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>> Mayor Reed: Good morning. I want to call the city council to order. We started at 8:00 and managed to get done with the closed session agenda. We have a very long agenda in front of us, and we need to make some modification to the agenda. I'll talk about that as we take up orders of the day. So on orders of the day, there are a couple of things we need to modify from the printed agenda. Items 2.3A to 2.3F, committee reports, will be deferred to August 3rd. Item 9.1, development agreement with Cisco, item 3.7, revenue anticipation note, and item 2 on the joint financing authority will be heard first in the afternoon. Item 3.16, the possible approval of terms with MEF is to be dropped. And then I want to talk about the rest of the agenda order. Jennifer Maguire is here with her staff waiting anxiously for us to take some action on the items, some of the budget items that are in front of us, and she can't start getting the ordinances done, the calculations done, until we do that. So I want to make sure we do those this morning. And so I'm going to take -- instead of starting with the redevelopment agenda, I want to start with the budget related items which are the tentative agreements in present of us, items 3.11, 12, 13, 14, 15. And if once we get those done that will allow us to take up item 3.2, which is approval of various budget actions for the year, and 3.3, the adoption of annual appropriations ordinance and annual funding source resolutions and other resolutions have to wait until Jennifer can do the calculations. We need to get those others done so she can get started immediately. So anything else under orders of the day? Is there a motion to approve? Motion to approve orders of the day. All in favor? Opposed? None opposed, those are approved. Closed session report anything to report?

>> City Attorney Doyle: There's no report mayor.

>> Mayor Reed: Okay. So in the new and modified agenda order, in order to give our budget staff the maximum amount of time to work, we're going to take up the ideas 3.11 through 3.15. Those are the contracts with five of our bargain units. I'm going to let staff shift. I know this is a change but got to be flexible today. A lot of things going on. We're trying to Do get everything done.

>> City Manager Figone: Thank you, Mr. Mayor, if I could just begin while our labor relations staff is joining us. We're talking about a recommendation before you for approval of agreements with AEA, CAMP, IBW, AMSP and OE 3. I'm very pleased to announce that we have reached an agreement with the five bargaining units and

that I am able to recommend to the city council this agreement reaches the 10% total compensation reduction for all bargaining units and results in the employees paying 5% of total compensation towards the unfunded liability on an ongoing basis. I'll turn it over to Alex. I know you have a very long meeting today. We do have a abbreviated presentation and then we're open for questions.

>> Alex Gurza: Good morning, mayor, members of the city council, Alex Gurza director of employee relations. As the City Manager indicated we have very good news, not only have we reached agreement but all five of the bargaining units have ratified that agreement. We wanted to very briefly for employees and the public sort of pick up where we left off in our last open session presentation. I know it's been a little bit difficult to follow, given the breaks and continued efforts to reach an agreement. So at the June 17th council meeting last Thursday, we had identified a city charter issue with a proposal provided by the bargaining units, our concerns about the city charter issue were confirmed by the City Attorney. Very briefly, our retirement systems are set up by a cost sharing, amount of money that the city puts in, the amount of money the employees put in. Some of that cost is specified in the city charter and as I described last week it's what is called the normal cost. It is the cost for every year of service as you move forward. The city charter indicates that split on an 8-3 ratio, for every \$8 the city puts in the employee puts in \$3. That's in the charter. What's not in the charter specifically is who pays for the unfunded pension liability. And again as I described last week not to go over in a lot of detail unfunded liabilities can be caused by a whole variety of reasons including providing enhanced retirement benefits for years of service that have already been worked. Also, it can be caused by not meeting actuarial assumptions. Most recently obviously not meeting the earnings assumptions. The plan assumes to earn a certain amount, and it does not. That creates an unfunded liability. That is currently on the pension side 100% paid by the city. That is not in the charter, that is in the San José municipal code and we had been advised that that is something we could meet and confer about shifting that cost. Wanted to briefly go through the time line of the proposals that we had received for employees making additional retirement contributions. Therefore, relieving the city from the same amount. This is a concept that first came and was proposed by several of the bargaining units. The first date that we receive those proposals, date back to April 29th. Subsequent to that we did receive other bargaining units who also started to make the same proposal. But the key thing there is at the time, it was 7.5% of additional retirement contributions. So when we received that proposal, we started working on, can we make that happen? One of the

key questions is, did the 7.5 start to get into the charter issue? So we worked closely with city attorney's office, the Department of Retirement services, finance, everybody to try to figure out whether we can make this work. And it did work and we made it work and as a matter of fact it was in the City's last offer because the 7.5% again did not get into a normal cost city charter issue. Then on June 15th which is when the council was first going to be considering the potential implementation of the city's last best final offers at 11:51 a.m. prior to the 1:30 meeting we received a new proposal. That proposal essentially doubled the amount of retirement contributions that were going to go into the system. Again, we had a very short period of time between noon and when the council met at 1:30. It was my staff who immediately identified that the potential charter problem, because the 15% could very well be too much. And that initial concern turned out to be the case. So the council, as you all know, deferred the items until today, to see if the city could meet the union's interest while avoiding any city charter issue. And again the union's interest was in making as maximum amount as possible of the 10% total compensation reduction as extra retirement contributions. So the good news is, we executed a tentative agreement yesterday, on June 21st, after having received notification as I mentioned earlier that all the bargaining unit and their members had ratified the new language. So we did issue supplemental council memos yesterday as we attached the tentative agreement and summarized the provisions, that I just have one brief slide, again this is to summarize how the five bargaining units are getting to the 10%. You see the first five ongoing total compensation reduction, is now going to be an ongoing additional contributions to the retirement system. The amounts vary by bargaining units. And but they're relatively in the same range. So you see there it's between 7.29 and 7.76 of pensionable compensation will now be on an ongoing basis, meaning until and unless it's negotiated differently, that's the amount that make up the first 5. As you recall last week, we were about well, what's the maximum that can be put into the retirement system without getting into that normal cost? We did have very very little time to get to the number correctly, so as I'll talk about in a minute, that's why the contingency language was important. The Department of Retirement Services did their best to provide me with their estimate, again, subject by their saying that is going to have to be verified by the actuary, of that the total amount might be. And that amount they gave me was 11%. So again, instead of being able to put 15% they said we recommend you stay with 11. So these numbers on the second 5 where you see 3.2% to 3.71, that is simply the difference between 11 and the amount of each bargaining unit in the first five. So again, we were trying to put the maximum amount in there as possible. Then we had to deal with what about the balance, meaning the amount to get to the 10% since that does not equal 10%. The employees in

this bargaining unit are going to take a base pay reduction, temporarily, again, because this is the one-time five for the fiscal year to make up the difference. And again, by bargaining unit it varies a little bit, but it ranges between 2.65 and 3.2. And by the way, the tentative agreements we reached with all five are all individuals, so each one has the specific numbers applicable to that bargainin unit, but in the end they all achieve a 10% total compensation reduction. We also had to do with part time employees, specifically operating engineers local 3, have a relatively significant number of part time employees that do not participate in the retirement system, thus there is no way for them to make up their 10% that way, they are receiving a total 10% compensation made up as base pay. The contingency language is important, and that is because there is still work being done by the Federated Board's actuary. GRS, to determine whether that 11% is the correct number or not. There is a potential that it may be slightly less than that. I did inform the bargaining units of that yesterday before we fully executed the agreement. But we all agree that the contingency language is there for exactly that reason. If for any reason the amount ends up being slightly less than 11, the contingency language would kick in and so we're covered in that event. These are all one-year contracts, so we will be back again. And I think that as we all have seen, labor negotiations need a lot of time. They need time to be able to work through especially complex issues. So we, as part of our agreements that are going to expire next June 30th, there is language there that says that either the union or the city can provide notice to the other, in January, to start negotiations. That would mean that we can start early to make sure that we have sufficient time to work through what often are very complex issues. So, in summary, we believe that the agreements avoid any city charter issues and to the extent that anything arises subsequently, we have the contingency language to cover that. Most importantly and I think most significantly it reaches the goal of 10% total compensation, reduction, 5% ongoing and 5% one time by agreements that have all been are ratified by all the employees in these five units joining the others that you have already approved previously. Also, on an ongoing basis the employees will be sharing in the unfunded pension liability that was previously 100% pay by the city. So that brings us to our recommendation slide, which is our last slide. And I know the City Manager and I and on my staff are happy to change the first bullet point here to now recommend approval of a tentative agreement with AEA, AMSP, CAMP, IBEW and OE3. We did leave the middle bullet point which was there last week because we still think it's important to continue to research the legal charter and labor relations issues related to flexibility to change cost sharing of normal cost on an ongoing basis and what are the steps necessary if there was subsequent interest in doing so. Lastly you've heard a lot about what goes

on in negotiations and what doesn't and what is said and what isn't said. And previously you know, there was a lot of interest in still maintaining the flexibility to have those meetings be closed, not necessarily to make them secret or public but to be able to allow some trading of ideas and flexibility, but we want to still explore, however, because we've heard recent interest in having them be open. You heard last week about an interest in tape recording the meetings which essentially would be making them public. So we want to over the next year before the next negotiations explore the union's interest in open public labor negotiations. However, while still avoiding the possibility of bypassing and direct dealing. So with that, that is the administration's recommendation, and we ask for your approval.

>> Mayor Reed: Thank you.. Councilmember Herrera. I do have some cards from the public, and we'll get to that in a minute. Since this is different agenda items than the last time we considered these items, because we now have the tentative agreements, I will take public testimony, even though we've already had the hearing on this. But I am going to limit all testimony today for the whole day to one-minute statements. You look at our agenda and you'll see why. Councilmember Herrera.

>> Councilmember Herrera: I would like at this time to make a motion to approve the agreement with AMFP, CAMP, IBEW, and OE3.

>> Second.

>> Mayor Reed: We have a motion on the floor. We are going to consider all five of these at the same time. We will take testimony on all five at the same time. Councilmember Herrera.

