. But we might have to have a separate subcommittee for risk and investment, so the risk guys are

looking at this saying it falls on them if the portfolio gets too risky, geared up too risky whereas the investment guys would be motivated to move things on in terms of triering to restructure a bit on the portfolio bringing in some hedge managers or what have you.

>> I guess I'd defer to staff to see what they want.

>> That's another thing, I don't mean to micromanage. If I start to micromanage at all give me a kick in the butt and I'll back away. I want to be more of a sounding board to heps but you know I'd like to see it get moving.

>> Russell Crosby: Actually the Federated board is a little bit in front of you. They formed quickly and they're out in front apted there are a couple of trustees there who have had a lot of contact with the staff, one of whom is the regional manager for algorithmics, one of the risk managers for him. We've got the Intel trust fund manager as well. Perhaps the two of you would like or Vince contact Carmen and then what I'd really like to do is if we're going to launch down this road is get both board key players together who understand the risk analytics aspect and then do whatever we're going to do for both boards.

>> Carmen Racy-Choy: Jointly.

>> That makes sense. I don't want to jump forward on the agenda but carving out these little task teams if we will, I think it makes sense for us to look as quickly as we have our new board member on board, to have a board retreat, to prioritize what agenda items we want to work on, rather than coming to these meetings and looking at what's presented to us, from a governance perspective, goes back to a 1598, there have been retreats, I don't know when the last one was, but now that we have this new team together I think it would be very valuable for us to do that and as quickly as possible.

>> Makes sense.

>> Conrad Taylor: Yes, I agree. I think we're done. Let's go down to.

>> So that is a proposed agenda item by the way.

>> Conrad Taylor: I wrote that down. I just needs to go back to education and training.

>> While we're on proposed agenda items I would like to add, if staff could look into the cost versus benefit of the board books idea.

>> Conrad Taylor: We're going to move to proposed items. If we can get education and training and clear that off.

>> Russell Crosby: I'd like to call out a couple of items that are new this time. One is item 7.1, it's a risk management apropos our recent discussion, up in San Francisco on June the 7th, you might consider going to that.

>> Conrad Taylor: Do we contact you Russell?

>> Russell Crosby: Yes either me or Veronica, the two of us will handle that for you and the sackers program in Berkeley in July is also worthwhile. It's not as --

>> Last year?

>> Russell Crosby: Yeah I think you went last year.

>> Highly recommend it, it's good.

>> How does that compare to the Stanford one?

>> It's different. It's good. This is focused mostly on investments while Stanford gives you investment stuff. This is more like Wharton.

>> Conrad Taylor: Okay, I think we'll go with education and training 7.2, and 3, 1, 2, 3 and 4 be a note and file. Proposed agenda items.

>> Richard Santos: Yes, Mr. Chair. The first issue, I would like to bring up for next month would be this insurance cost that was given to board members. So anybody need to discuss that and I believe the plan should be taking care of that funding, and find out what other plans do and what have you when it comes to that issue.

>> Sean, you saw something on that --

>> I don't think we can have that page of the plan --

>> ERISA plans cannot -- that prohibition doesn't apply to us. It is your own fiduciary issue, at most a fiduciary close call whether you should use plan assets to protect yourself. But at least a flat prohibition doesn't apply to you. Still may not be --

>> Is that this \$50 thing?

>> Nonrecourse.

>> My understanding at the round table that I went to maintain that Chinese wall you need to pay for it.

>> Russell Richeda: I think that's the wisest, that means someone any other entity could pay.

>> Conrad Taylor: We'll put it on the agenda and talk about it.

>> Richard Santos: That is what I was hoping we would not do there, we would do then, find out all of it. Also the Cortex report, put on the next agenda so all board members can have an opportunity to read that. And then also a question of a quorum. I was kind of confused the last meeting. I know what it takes to have a quorum. What do we do whatever have you, it's nice to get not just the attorney's opinions but to understand do we conduct business how do we go about it whatever have you.

>> Conrad Taylor: So what constitutes a quorum can is that what you're asking Dick, what constitutes a quorum?