>> Councilmember Herrera: I just want to congratulate everyone involved with this and I want to start with our staff. Alex Gurza and his team for the heroic efforts they have made, working through night and day, without regard for sleep, food, and everything else, to really work very hard. Also, all the bargaining unit representatives, but most especially Chris Platten, for the persistent effort in working to get this done. This achieves our 10% compensation savings by 5% ongoing and 5% one time. It is able to direct it to the unfunded liability and resolves

the normal costs, city charter issue. I also think it's very important that we have a time-certain in January to get these negotiations started sooner. There's been a lot of discussion about the failures of the process. And a lot of - a lot of that has to do with timing, and make sure that we get started soon enough to be able to resolve things. I think it was said by Chris platten that if we have enough time to meet then we can get things done. So I'm really happy to be able to make this motion and support it, and congratulations to everybody. This is a win for all of us. Thank you.

>> Mayor Reed: We have a motion on the floor. I think I'll take the public testimony at this time. Again it will be one minute so please come on down when I call your name because we have a lot of people that want to speak on this one. Nancy Ostrowsky, Cameron Cleland, John McCarr.

>> Good afternoon, I'm Nancy Ostrowsky from IFPTE local 21 representing AEA and CAMP. For those of you on the city council that believed in us from the start, we thank you. For those of you who believed in our testimony, that we needed another 48 hours, we thank you. And for those of you who said they just need another 24, we do really thank you. Now, with -- besides that we also want to remind all of you that we were a coalition, and it's regrettable that that coalition by the city has not been totally acknowledged. One was AB MEI, they have been imposed upon by you. We are asking that you accept their proposal. They are giving, they are giving what we have. Labor relations, the communication, we really question how it's come across to us. We need that to happen right away. For Police and Fire, they are part of our coalition. They've come to you with genuine hardworking and really good proposals. You need to accept them. We ask you to. Thank you.

>> Mayor Reed: Your time is up. Cameron Cleland, John McCarr, Roger Stores.

>> Good morning, mayor and city council, I am Cameron Cleland, vice president of CAMP IFPTE Local 21. Thank you for allowing time for the union coalition to finish submitting their proposal. Make no mistake, though, this is very difficult for us. People are worried and struggling to figure out how to live on these cuts. It's all the more difficult if San José residents think of us as selfish or rich. Nothing is further from the truth. Let's continue to work together to solve problems. Communication must improve out of your employee relations department. As far as

ABMEI, they are part of the proposal. Please accept their proposal, don't delay on this matter. We urge your acceptance of Police and Fire proposals. Thank you.

>> Mayor Reed: John Mucar, Roger Stores, Warren Kraus.

>> Good morning, mayor and councilmembers, I'm John Mucar, president of AEA IFPTE, Local 21. I'd like to start by thanking the councilpeople, staff that worked with us to reach this agreement and bring us here today and avoid the imposition. All along we heard from you that imposition would only be a transitional point and then we can go back and negotiate that evening or the next morning. That's not the case with ABMEI. ABMEI put in more money, twice as much as they are imposed on on the table now we encourage you to accept that and move staff to finish the negotiation with them, additionally, Police and Fire, both unions came up and provided concessions. Please continue negotiating with them and accept their deal. Thank you.

>> Mayor Reed: Roger Stores, Warren Kraus, Tim Brim.

>> Good afternoon, honorable mayor and city council. My name is Roger Stores, I'm a city residents of District 4 and been a city employee since 1992. I'm represented by AEA, IFPTE local 21. Agreements that meet your goal of cutting total compensation by 10%. When we work together, instead of against one another, we can solve just about any problem. But really, this problem, this situation comes down to just one issue. Trust. Do you trust us to participate sacrifice and help you meet the needs of the residents? Can we trust you to treat us fairly, equally and not to take advantage of your power over us? The last few months have been a time of extreme stress, division and distrust. To make sure that we move forward and deliver the best possible service to our residents we need to start the healing process. Please take care of ABMEI, they're giving you double what they were imposed upon. Also, I asked you to demonstrate some of that fairness and equality --

>> Mayor Reed: Sorry, your time is up. Warren Kraus, Tom Brim, Judy P.

>> Good morning, honorable mayor and councilmembers, my name is Warren Kraus, I'm with ABMEI. ABMEI and its coalition partners that are on today's city council agenda are formally requesting that the city council substitute the imposed conditions on ABMEI with the tentative agreement signed by each representative bargaining unit in the city of San José. The members of ABMEI voted twice over the last week to accept these same contracts that the other members of the coalition agreed to. This additional 5% to the General Fund would create \$297,000. This is enough new money to save library homework center program or just about enough to save the police department's juvenile investigations unit and the assault unit. In order to provide you with the prime example of the mentality and lack of fundamental fairness our coalition has been dealing with, when we have been interacting with your designee, Mr. Gurza, made it clear that ABMEI would not be on the agenda for the council action --

>> Mayor Reed: Thank you, your time is up. Tom Brim, Judy P, Al Gonzales.

>> Hi, councilmembers, my name is Tom brim, I'm president of ABMEI. Just wanted to continue with what Warren was saying. It is that we have been part of this coalition from the beginning and we're the only group that's been imposed upon so far. We were only imposed upon by 5% some we came back in the coalition and offered 10%. As Councilmember Pyle pointed out last time, sometimes the people you represent you, Mr. Gurza make it very hard to deal with you guys. We're offering twice what was asked of us and if you please consider that you take that, in the spirit of cooperation with the coalition, the same deal that the coalition has made, we're asking you to make that for ABMEI. Thank you very much.

>> Mayor Reed: Judy P, Al Gonzales, Tom LineBarger.

>> Good morning, mayor, councilmembers, my name is Judy Pitts, and I live in the rose garden area. I'm here today to commend the San José bargaining unit for stepping up to the plate and offering 10% concessions that were asked of them. Thank you all in supporting a negotiated solution. It's not easy for families to voluntarily agree to make these kinds of sacrifices and already tough economic times. We have just purchased a home in the San José area, because we love this city but because of all the cuts in the city services we are really going to be hurting. I would like to urge you to keep up the work you have begun so we can save the critical programs and

services necessary for our city to be a safe and productive place for our families. Please schedule an additional meeting before your July break and finish your good work. Thank you.

>> Mayor Reed: Al Gonzales, Tom Linebarger, Carlos Baraja.

>> Good morning, Mr. Mayor, city council, my name is Al Gonzales. I'm a member of CAMP, IFPTE local 21. I've had the privilege of being part of CAMP's negotiating team. It's been enlightening experience to say the least. However, our work is not done. We still have a lot of ground to cover. A few months ago, ABMEI was imposed terms and conditions of employment. Mr. Mayor, it's been repeatedly stated that negotiations can occur immediately after imposition. ABMEI has submitted the same coalition proposal which meets the City's goal of 10%. Their membership has ratified the proposal and are ready to sign the tentative agreement. I ask that you deregulate staff to meet with ABMEI and accept the tentative proposals, I also ask that you accept Police and Fire's proposals and go back to the table and continue negotiation. Thank you.

>> Mayor Reed: Tom Linebarger, Carlos Barajas, Gary Roberts.

>> Tom Linebarger, Painters Local 913. I want to thank this council for the work you did last week in approving a contract and I thought it was a great effort. The -- I hope that you're going to continue these efforts to reach an agreement with those groups that are not yet settled. And I want to tell you a little bit about who the city workers are from a different perspective. I don't have any city workers here but I know who the city workers are. These are the people who worked for health care, for all children in the county, and I appreciated that effort. That was a great effort. It wasn't a selfish effort because they have health care. These are the people who work for raising minimum wage. They don't have minimum wage. They are working for other workers. These are the people who worked for a livable wage. This is something that is important and good for the entire community. So I really appreciate that a lot of you that don't necessarily feel like I do have made that effort to reach agreement and I hope you're going to keep this open and reach agreement with all unions. Thank you so much.

>> Mayor Reed: Sorry your time is up. Carlos Barajas, Gary Roberts, Gary bird.

>> My name is Carlos Barajas, I'm a third generation native San Joséan, so I've been here a long time with Local 3. And I just want to say we're not taking 10%. We're actually taking 14.2% total compensation. I hope next year when we go through this that this is going to be so the libraries stay open, the community centers and I think next time we should be if it's going to be across the board 10% it should be base salary, 5% and 5 we'll see you next year. All this stuff what we're going through, putting the public through this, putting the fear in them, that wasn't right. I think next year we should be more honest in all of us and make this happen for the kids and for the senior centers and I hope after all this is done that those are going to stay open. That is what you guys promised.

>> Mayor Reed: Gary Roberts, David bird, Rebecca Keiken.

>> Hi, Gary Roberts. I keep hearing 10% when in fact yesterday I voted on a contract that's going to cost me 14.2%. I feel like you're lying to me. 10% 10% 10%, I feel like you're sleeping with the Mercury News because they keep echoing the same sentiment. 14.2% is what we're taking from you, and I heard each one of you in the night take a 10%. Are you going to take a 14.2? I want to see it in the paper. I want to see facts that say that you are doing it, I think you're lying to me, and I don't like to be lied to. Thank you.

>> Mayor Reed: David Bird, Rebecca Keiken, Sergio Jiminez.

>> David bird, Trinity Cathedral in downtown. Mr. Mayor, councilmembers and assorted friends on behalf of the Episcopal church, we are delighted with the unions on the agenda today. We also thank everyone for their assiduous work so far and trust that you will continue your work with the three outstanding unions not on today's agenda. Finally it will be a great joy to us if negotiations could lead to a further council meeting before July for reasons we all understand. Thank you.

>> Mayor Reed: Rebecca Keiken, Sergio Jiminez, Rosemary Kamei.

>> Rebecca Keiken, director of the Interfaith Council on Economic Justice. I'd like to express gratitude on behalf of many people in the faith community who have been listened to in this budget process. We also give thanks for city workers who have sacrificed and worked to find a solution, and we're also equally grateful for the resolution that is moving forward for these five units. Our request is that further mutual dialogue, further solutions, and healthy respect continue with police and fire, and ABMEI and it is our hope that you could schedule and complete this budget by July 1st, even if it means another meeting for you. Blessings.

>> Mayor Reed: Sergio Jiminez, Rosemary Kami, Jonathan Carp.

>> Mayor, council, I come to you as a father and a long time San José. I currently reside in Mr. Kalra's district, my children are 3, 8 and 11 years old and attend schools within the Oak Grove school district. As a concerned resident, I've come to express my support for continued negotiations with city workers. Negotiations with city workers is the only way that city workers and city residents win. Only through negotiations can we as a city save millions for our city programs. Now as a father, my primary concern is keeping my children safe to make certain that they live in a safe city. It is my belief that awe money saved through negotiations can help make the city safer for my children by maintaining critical fire department services as well as police units, especially those police units that deal with children. I ask that you schedule additional meetings before the July recess and that you direct city staff to negotiate with bargaining units that aren't present today. I completely understand that negotiations are an exhaustive process but it's a process that is well worth the effort --

>> Mayor Reed: Sorry, your time is up. Rosemary Kamei, Jonathan Carp, Joe Kinney.

>> Mr. Mayor and councilmembers, thank you for the opportunity to address you this morning on behalf of myself, although I'm not a resident of San José, I have worked in San José for over ten years. And certainly have worked with many of you on many of San José's needs. Today I'm really thrilled that Councilmember Herrera has put a motion on the floor and I encourage you to vote in favor it. I think it's good in terms of being able to have the solutions in place regarding the tentative agreements with the coalition bargaining units. I also encourage you to continue to negotiate in good faith for the agreements of those bargaining units that are willing to sacrifice but

aren't on the council agenda today and hope that the council does see fit to have a meeting before your July recess comes to -- in July. And I encourage you to look at balancing some of these competing interests and as has been mentioned before, you know, the time and the trust and trying to find solutions. It does take time and I hope that you're able to take that.

>> Mayor Reed: Sorry your time is up. Jonathan carp, Joe Kenny and Alyce Beza.

>> Honorable mayor, councilmembers, my name is Jonathan Carp. I've been a homeowner in Naglee Park, Sam's district, for eight years, and a faculty member at San Jose State for the last 23 years. This budget process hasn't been easy on anybody, certainly not on you or the members of the council, and definitely not on the workers and their families who voluntarily sacrificed part of their livelihood. The 10% compensation reduction the city workers have offered is a testament to the commitment to ensuring quality services continue in San José. The members of the building inspectors union, ABMEI, have also voted overwhelmingly for the very same coalition agreement of a 10% wage reduction. As has been previously mentioned, this 5% is above and beyond the amount imposed upon them in April of this year and would generate an additional \$297,000 in savings. This is enough money to save a number of programs including enough to save the City's library homework center program. I would like to urge the council to conduct an additional meeting before your July break to finalize the agreement with units not on today's agenda.

>> Mayor Reed: Sorry, your time is up. Jo Kenny, Alyce Blazic, George Beatty.

>> Good morning, mayor, city councilmembers, my name is Jo Kenny. I'm staff of Pride at Work, which is part of the AFL-CIO. I have a 35 year career of working with both labor and nonprofit organizations, and actually, I raise money for nonprofit organizations, so I recognize how difficult this situation is for all of you. I don't like the way that it's been set up as city workers against community programs. It made me heart sick to see that because we all are in this together. I really applaud you for stepping back and negotiating with the unions over the last week to reach this tentative agreement. I think you really deserve a lot of praise for that. I also encourage you to continue that

and work with the unions that are coming forward and saying, we're willing to make this sacrifice. We really want this to be a win-win. It hurts San José.

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

>> Thank you.

>> Mayor Reed: Alyce Blazic, George Beatty, Randy Sakani.

>> Good afternoon, my name is Alyce Blazic and I've lived in San José for 45 years. I've raised my two children there and they went to San José schools. I'm here to support the agreements the city has come to with the five of the coalition unions and I'd like to sincerely thank the workers for their willingness to sacrifice and be part of the solution to our budget problem. Because I raised my two kids here I know how important it is that we invest in Public Safety programs, which makes San José safe. For that reason I would urge you to continue working to reach agreements with the other unions including Police and Fire, as soon as possible. We cannot afford to lose key programs that make our city safe. Thank you.

>> Mayor Reed: George Beatty, Randy Sakani.

>> Honorable mayor, city council, George Beatty, San José Police Officers Association. It's no surprise to anybody here that we've been working with the coalition to try and find an equitable way to make concessions. As I stood before you last week I told you that we would make some ongoing and one time cost concessions. At that particular time I believe we were very close. In our discussions between the City's negotiation team and our negotiation team we had some hypothetical discussions about a 5.25 wage roll into pension and co-pays and the 85-15 for health care. We wanted a two-year deal. After further evaluation we realized that couldn't be possible. We resubmitted to a one-year deal. We look forward to continue to work with the city to resolve this in an equitable way. I'm available whenever you need me. Thank you for your time.

>> Mayor Reed: Randy Sakani, Cora Pementuan.

>> Randy Sakani, San José Firefighters. First, we hope you do deal equitably with ABMEI. I want to echo what my colleague, Mr. Beatty, talked about. We've been part of the coalition as well as 7 or 8, and then of course Public Safety coalition. We, too, in working in that vein, arrived at a proposal that you have that I believe you were briefed on that includes 5.25, because those were numbers that were brought about, brought forward, were discussed. Also, all of the health care proposes, they are in our proposal as well, as well as the key issue, that's the ongoing funding of employee health care. We have accomplished all of those and put it in a one-year model. We hope you can give it serious consideration. We know it will save between the two public safety millions of dollars to keep public safety services alive and let us take care of the community for this year and into the future. Thank you.

>> Mayor Reed: Cora Pementuan.

>> Good morning, honorable mayor and city council. My name is Cora Pementuan, I'm a resident of District 8 and I have been a city employee since 1997. I'm represented by AEA, IFPTE, local 21. First I would like to thank you for giving us the extra time needed to put these agreements together. I ask you to demonstrate the fairness and equality we have been discussing. I ask you now for a good show, a show of good faith, give our members the same additional paid time off as you have already approved for the executive and the senior management. We have all equally sacrificed to meet your goal of 10%. We are all equally sharing the pain. Please give us the same respect and show us that we can trust you to treat us fairly and equally. Please approve these contracts today. Thank you very much.

>> Mayor Reed: That concludes the public testimony on these five items. I think there will be some additional council discussion. I just wanted to start by thanking not only our negotiating team but all the people that worked very hard over the last week and that includes the couple of dozen people representing the various bargaining units that are in front of us on this agenda today. It hasn't been easy to put this together in a very short period of time and I know a lot of people lost a lot of sleep certainly on our city staff in order to make it happen on a very

short time period and negotiations are never easy. And these were particularly difficult because of the bad budget situation we were in and the concessions that we have asked for. I want to thank the five bargaining units that are in front of us today for their willingness to make sacrifices to save jobs and services. That's what we asked them to do. They've stepped up to do that. I very much appreciate their sacrifices. As for the other bargaining units, some of them we have already negotiated with and approved. The ALP has been approved previously. Unit 99 concessions were previously voted on by the council and we have additional work to do on that as well. But the others that people have been talking about, we're still talking to them, and negotiations can continue, even though they are not on the agenda today. That's what our staff does. They never give up. And they will continue to work with the other bargaining units that aren't in front of us today. I want to thank the staff for a huge piece of work they got done in the last week. All to the benefit of the city. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I wanted to echo all the thanks. I want to thank all our employees for making very extraordinary sacrifice. I think we all know how tough times these are for all of our residents. But we also know that this is extremely unusual result to have, through coalition bargaining or through collective bargaining, to have people willingly giving up so much of their own compensation, tough times, when we know people have such a tough time make rent and making mortgage. I want to thank the leaders of the five bargaining units for their courage and stepping forward and taking these agreements to their membership. Chris platten, Alex, Gina, Aricelli, and Jennifer for your extraordinarily hard work in the last weeks and I hope your families will forgive you for all the lost time. I just had a couple of quick questions, one is with regard to ABMEI, what are next steps for us?

>> Alex Gurza: Councilmember Liccardo thank you for asking. I meant to cover that in my presentation. As you've heard, ABMEI already has the 5% reduction that was implemented by the city council in April. I think it's important for background, the reason that it was only 5% is their contract expired back in December and that was before the City's changed circumstances where the budget shortfall changed significantly. We only asked for 5. I think it is very significantly that they are willingly coming forward now and asking for 10. They did come to the bargaining session we had on Friday. We had to explain we had to meet them separately. Because if we were to accept the agreement as written, he they would be 15 down. They were already five. We sent them a letter

yesterday saying we would like to sit down and talk to them about how to achieve the 10. With their unique circumstances, they're already 5, which could include reversing some of the things or not. So that's how we would proceed in sitting down with them separately, again, because of the unique situation. The other thing just briefly mentioned about other contracts in place, I just want to mention that two of our bargaining units and they are on the slide you see here below, but very small print at the bottom, MEF and CEO, they have contracts that extend through this next fiscal year. When we have closed contracts there is no negotiation to be had unless there's a -- they agree to reopen their contracts. The last two in yellow there was a discussion about accepting the two other union proposals which are local 230, the firefighters and the POA and as of yesterday I received the most recent proposal from the police officers yesterday afternoon at about 3:00 p.m. and the most recent proposal from local 230 sometime in the evening and that is the comparison in terms of total compensation and how much that would achieve based on their current proposal. As the mayor indicated with those two bargaining units we will continue our efforts to try to see if we can reach an agreement.

>> Mayor Reed: Okay, so in summary conversations will continue with POA and others, ABMEI if you're able to reach some agreement we'd expect that to come back in August, presumably?

>> Alex Gurza: Yes, probably the August 3rd council meeting.

>> Councilmember Liccardo: Okay, great. And then just to clarify, I know one of the speakers raised the 10% of compensation, and what that means. Is it fair to say when we ask for 10% compensation obviously that means more than 10% of salary, because in addition to salary people are paid benefits.

>> Alex Gurza: Yes, the key word is total. And I think this has presented us with an opportunity and a challenge to educate the workforce that the cost of the city employee is well beyond pay. So if you were to make \$75,000 a year and ask for a 10% pay cut we can all do the math and say that's \$7500. But the cost to the city is much, much more to that. Your total compensation is the City's cost for benefits. The two main benefits are the City's contribution to the retirement system and health care. So that same employee who make 75, when you talk total compensation may be well north of 100. For ease of math, we would say for total ease of compensation that is

100,000. Then the totally cost of compensation to the city is over 100,000. When the speaker says he added the math up, and adds 14. Because it's sort of an apples-to-apples comparison that they're doing that. But really it is 10% of the total cost to the city because our costs are dramatically escalating and will continue to do so for pension and health care over the next few years. We really focus on a total compensation perspective rather than a base pay perspective.