>> Richard Santos: That and other discussion about that. I understand what takes a quorum to start a meeting but when someone leaves as I just said, what do we do then when we have business to conduct. So do it there.

>> Conrad Taylor: Yes?

>> Mollie Dent: I can do a memo on what constitutes a quorum for beginning a meeting and what constitutes a quorum to take action.

>> Richard Santos: The reason I asked, one member said we didn't because there was five people here or something and I didn't understand it myself, I thought we should be able to take care of the business here.

>> Mollie Dent: Sure and I'll be glad to have Russ take a look at that.

>> Conrad Taylor: Board retreat. You had one and I had the same thing with the cost savings using some type of electronic device. I know we receive a lot of paper. Some of this paperwork, I'm going to get again next month. I wonder if we had --

>> There's a specific program that's called board books which seems to be pretty highly rated within the private sector, lot of boards are using it so that's the only suggestion I have. I'm sure there are other ones out there, maybe staff can look into it.

>> Archiving, all of your notes are maintained there, you don't have to worry about somebody getting to your house to get your notes.

>> I wasn't worried about that until you brought it up.

>> Russell Crosby: Electronic agendas, board members would be a tablet of some kind, rather than distributing the paper.

>> Mollie Dent: I don't think the paper does have to be distributed under sunshine.

>> Russell Crosby: No, it doesn't but it's an issue of --

>> Once we start making notes on it and things like that we were advised you start keeping things like that, the issue comes up, having it all open eliminates that issue or reduces that. We can talk about this next --

>> We can talk about it mention month.

>> One point of information for Carmen and Ali, I think there's a conference in Las Vegas called salt, it might be interesting in seeing what these guys are doing and looking at again.

>> The boss going to Las Vegas --

>> Russell Crosby: There's nothing about Las Vegas, it's out of the country.

>> And staff also.

>> Russell Crosby: Staff on many conversations, staff and trustees go for free.

>> You get to see a lot of managers all in one place.

>> It's one of the best. I've been kind of avoiding it, because of its location.

>> Trustee Sean suggests you reconsider.

>> Russell Crosby: We'll put it on the agenda next time, so you can approve it.

>> Conrad Taylor: Last of the proposed agenda items would be establishing or looking into a subcommittee for assisting or validating the medical forms.

>> Not a committee but a group that would assist in the medical forms.

>> Mollie Dent: A committee of the board?

>> Sean Kaldor: Yes, and staff I assume. This is not to approve the disability, to talk about the forms and the process and how it works.

>> Russell Crosby: There's actually a similar working group has been working in Federated for several months. They're way out in front of you.

>> Mollie Dent: The reason I asked whether you meant the board, there is a working group with Police and Fire and attorneys and staff. So if you want to have a board subcommittee that's fine.

>> Sean Kaldor: That working group is still in existence, we can talk about the meeting when it comes up I'd rather use existing infrastructure if that's still in place?

>> That was specifically (inaudible).

>> Conrad Taylor: That was the forms when it first started out.

>> Sean Kaldor: Okay so I do have a few items for the next one. Somebody might be asking for updates, one is the FLSA overtime pay for retirees. The current Police and Firefighters, for times which should not have been credited to them. They owe us opinion, we owe the city money, where does that stand, what is the reconciliation on that? The second is peoplesoft vs. pension gold, that was part of that, got sparked by that question, transactions on the status identified the issues identified in that. The third is an audit committee, lots of discussion in the Cortex report, about how important the audit committee is, should we have one? What to do? Finally just because I'm a glutton for punishment, if there are any classes out there more focused on the actuary side of things I'd be interested in --

>> Russell Crosby: Trying to find those?

>> Yes. That's all I have.

>> Conrad Taylor: Anything else? That's it?

>> Russell Crosby: There is a meeting.

>> Conrad Taylor: No public comment. I'm ready --

>> This becomes a trend we're out wearing the public.

>> Conrad Taylor: Motion for adjournment?

>> Second.

>> Conrad Taylor: Meeting's adjourned.