>> Councilmember Liccardo: Thank you, Alex. Then finally with regard to councilmembers pay and compensation it is my assumption that that was 10% of total compensation some is that right?

>> Alex Gurza: That's my understanding is not only the city council did but the council appointees also used the same methodology of a total compensation reduction.

>> Councilmember Liccardo: Great, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to add my thanks as well. It's been quite a number of months since the city council set the goal of 10% total employee compensation reduction. And I'm very thankful that we've gotten to a point where we are able to balance our budget based on these reductions. I also wanted to make sure to thank the Alex and team, all of you individually and collectively, for all the work you've been done and the pressure you've endured from both sides. It's never easy to be stuck in the middle, and you guys have been stuck in that position for a long time. And I really hope that the few that are out there that are outstanding, that we can come to resolution quickly on, and that those couple of contracts that aren't open, we can get to a position where we can save more services for our residents.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. I want to start by thanking Alex and the team and particularly for setting, I think having the foresight of setting the ratification. I know that the bargaining units need you to be able to communicate with the membership. At least in an effective and efficient way and having the foresight I think as soon as you were given direction or soon after, to schedule ratification, otherwise this wouldn't have happened, it continue have happened. I think important or essentially even prior to coming to agreement, to make sure procedural we were in a position to act on it. And the question on the Councilmember Liccardo raised on ABMEI, ABMEI is in a position just like any other that although terms have been imposed, negotiations can commence at any moment.

>> Alex Gurza: Yes, absolutely. We sent them a letter to that effect. The other thing I forgot to mention, there was talk of using that extra money for community centers and libraries. ABMEI is a unique group, they are all building inspectors, almost all of them in the Planning, Building, and Code Enforcement department. There are restrictions on the use of those funds. Almost all of those funds would need to stay within the development fee program, although clearly that would be helpful and we'll continue discussions with them about beginning potentially as soon as we get a meeting set up could be tomorrow, to see if we can reach agreement on accepting their willingness to do the 10%.

>> Councilmember Kalra: Yeah, and I think that certainly my preference is the sooner the better, you know, to start the discussions clearly, there's an indication that they're willing to make even a greater sacrifice than that that was imposed upon them. I think we should take that seriously, especially with the potential of having more money for us to save those positions and save services for this upcoming year. And I really, you know, over the -- past past week's been long for all of us, especially those from the bargaining units and our bargaining team have had to spend many, many hours in coming to these agreements. But I do think it's worth it. We had two meetings last week, at both those meetings, at different times, there were based upon the comments that were made, there were recommendations by the City Manager as well as suggestions by consensus of the council that imposition was the best course of action. I want to thank employees that came forward, expressing a strong willingness to continue to work and practically begging us to give them the opportunity to come to an agreement. I want to thank the faith leaders that came in support of our employees and I want to thank the councilmembers, that were willing

to give even at the 11 and a half hour the opportunity to come to an agreement. I do think there's great value in that. And I think that as much as we've -- as much as many people have had to work over the past week, with a lot of tension, and back and forth, in some of the legal issues that we very vigorously discussed at the end of the day, I think it's worth it in termination of the respect we show our employees, I think it's worth it in saving the services which I think that was foremost in all of our minds, and I think it was worth it to the residents to put us in a position where we can start building a more amicable relationship with our employees who are the face of our organization. I just want to thank the sacrifice that has been made by the employees to come all the way to where the council asked them to come, and to do it in a manner I think that showed a sense of urgency but also a sense of desire. And so I just want to thank them for that.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I want to thank everyone involved regardless of name or title. It was a very difficult process and I think that was very visible to everyone involved and to the public for one of the first times. Moving forward I hope we don't have to repeat the same mistakes, that we have an open negotiation process that deals with respect and valid information and visibility to all involved so we don't have to go through this again. I am very happy to see that was a point on the PowerPoint, any step we can make in that direction would bring a lot more ease to the current process, because you know what? We have hard years next to come. We're already starting next year in a deficit and the pension costs will continue to grow faster than revenue. Thank you, for everyone.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'd be willing to take an answer for this one offline but I'm struggling to understand the difference between base salary, 10%, or base salary plus benefits, 10%. I don't know how many units have one, and how many have another. And I don't know what the reasoning for it is.

>> Alex Gurza: Councilmember Pyle, maybe the chart might help. These are the -- you see the second column, it says average total compensation per FTE. For those who don't know FTE, who may be listening, full time equivalent is a full-time position. So you can see those are the total costs to the city of a position. The direction from the city council was to achieve a 10% total compensation reduction. That has been achieved in different ways for each of the bargaining -- while the five are essentially similar, again if a full time equivalent position cost you \$150,000 with pie and benefits the goal is to get \$15,000 in savings. That can come from a variety of places. That can come from base pay, that can come from retirement contributions, that can come from health care plan design. At the end of the day, if we achieved our 10% total compensation reduction the city has saved 15,000 per that FTE. If the council's direction was different and said don't worry about how much pension costs go up or how much health care costs go up, and all that, that is a different direction, meaning just reduce our base pay. The council's direction was total compensation. It has been achieved with all of those bargaining units on the top half of that chart, again, but in different ways. I hope that helps. We can also later provide you with some different charts that may give you some examples that can show you how that's achieved.

>> Councilmember Pyle: That did help tremendously. I just, I'm hoping that the people who have expressed their concern that they're doing 14%, as are the councilmembers, aware of why? I would hate to see any kind of feelings of inequality.

>> Alex Gurza: Yes, exactly, Councilmember Pyle and that's the issue of education challenge that we have to really educate employees about the total cost to the city. Especially, again, when you have the pension costs that cities and counties and public agencies are facing it's very important to know that that's part of your compensation package. So we will working on putting total information packages to explain these concepts and really focus on the total cost.

>> Councilmember Pyle: Thank you, Alex. I know your team hasn't had much time to do anything other than what you're doing. I appreciate the many, many hours and sacrifices of time and sleep for your group. I appreciate that tremendously and I think we owe an incredible amount of debt of gratitude to all of the units who have given up to 15% total to their city. I truly appreciate that. I'm absolutely amazed that everybody's come together and this

is not an easy sell. Not by any stretch. And so many, many thanks to all of you. You've done an absolutely stellar job. Thank you.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I've always been reluctant to repeat what many other people have said. But I think at this point, I need to join the chorus. These are complex issues on all sides. These are complex processes on all sides. And most especially, they're emotional issues on all sides. I would like all people to be proud of the work they have engaged in because they have a right to be. Our community feels the pain. Our employees feel the pain. The city feels the pain. And we are all grateful for the resolution. So from my heart to you, thank you for all the work that you have engaged in. This is why we are the great city that we are. The struggles are not small but the successes are great. So thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First of all, I want to thank the city employees for your willingness to continue to push the envelope for us to hear you, for us to have a thoughtful discussion, and for your willingness to help balance this budget. I think one of the things that you should be very grateful was, you were able to change the message. You know, from the first state of the city, when they announced that we were asked that the mayor was asking for a 10% wage cut, or 15% wage cut, I think the message started off on the wrong foot. And it was hard for you to come to the table with encouragement and confidence to be able to negotiate. So today, I think what you said in the message is, is that you were willing to stay at the table, you were willing to continue to find solutions, even though it was challenging. Even though the tone was not the most pleasurable tone. And I think you're to be commended for that. Because you knew at the end of all these negotiations, that you were doing something with the intention to make sure that the City of San José was not cutting services to our city employees. And I think you get credit for that so I thank you for that. The other thing I wanted to recognize is my colleagues, that at the 11th hour, you were willing to hear the public and, to the Vice Mayor for asking that we go into closed session, so that we could actually consider some of the comments and some of the proposals that

were being presented to us at the 11th hour. This wasn't an easy process. It was a challenging process. And I think some of the comments that were made, that it was emotional, and it was trying. But we made it. And if we hadn't had the employees that have been vested in this city for so many years, I don't think we would have been here. And City Manager, I just have one question to ask you. And no blame, no fault anywhere. But through this whole process, one thing that I kept hearing and kept hearing, I want you to know that I heard you, I want you to know that I heard you, is that there was a lack of communication between the team that we sent to the table to negotiate with these bargaining units, and I haven't asked the question, so I think it's fair to ask this question. What happens with those comments that were made by our employees about them not feeling that the communication was being relayed to the council in closed session? And I just would like to know, is it just information that we hear from the public and from our bargaining units, or does your department actually do something to evaluate and assess those comments?

>> City Manager Figone: Clearly, we evaluate and assess. I think there is a difference of opinion. If you look at the formal communication, it is extensive from the city side. But you know perception is reality. I think it's important that we circle back with our bargaining units. I intend to have one on ones with each of them just to talk about relationships. As I have during the year. But it's very easy, councilmember, to stand in front of all of you and to throw out accusations or lack of communication, or whatever it might be, and, you know, I cannot say that there was a lack of communication. I think that there was a lack of alignment on goal. And perhaps a disbelief in what was really being asked. But I'd like to suggest we put that behind us, and that we move forward with the significance of today is that you have a mutual agreement, regardless of how we got there. And so my suggestion is that we consider today a re-start and a re-set and move forward.

>> Councilmember Campos: And my hope is that we move forward, as well. I think I brought that up for the sole reason, is that we need to acknowledge that there were some concerns and probably from both sides, and that we need to be able to move on. Because if you don't acknowledge things then we're tempted to repeat them. So it is encouraging that you have stated those comments in public for our bargaining units to hear. So as we move forward with the remaining ones, that it can be a positive, and productive, negotiation, and that we'll be back here

by the end of July with some agreement -- tentative agreements to be able to vote on. So with that, I will be supporting the motion.

>> Mayor Reed: On that last point, I've been hearing that comment for nine and a half years that I've been here. And never once in the entire nine and a half years have I found a fact that wasn't communicated to the council in closed session or otherwise. So I know it's a concern. It's one of those problems that you have when we can't talk directly to employees because we have our rules about going through the bargaining units. And doing the proper negotiations. But I understand the concern. I've heard it, and the manager's heard it. It's something that we need to deal with. Never in nine and a half years have I seen Alex and his staff failed to communicate to the council the facts and the things that were communicated at the table. But if it's an issue that's an ongoing problem, we will treat it as the manager has suggested. Councilmember Liccardo.

>> Councilmember Liccardo: I just point to the fact that I think Councilmember Oliverio's suggestion that we have open and public negotiation or somehow or another make available those negotiations through recording or otherwise, I think is a wise one. It's pretty apparent that these accusations will continue as long as there's a perception that something is being said in one room that's not being said in another. And I think many of us strongly agree that this all should be said out in the open. There's no question in my mind that our bargaining team faithfully executed the direction of this council and I feel similarly to the mayor with regard to how communication happened. I will say this though. I know that this bargaining team that we have was negotiating simultaneously in the last four days by my count with eight different bargaining units, roughly. And if we're trying to strike deals on June 22nd, there might be some miscommunication. If folks are coming to the table when we're imploring them to do it in March, I think communication is much easier. So I don't doubt that communication got difficult in the last few days, and in the last few weeks there was a lot going on. And these are conversations that certainly need to be happening sooner.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to echo the sentiments that had been expressed by my colleagues, in terms of a gratefulness for all the parties and individuals coming together to strike an agreement. Obviously I think none of us wants to impose on the bargaining units. It just sends a wrong message. But given what we've gone through in the last couple of months and eventually in the last several weeks it was just very hard for the council not to think about impositions, given the fact that at the end of the day, it's the residents who have to bear the pain and the sacrifice of not having the type of services that the city is obliged to provide at an entity. And so I also wanted to express my thanks to the labor coalition. I don't remember the last time we actually had five bargaining units coming together to speak as one collective voice. And I think that that was very helpful in terms of helping our staff to negotiate. The other factor I wanted to talk about is that the trust factor. I think it has approve that we trust you. We trust you, that's why we give you every opportunity to come to the table. Even though, you know, proposals and ideas are coming at the last hour. I don't think that there's any reason for the bargaining units to not trust. We don't really have anything, you know, that we want to preserve here, as councilmembers. We take the sacrifice, we take the pain just as much as the employees do. And so I think moving forward, we perhaps need to do something different to show we trust you. I can't speak for my council colleagues but as a individual councilmember, I think if we don't have the trust factor it is verve hard for us to work collaboratively, to achieve the agreement we have done today. Thank you for the hard work and I look forward to working with all of you.

>> Mayor Reed: Thank you, I think that concludes the discussion, although Councilmember Nguyen's lights aren't working, so if anybody else wanted to speak, I didn't see it. We have a motion on the floor to approve these tentative agreements for these five items. All in favor, opposed, none opposed, those are approved. Thank you very much. Now we'll need to move to item 3.2, which is approval of various budget actions for this fiscal year that's about to run out on us in the next couple of days to true up some of our appropriations. We have a supplemental memorandum, with about eight different appropriations items that need to be done. Any discussion on that? I have no cards from the public. We have a motion from Councilmember Constant and is there a second? I feed a second. Calling for a second. Motion to approve and a second on this motion, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just had a question about this item and 3.2 and 3.3, I can ask the similar question, the removal of this item as well as 2.3 is essentially approval of the appropriation of -- appropriation consistent with what was voted on in the budget message last Thursday?

>> Mayor Reed: Well, 3.3 will be. But 3.2 is a little bit different. 3.2 is just getting us out of this year with a balanced budget; is that right, Jennifer?

>> Jennifer Maguire: That's correct. Jennifer Maguire, Budget Director. Councilmember Kalra, 3.2 is for 2009-2010 appropriation actions, and 3.3 is for 2010-11.

>> Councilmember Kalra: So on item 3.2, I have no further comment, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, I'm sorry I didn't ask these questions offline but I know we've all been rushed in the past few days. I just had a quick question first with respect to the sick leave payments, we have a projected overage of 4.3 million.

>> Jennifer Maguire: That's correct.

>> Councilmember Liccardo: Can you help me understand why the discrepancy?

>> Jennifer Maguire: The discrepancy, it's a very hard appropriation to predict from year to year. It's had -- a couple of years ago we were spending \$6.2 million. It's increased to last year being 11.7. We set a budget of 10.7. We're now running to perhaps be at the \$14.8 million level. We've had a large number of retirements being filed so this is what's either been paid out from people already leaving, to date, or has filed for this month and we gave a small amount of room for any additional retirements that could be filed before the end of this fiscal year. I just want to let you know that if you look at who is eligible to retire the rest of this fiscal year, and who is eligible to

retire next year, it is about 526 more employees. And if you look at the liability we have in that regard it's about \$22 million. So hence, the appropriation for next year, what we had asked to use some of our sales tax revenue to increase it because we feel it is underfunded. And to the extent that if anybody does pull back their paperwork on retirement this fiscal year we would recommend in our fall cleanup to rebudget the money to the 10-11 fiscal year.

>> Councilmember Liccardo: Right. So the 19.8 million we have projected for this year I assume that is an all time high?

>> Jennifer Maguire: That is an all time high.

>> Councilmember Liccardo: When I see on page A-7 that the average payout for -- for instance, for Police and Fire, was \$118,000. That's for the last fiscal year, or is that for the upcoming?

>> Jennifer Maguire: That 118,000 refers to the 32 members of Police and Fire that have filed for retirement as of June 10th, and those payments have not been paid out yet. So it is not the average for the entire fiscal year.

>> Councilmember Liccardo: Thanks Jennifer. And I appreciate how difficult it is to predict. Obviously it sounds as though the numbers are very variable, depending on who retires and when. The last question I had related to the crossing guard site evaluations, it's on page A-3. I don't know if this is probably more a question more appropriate for public safety. But it looks as though we're spending \$60,000 on a consultant study. Of crossing guard location. And I wonder and I know this is a small number relative to the very large numbers we're dealing with but sort of open question nor anyone in staff who wants to respond. Thank you, Hans. You know, \$60,000 could fund a lot of crossing guards, I would assume. Assuming that we have some numbers as to where the problematic intersections are, wouldn't it be better to spend the money on the crossing guards, knowing we had slightly imperfect information rather than spending it on a consultant?

>> Hans Larsen: Yes, Councilmember Liccardo, Hans Larsen, acting director of the Department of Transportation. The manager's budget that was issued in May proposed a reduction to the number of cross guards. And in order to best determine how to make those reductions, we did not have the current data to basically evaluate traffic volumes, pedestrian volumes in order to make that assessment. So that initiated a process to update the information that we have at over 100 intersections where we have crossing guards. So essentially the action in front of you is money that has already been authorized but we haven't actually paid the consultant for the work, we are carrying the money over to next year so we can pay for work that has already been committed. So to give us a foundation to better understand the program, there is work we can do with the police department to maximize the efficiency of the program, as well as to give us a foundation for possibly considerations for next year's budget. Essentially money already committed and spent.

>> Councilmember Liccardo: I understand we got to pay our bills, thanks Hans for the explanation. Is it possible that as councilmembers we could see the results of that study if it hasn't already been presented just so we can have a sense in our own districts where did hot spots are?

>> Hans Larsen: I think we can arrange that, perhaps maybe just a follow-up report through the transportation and environment committee.

>> Councilmember Liccardo: Or maybe just a simple e-mail. I'm not looking for a lot of paper. Thanks a lot.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Well I wanted to echo that very great concern. I wonder if we're spending more for the studies than we are for the actual problem itself. Wasn't that, Hans, you can't get too far? Wasn't the 60,000 for this year pursuant to another -- I can't remember the exact figure for last year? I'm just wondering, how many times do we have to study crossing guards?

>> City Manager Figone: If I could just jump in Hans and then you can add on. This was councilmember to evaluate the traffic volumes of the intersections, in order to determine which was the --

>> Councilmember Pyle: I know what it was, I did read that.

>> City Manager Figone: The higher priority intersections. And the data that we had on hand was quite stale, as I understand it Hans, if I remember it.

>> Hans Larsen: As we improve intersections for cross guards many of these were ten years or more ago. We don't have current information, we don't do updated studies for these. So to answer your question this is not something that we have studied in the past in order to make an informed decision on how to evaluate the program we thought it was important to have good information. So it's counting the school kids that are there, the traffic volumes, considerations of speeds and other factors.

>> Councilmember Pyle: Thank you.

>> Hans Larsen: I think it was over 120 intersections, so it's about \$2,000 per location to get good, accurate data.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: I think that concludes the council discussion on this item. We have a motion to approve staff's recommendation. All in favor? Opposed, none opposed, that's approved. Okay. We need to take up item 3.3 before we break for lunch. And however long it takes to get it done so Jennifer can get the work, so I'd like to have Jennifer talk about all the work that needs to be done, before we could approve item 3.3 because I don't think we're in a position at this point, and this item is adoption of the annual appropriation ordinances and funding source resolution, resolution for the fiscal year 10-11 limits and other kinds of actions so Jennifer why don't you explain what this is and how long it's going to take you to get it in a form we can approve it.

>> Jennifer Maguire: Unfortunately we don't have there item other than the Gann limit in front of you today because we have been unable to finish all the calculations based on the agreements with the bargaining units. So we, it is a tremendous effort because depending on how these agreements were structured, we did not know how to recalculate all the budget proposals, all the overhead reimbursements, what it does to our prepayment amount and get actuaries involved. So there's a tree amount of work next week involving about 20 staff between the Budget Office, the Finance Department, the I.T. Department, our retirement office and actuarial, it was several hundred hours of work. So we think that if everything goes right, we don't have any glitches in our system, that we would release the appropriation ordinance memo for your consideration hopefully by Monday. And would respectfully ask for you to hold a council meeting perhaps on Tuesday. So we could -- you could have the ordinances in place and then we'll finish out the work in about a 36 hour period to have a budget on July 1 up and running.

>> Mayor Reed: Still possible to do it? Assuming no glimpse of.

>> Jennifer Maguire: Well, we've actually had a glitch in our budget database yesterday, that caused us not to move even unit 99 and Alp forward, so we have got very antiquated systems, but we are committed to making sure it happens, manual or not.

>> Mayor Reed: I know that at least 20 people have to work busily. That's why I want to get this done this morning, so you could get to work. Now that we've approved items 3.11 through 3.15, you now know what the deals are, so you can begin the recalculation and preparation of the ordinances. I think City Attorney, we probably need to adjourn this meeting today to a meeting from a week from now, to the 29th, in order to take up this single item, rather than set a special meeting. Because I don't know if we'll have a full council here a week from today or not. If we have a special meeting it would require eight votes to take action but we can adjourn to a regular meeting date?

>> City Attorney Doyle: That's correct. And you -- the rules committee did cancel the 29th meeting but the council could today say we would adjourn until Tuesday and essentially uncancel that meeting. The question is timing. Normally it's 1:30. If you wanted to keep the regular time that would be the recommendation, I think.

>> Mayor Reed: We would adjourn this meeting tonight, whenever we get to the end of the agenda.

>> City Attorney Doyle: When you adjourn, you would say we are adjourned to next Tuesday, June 29th, to take up the appropriation item.

>> Mayor Reed: And defer item 3.3 to that time.

>> City Attorney Doyle: Yes.

>> Lee Price: And Mr. Mayor if allowed, we would post a notice much adjournment so that that information is available to the public.

>> Mayor Reed: Okay. So we can't take action on 3.3 today. What I will do is I think we'll wait until the end of the agenda on 3.3, and then we can adjourn the meeting and defer that item and adjourn the meeting all at the same time. So okay with you Jennifer?

>> Jennifer Maguire: That would be great, thank you.

>> Mayor Reed: People are waiting to go to work, I don't want to delay you any longer.

>> Jennifer Maguire: Thank you.

>> Mayor Reed: We won't take action on 3.3 at this time, we'll come back to it at the end of the agenda. That completes the budget related actions more or less. We still need to take up the RDA agenda, the other items that

we're taking up and we're going to be here for a very long time but we do need to feed the councilmembers. And some of the staff. So I think I'd like to do that. We'll reconvene here at 1:30. And as I announce under orders of the day we'll take some items first. By that we mean right after the ceremonial items, we'll take those three items and then we'll get into the redevelopment agency agenda, and then we'll plow through the rest of the city agenda until we get done. So we're going to take a recess until 1:30. [ Recess ]

>> Mayor Reed: Good afternoon. I'd like to call the San José city council back into session. We had what we claimed was a lunch break, turned out to be a flag-raising break. So councilmembers are still trying to get lunch, and I'm sure we'll have to be taking breaks during the day to do that, because we have a very long meeting. In case anybody wasn't watching this morning's proceedings we did a lot of work, but we didn't get everything done. So let me just talk about the sequence for this afternoon's meeting. We will try to have our sort of normal afternoon sequence which we'll start with an invocation, pledge of allegiance, ceremonial items, and then we're taking up three items out of order. That's agenda item 9.1, which is a joint item, the development agreement with Cisco Technology. The joint financing authority items regarding the Orvieto family apartments and item 3.7, the 2010 tax and revenue anticipation notes. Then we'll go to the redevelopment agency agenda for for all the mundane items on that, as opposed to the exciting items that we're taking up and then after we're done with the redevelopment agency, we'll start the city consent calendar, plow through the agenda as best we can. But last on the agenda will be the municipal regulations and enforcement pertaining to medicinal use of cannabis. We have said it will not be taken up before 3:00. I don't think there's any chance we're going to get to that before 3:00. So no problem on that one. So I think we have -- yes we do have a quorum here so we'll go ahead and start the business. We'll start with the invocation, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. Today we are joined by rabbi Menachem Levine, of congregation am echad in Willow Glen. This is a congregation that was founded in 1970 and recently celebrated the 20th anniversary of their building on the corner of Marina Avenue. So at the time, Rabbi Levine.

>> Thank you to the city council, honorable mayor, and in particular, to my esteemed councilmember, Pierluigi Oliverio, for inviting me to address you today. During the civil war, a group of clergy met with president Lincoln. And during the meeting, one of the clergymen remarked to president Lincoln, "I hope that the almighty is on our side, president Lincoln said, I'm not worried about that at all. But it is my constant anxiety and prayer that I, and this nation, should be on the almighty's side. Scripture states that at the beginning of King Solomon's reign, the almighty offered to King Solomon a blessing of his choice: Vast wealth, fame and glory, or many years in

office. The choice was his. Solomon asked for wisdom to be able to rule the kingdom in the best possible way. The almighty responded that since you asked for wisdom, I will not only bless you with wisdom but I will give you all the other blessings as well. At this critical juncture, the City of San José needs great foresight and wisdom. On the one hand, there are the livelihoods of so many wonderful and important city officials and city employees who make our great city the great city that it is. And have to make painful sacrifices. Regrettably, the harsh reality necessitates cuts to other important agencies and social services as well. However, there is another side to the equation. The Talmud records a story of a great Jewish sage, Hone Hamagle, who was once walking on a path, when he noticed a man planting a carob tree. Hone asked the man, how long does it take for the tree to grow? And the man retorted, 70 years. So Hone asked the individual, do you really believe that you will be here in 70 years to eat from the fruits? The man responded, with great insights. When I came to this world, I found planted carob trees, just as my fathers planted trees for me, so, too, I plant trees for my children after me. Today, it is our obligation to likewise plant trees in San José, for our children, and grandchildren, and the decisions we make and the actions we take unfortunately, money does not grow on trees. And it would be reckless and unfair to burden our children and grandchildren with overwhelming debts. May, city council members and mayor, be blessed with the wisdom, desire, and ability to serve and lead wisely. May the almighty bless you with the capacity to make intelligent, though difficult, decisions, and may all other blessings follow, and let us say, amen. I thank you for inviting me, I thank you for listening.

>> Mayor Reed: Thank you. We'll now do the pledge of allegiance. Please stand. [ pledge of allegiance ]

>> Mayor Reed: We now have some ceremonial items, I'd like to invite by inviting Councilmember Chirco, Vice Mayor Chirco and our District 9 stars to join us at the podium.

>> Councilmember Chirco: These are always very special ways to start a council meeting. I'm really excited to recognize the following people to receive the District 9 star awards. Bev Hooper, and Jackie Daemion, and Karl Belser. Over the years through service on the Cambrian school board and now on the San José city council community members have shared stories about the talents and heroes in Cambrian park and the surrounding area. These stars and their stories fueled my desire to serve in public office. This program recognizes people who

live, work, play and learn in District 9. I feel they are doubly honored since they are nominated by their fellow -- it's been a long day already, Chuck. By their fellow community members. The intent of the stars program is to learn more about the extraordinary students, teachers, oemployers, employees, athletes, musicians, activists and parents who add strength and compassion as well as comfort to our community. I look forward to hock more D-9 stars throughout the year. But today I am proud to recognize these volunteers as stars who have made District 9 shine. So I ask Bev Hopper to come forward. We are thrilled to have you as a D-9 star. Bev Hopper is a teacher at Dartmouth Middle School, and since 1999 she has led the annual food drive at the school. Second harvest food bank has received 494,000 pounds of food from Dartmouth because of Bev's effort. Never underestimate what one person can do. [applause]

>> Councilmember Chirco: To give you an idea how much that is, last December's food drive collected 7,929 pounds of food and \$7,618 which translated into 44 more barrels of food. Dartmouth has received the platinum award from second harvest food bank several years in a row. I think that's a challenge that the rest of us need to step up to.

>> I agree.

>> Councilmember Chirco: Bev was nominated by Carol Carlson, the delightful principal at Dartmouth Middle School. So congratulations to Bev for being a D.-9 star. Let's give her a round of applause. And as I like to tell my fellow councilmembers, that being a D-9 star is just a little bit sweet, so we give them a D-9 star made out of chocolate.

>> You're wonderful. Thank you very much.

>> Councilmember Chirco: Now, I ask that Jackie and Karl to stand up here so we can acknowledge them and recognize them as D-9 stars. Jackie and Karl have been volunteer square dance class leaders for the past four years at the Camden community center. Their enthusiasm for square dancing is contageous and evident in the fact they have graduated more than 100 new dancers from their classes. And you see a couple of them right

here. And where is that gentleman that has been doing it since 1947. Could you please stand? This is one of their very experienced -- 1947! Karl and Jackie have both served as chairman of the committee to promote square dancing for the past 20 years. They have been spreading the word about what a wonderful activity it is and how square dancing promotes community involvement and benefits the body, mind, and spirit. Jackie and Karl were nominated by 13 enthusiastic square dancers in the Camden community center. Congratulations on being D-9 stars! Thank you! [applause]

>> Councilmember Chirco: And again, just because it's a little extra-sweet, thank you for all that you do.

>> A woman after my own heart! Thank you so much!

>> Councilmember Chirco: Thank you so much! Did you get all the pictures? Okay, Chuck? Got the pictures? Thank you all so much!

>> Mayor Reed: Next I'd like to invite Councilmember Campos, Alfonso Rodriguez, Jr. and Al Fawn sow Rodriguez III, as we are recognizing them for rescuing a man in need. Councilmember Campos.

>> Councilmember Campos: I'd like to ask Diana and Mary Ann to join us as well. These are family members, the mother and the aunt of the young man that they rescued. And I think it's an honor to have you both here with us this afternoon. I'm honored to congratulate and applaud these two selfless and courageous individuals, we are here this afternoon to show our utmost gratitude to Alfonso Jr. and Alfonso III for going beyond their civic duties and jeopardizing their lives in order to save a man they didn't even know. On March 13th, 2010, Alfonso and his son demonstrated great heroism, as a trip to the Fisherman's Wharf was delayed, due to a person trapped inside a burning vehicle in Interstate 280. Without hesitation -- without hesitation -- both father and son sought to the aid the man in need. Using a wrench to break the passenger's window, Alfonso, Jr. reached into the nearly incinerated car to unbuckle Anthony's seat belt. Moments before the car went up in flames, Alfonso Jr. was able to free Anthony from the car. Anthony suffered third degree burns and fourth degree burns with over 25% of his body burned. Alfonso Jr. and Alfonso III are model citizens whom our community is fortunate to have. Mayor, will

you please present the commendation to these two individuals that we need to give a round of applause. [applause]

>> Councilmember Campos: I'm going to ask Alfonso to come and say a few words. And then if Diana his mother would like to say anything, you're welcome to do that, as well. So please.

>> Thank you, ladies and gentlemen. It's an honor to be here, and like it wasn't for my acts weren't out of, how we say, monetary means. Or rewards. It was for one parent to another parent, saving a child's life. I have two children, and my day does not stop. I'm a single parent, as well. And you know, saving Anthony's life put a lot into me. I'm still with him, inside the burning vehicle because I literally had to step into it to unleash his seat belt. When he tells me that he's going to be all right then I could feel comfort inside. But trauma is still you know rhythming inside my mind on the exact to that day. My son however is the brains of the group here, because you know, I have the guts that he had the knowledge to remember that you know I had some tools inside the vehicle, my vehicle. Which helped me get Anthony out. And I just wanted to thank you all for recognizing me today. Thank you. [applause]

>> I could never thank Alfonso or his son enough for what they did. For a total stranger! Someone they didn't even know. I talk to my son, and he looked at himself and he just cried. He says he looked like a freak. I said Anthony, I would rather have you like this, than not at all. And I just -- I could never thank Alfonso and his son enough for saving my son, who he had no idea who he was. And I just wanted to thank everybody for presenting him. Thank you. [applause]

>> Mayor Reed: Now I'd like to invite Gabriel cordera, Joe Garcia Jr, Luis Garcia and Alberto Servin and Councilmember Campos at the podium. We're recognize those who receive HACE scholarship recipients. Councilmember Campos will have more about that.

>> Councilmember Campos: I'm excited and proud for these students to be selected as Hace scholarship recipient. Hispanic association of city employees scholarship presents educational scholarships to high school

seniors pursuing a higher level of education, who have demonstrated academic excellence, impeccable leadership and a commitment to their community. We do have the four recipients here. And before the mayor presents them with their commendation, I'm going to ask Theresa Ramos to come up and say a few words, and then she will also recognize the four recipients, and the mayor will present their commendations. Let's give them a round of applause for the achievement they have done. Before I turn the mic over to Teresa, I'd like the parents or guardians of these children to please stand up of these students because it is with their family support that they're able to achieve what they're able to achieve. So let's give them a round of applause. [applause]

>> Thank you, Councilmember Campos, honorable mayor, city council and public. Recognizing challenging times the Hispanic Association of City Employees is still committed to education, leadership, community service, culture and heritage. I am honored to introduce to you the four recipients who will each receive \$1,000, that comes from the members of HACE, their contributions and fundraising. Gabrielle Cordero graduated from Our Bishop Medi School, 3.3 GPA, entering freshman at Sonoma State University. She plans to pursue a career that involves the study of racial ethnicities and American culture in the film and media industry. Joe Garcia, Jr, graduated from Valley Christian with a 4.5 GPA, entering freshman at UCLA. He plans to pursue a career as a doctor and work in army hospitals. Luis Garcia graduated from Evergreen Valley High School, 3.1 GPA, he plans to pursue a career as a psychiatrist. Alberto Cogi Servin graduated from Branham High School with a 3.8 GPA. He plans to pursue a career -- excuse me -- Alberto Cogi Servin graduated from Branham High School with a 3.8 GPA. Entering freshman at Millbury College and he plans to pursue a career as a peacemaker. I'm very thankful to be here today to introduce these recipients. You have demonstrated HACE's mission and goals and we want to let you know that you are our future and we wish you very much success in your college career. But before I conclude, I would also like to give a special commendation to Nora Campos, our councilmember Nora Campos, an honorary member of over 15 years of service with Hace, and to let you know that you've made a difference.

>> Councilmember Campos: Thank you so much. Thank you. [applause]

>> Mayor Reed: Thank you very much. I'd like to invite Patricia earnstrom, San José sports authority to join me at the podium. We're here to proclaim June 23rd as Olympic day in the City of San José. Last week it was

announced that San José has been selected to host the 2012 Olympic team trials for gymnastics men and women. It is a fantastic opportunity to bring the San José community together and support this national Olympic event and national Olympic team. It is our honor to host this amazing event. We're grateful the support we received to bring the trials here. It will be back probably in about two years from now to proclaim the last week in June, first week of July of 2012 as gymnastics city U.S.A. Patricia would you like to tell us that?

>> Just like to acknowledge and thank the City of San José for making this recognition today. We're recognizing Olympic day with cities throughout the world and San José's role in the Olympic movement. I'd like to thank Mayor Reed and members of the city council for supporting the Sports Authority's strong partnership with the U.S. Olympic committee and the Olympic movement to bring world class competition to San José. We look forward to working with all of our partners at the city and the entire community as we prepare for a huge citywide celebration when San José has the privilege of hosting the Olympic trials in 2012. So again, tomorrow, with cities throughout the world we're going to be celebrating Olympic day here in San José. Thank you. Thank you very much.

>> Mayor Reed: Now, back to our unusual agenda. We're going to take up 9.1, the development agreement with Cisco technology, Inc. Paul Krutko probably has the lead on that presentation.

>> Paul Krutko: Good afternoon, mayor and council, Paul Krutko, chief development officer. Mayor, I'm just prepared to answer questions if the council has any on the development agreement.

>> Mayor Reed: Thank you. Well first I'd just like to acknowledge and recognize Cisco as the largest employer in the City of San José, largest employer in the county and just say how proud we are to have them as part of the city. And my question for you, Paul, and I don't even know if you were here in the good old days when this got started. I think Joe Horwedel was leer. Cisco didn't happen by accident. We were able to move at the speed of business, many years ago. Cisco was a relatively small company when they moved to San José and they have grown tremendously here. And I know that there was funding from the redevelopment agency went to pay for a bridge, and a light rail station and some things like that. Not a great deal of money, but when we talk about economic development, this certainly is the gold standard. What we can do with a small company like Cisco that

turns into a world power. So tremendous opportunity. I just want to acknowledge Cisco's contribution to the city. They employ lots and lots of San José people and we like that. They pay a lot of revenues.

>> Paul Krutko: Player, to highlight that, to give a little statistics, Cisco's campus in San José is 137 acres, 3.3 million square feet. So if you take this building, and you multiply it by about 15 times, that's what you're talking about, 19 buildings, 15,000 employees. And what this particular amendment, this new development agreement does for us is, we are really getting mayor ahead of the speed of business. What we wanted to do is preapprove the ability for Cisco to move forward with development at their time frame, when they're ready to go, so that there would not be any question, could they move forward with development in San José, have to go through a permitting process, and so forth. This is some of the fruit from the North San José policy in which we cleared all of the square footage for development.

>> Mayor Reed: Thank you. Would like to note that Cisco is hiring. But they have choices around the world where they put that head count. We certainly hope they continue to expand in San José. We want to be prepared for that. They do have choices. If we have six months or locker whether or not we can accommodate that, they'll move somewhere else. That's an important thing. Anything you want to add? Joe Horwedel.

>> Joe Horwedel: The Planning Commission considered this item last night at a special meeting, they considered the development agreement and we're supportive of it.

>> Mayor Reed: Thank you. Councilmember Chu represents the area, home of Cisco, Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Also notice Larry Burnett representing the applicant is here. So maybe we could ask Larry to come down and do your presentation.

>> Mayor Reed: Okay, let's take Larry Burnett representing Cisco at this time.

>> Good afternoon, my name is Larry Burnett, I'm global portfolio manager, real estate portfolio manager for Cisco systems and I worked with city staff intensively over the last few months pulling this agreement together. We really want to thank both the leadership of Mayor Reed and Councilmember Chu in helping us get this over the line. And specifically, call out staff members Paul Krutko who you just heard from. Joe Horwedel from planning, Laur Prevetti, Chris Burton, Nancy Kline, ReneÉ Gurza and Jeannie Hamilton who put a lot of time and effort into getting this right for both the city and for Cisco. You've already heard the outlines of the agreement. I just want to underline the fact that Cisco has been an incredibly successful company but we work 92 volatile industry. When growth is there when hiring needs there are we need to be able to react quickly. It takes a while to build a building. If we need to on top of that put in place these types of agreements we could lose the opportunity. We appreciate the City of San José stepping up and helping us get this agreement done. We're the largest employer in San José and we look forward to remaining so. Thank you.

>> Mayor Reed: Let's see if there are any questions Larry before you go. Any questions for Larry? Councilmember Chu? Anything else? Okay.

>> Councilmember Chu: All right. I want to take this opportunity to thank the staff for your special attention on this development. And definitely, thank Cisco, for your commitment to a long term growth in the City of San José. As many of you know, that the North San José plan is a job plan. For the last three years we are worried about the housing getting way ahead of the job development so I look at this development agreement as definitely a very important first step. So to provide a balance between the job growth as well as the housing development. So thanks again.

>> Mayor Reed: Anything else for Larry? Okay, Larry, thank you very much, we appreciate very much all the work that Cisco has done. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor and Larry, thank you for your company's investment in San José. We are very appreciative, also thrilled to know that Cisco is hiring. We know we need those jobs. I had a quick question for Paul or Joe, really. First of all, congratulations and thank you, I know it's very important in the

city. But a question about the development capacity in the DA. My understanding is 1.5 million comes in phase 1 and 1 million comes in phase 2. And my question is, knowing that the industrial and office development is sort of the critical path, for moving from phase 1 to phase 2 and the housing certainly comes very quickly. And we know the jobs is always more challenging, that jobs are more challenging. The question I have is, why wouldn't we simply want to give them unlimited capacity in phase 1?

>> Paul Krutko: Councilmember, the discussions with Cisco were more about the certainty that they would have a tranche of square footage available to them. As we move through the various phases. And to some extent, the amount of square footage in here is a reasonable amount, if we reflect on the fact that Cisco has 3.3 million now. And so what this basically does is creates a reservation in each phase. What I mean by that is, to the degree that Cisco doesn't need the square footage, and there are others that are ready to complete projects, that can move to the next phase. In the alternative, Cisco could take down the square footage if you will by reserving the square footage and paying the traffic fee to enable them to do that. That's kind of a layman's description of what it does but it's a rolling reservation. As Councilmember Chu said, the plan is based on getting the jobs in place, then allowing how the development to go in accordance with that. What this does, if we would let -- advise Cisco that there were development proposals in place that were ready to go forward, they could make a decision as to how to proceed at that point.

>> Councilmember Liccardo: Okay, I think what I'm hearing from you kind of underneath it all the idea of exceeding 1.5 million square feet is probably pretty optimistic.

>> Paul Krutko: We hope that that will be the case. I think in the alternative, it's a little bit of history here, what we were faced when we decided to move forward with the North San José plan was we had actually run out of square footage. Because what we hope that happens is that in a period where Cisco is having the opportunity in economic growth around the world to expand, others of our companies will be in the same circumstance. And so where we were faced at the end of the North San José -- before the end of the North San José plan is we had actually run out of zone entitlement. That's why we did that whole effort to create more job capacity.

>> Councilmember Liccardo: Thanks, Paul.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. My wheels are getting past me here. I have to scooch up a little bit. I want to thank Larry Burnett for being wise enough to pick San José as a home, and one that has expanded sizeably. And I'd also like to congratulate our wonderful dream team in San José. I just can't believe what you're all often able to do and very, very proud of what you are able to pull off, in a short amount of time, relatively. I think, too, it's great that there's a marriage of the workplace, plus housing in that area. And so I hope that everybody that joins on will be very, very happy there. And thank you very much.

>> Mayor Reed: Councilmember Chu, would you like to make a motion?

>> Councilmember Chu: Yes. I also wanted to thank the mayor for your leadership. At this point I'd like to make a motion to approve the memo cosigned by the mayor and myself dated June 18th. For your --

>> Councilmember Pyle: Second.

>> Councilmember Chu: Thank you.

>> Mayor Reed: We have a motion on the floor. Is there further discussion? I have no cards from the public to speak on this item. On the motion? All in favor? Opposed? None opposed, thank you very much and congratulations. Look forward to Cisco growing for many, many years. Our next item is the joint financing authority item. We have two actions related to Orvieto family apartments.

>> City Manager Figone: Mayor, there is no staff presentation and we're here to answer questions.

>> Mayor Reed: This is in regards to issuing bonds and bond proceeds. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I'd just like to thank staff and all the parties involved for bringing these sets of recommendations forward. As we all know this project has been in the pipeline for a very long time, and I'm sure the applicant wants to get this project started and for me this is the time to put the shovel in the ground because this is a very important project for District 7 so with that I move for approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. We have requests from the public to speak, I'll take that now, Jerry Mungai.

>> Thank you, Mayor. What I have to say is like whispering in the wind, predetermined what you're going to do. However, I'd like to know, on these affordable housing units, how many of these residents will be eligible for other taxpayer provided services, like free and subsidized breakfasts and lunches at schools, subsidized utility cost, childcare, medical dental services, preschool activities. What we're doing is we're allowing employers to pay lower wages, so we can the workers can have a place to live with the help of the taxpayers. We are providing or allowing people who cannot afford to live here to do so, with our financial resources, of the taxpayers. It also allows government employees to decide who can and under what certain conditions they may enjoy the largesse of the taxpayers. This reminds me of what someone once said about big government advocates hold us individually responsible for nothing, but collectively responsible for everything. So we collectively have to be responsible to provide housing for those who wish to live here but cannot do so without taxpayer support. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Let me just announce something I announced this morning and forgot to announce this afternoon. We're limiting all public comments to one minute because of length of our agenda, that's for all items today. Anything else on this item? We have a motion to approve the recommendations, in the multiple actions. All in favor, opposed, none opposed, those are approved. Our next item is 3.7 that's our city of San José 2010 tax and revenue anticipation note. We don't have a presentation on that but

staff are prepared to answer questions, including bond counsel, prepared to answer questions, technical or otherwise.

>> Move approval.

>> Second.

>> Mayor Reed: We have a motion to approve these items. All in favor, opposed, none opposed, matters are approved. Okay. Now we're going to take up the redevelopment agency board agenda which is a half a dozen items and then we will come back to city agenda which would start with the consent calendar. So first on the redevelopment board, we'll just take a minute for the staff to swap positions. First item on the redevelopment agency board will be the agency consent calendar.

>> Move approval.

>> Second.

>> Mayor Reed: Are there any items the agency board wants to pull for discussion? None, all in favor, opposed, none opposed, those are approved. Item 6.1, authority to award a contract for kitchen concessions equipment at the civic auditorium. All in favor, opposed, none opposed, that's approved. 7.1, approval of an amendment of the sublease of co-sponsorship of operating agreement with the San José State, I'm not sure I got the name right, but it is biocenter.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: The biocenter is one of those great incubators. I want to thank San José State for their continued collaboration, not on just this but others as well. And there are ways that we can probably strengthen this relationship, and grow the tenant companies that have been growing in there and get them into our industrial

areas. I think it's something we need to work on but I'd just like to note that the companies that have been in around the biocenter, we had 51 resident companies since 2004, generates over 600 jobs and raised over \$1 billion in private sector capital. So that's really good. We have a state-of-the-art life science lab and business incubator, and I want to thank Melinda Richter and her team, who does the management on a day-to-day basis, helping these companies be successful. Good returns, looking forward to better returns as we continue to grow. We have a motion to approve. All in favor? Opposed? None opposed, that's approved. Item 8.1 is a joint city-agency item, that's for capital equipment assistance agreement with intermolecular for acquisition of capital equipment.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: We have a motion to approve. I'd just like to point out the previous hearing about Cisco, a small company that moved into San José, relatively small and grew enormously. We'd certainly like to repeat that with intermolecular, you can't predict the future. We certainly have the opportunity for a great company to move into San José and continue to grow and be successful. I'd like to hear from the CFO, chief financial officer, Peter Adelman who is here to speak on this matter.

>> Thank you. Thank you, Mayor Reed, thank you, councilmembers, thank you, Councilmember Chu. I'd like to thank you all for believing in retention, and expansion of local San José businesses like intermolecular. I'd also like to provide a special thanks to the team at the redevelopment agency and the economic development office for all the support over the last few months. Intermolecular started its business about five years ago with the core focus to accelerate development in the semiconductor industry. We have since mapped that accelerated development process onto the clean energy sector as well, including solar photovoltaics. Our main focus of accelerating development has been the use of commercial science techniques, and we have purpose-built systems to allow us to accelerate learning and development over 100 times faster than conventional methods. The acceleration of time to development leads to the acceleration of adoption of new products. And we're all about speeding up time to market. Our expansion in San José will allow us to triple capacity and we will be investing millions of dollars in our facility, in new equipment, and our people. And we appreciate the support to allow us to grow in San José. Thank you.

>> Mayor Reed: Thank you. Any questions for the company? Not at this time. Thank you very much. For your investment in San José. Like to go back to the Cisco analysis. Because like Cisco, this particular company started with a phone call to the mayor's office. In this case, it was Carl Guardino. He said, this is a great company, you guys should look at them. They're thinking about expanding. And as we did with Cisco many years ago, we took a look and decided it was a great company, and we'd like to have them in San José. And so I had many conversations with their CEO, David Lesofsky, and Peter Adelman, whom you just heard from. But it did start with a phone call from Carl Guardino, so Carl, I know you always watch us on Tuesday afternoons, so thank you. It is a company that's growing rapidly, and they were able to take advantage of our special tenant improvement program. Since January they're not the only company. We have processed over 500,000 square feet of tenant improvements through this program. Last week we had an agreement with Solfocus, another great growing company. And I know that Councilmember Kalra and I have been talking with executives of Hospera, 80,000 square feet office space in, and I want to thank in this case Harry Mavrogenes, John Weis and Abi Magamfar, who did most of the work on this. An the economic development team is always a team effort, sometimes office of economic development leads, but it is a team effort and we're able to get these things over the goal line with millions of dollars of investment, lots and lots of jobs created in San José. And that's what our economic development strategy is all about, so another success. Thank you staff for that. I don't have any other requests from the public to speak on this. I do think we have a motion. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Our next item is 8.2, the 2010-11 cooperation agreement between the City of San José and the redevelopment agency.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: We have a motion to approve. Sometimes cooperation is easier than others. Sometimes cooperation is hard, but our staffs are willing to act together. The actual work is a pretty big part. City and staff have solved some really big problems together. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 8.4, approval of an amendment to the inclusionary housing policy.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: We have a motion to approve that. It's been here before. We've been work on this as well. Executive director, do you have a comment on that?

>> Harry Mavrogenes: Mayor, board, yes I do. We have a letter from the law foundation of Silicon Valley, you received this morning, concurring with the approach we were taking. You recall we had a concern earlier on and I believe we've addressed their concerns so we recommend your approval.

>> Mayor Reed: We have a motion to approve. All in favor? Opposed? None opposed, that's approved. 9.2 is authority to advertise the request for proposals for the convention center. We'll have a staff presentation on this.

>> Katy Allen: Good afternoon, mayor, members of the council, one the partnerships that the mayor just referred to was between the city and the agency, and this was the case with the convention center project, as well. We were last before you about four months ago the end of February when you provided the direction on this project to move forward with a design-build effort, and working closely between the agency and the city to do the best we could to mirror some of the successes that we had at the airport. So today we'd like to check in with you on where we are with the project and go over some of the recommendations that are included in our staff report. So there are just a few things we wanted to highlight. One is, it's important that council make a preliminary finding to be consistent with measure D which requires that you approve our finding, our staff work that indicates that we will save time on this project. You always have a choice between validating design-build to either save time or save money. We feel very confident in our analysis, that about nine months of time will be spent, if -- by moving forward with the design-build project at the convention center. The other important aspect of your action today is to go out and begin advertising through a request for proposals, and in a few minutes I'll go over what that criteria looks like. And then the last action that you're really taking is really just ministerial, that's where you're giving us the authority to address or resolve any technical issues on the RFP that materialize during the advertisement process. So I'm going to touch on where we are. Right now, the procurement is primarily a two-step process. The first is a qualification, base selection. There's a tremendous amount of detail and effort that goes forward to make

sure that we have experienced and financially sound companies that are interested in our project. Though there's a lot of detail the best way to summarize the qualifications that we're looking for from the design-build contractors is, do they have the experience with public projects and convention centers, do they have the financial capacity, the bonding capacity and the financial strength to complete our project? And then do they have a track record on safety? What I wanted to point out here is that the RFQ is due tomorrow afternoon, excuse me, Thursday afternoon. And this time next week, we shall have a short list and we will be providing council with an indication of the contractors that made it through the short-list process. So basically this is where we are right now as we speak, is going through the qualification based selection. Following the short list, I wanted to highlight some of the proposals that we're going to be looking for. And I want to touch on how we are going to be grading and evaluating the proposals that we received. The top four items reflect our desire for a design-build contractor, there's 70 out of 100 points for these categories. We're looking for someone with a fresh set of eyes with experience, the capacity, and the ability to look at our project, the dollars that we have, and work with us to maximize revenue generation for our convention center to build a project that will work well for our community and that will participate -- excuse me -- provide a venue for participation of the stakeholders. Stakeholders on this project are why we know that the operators, the maintainers of the building, it will be a city facility at the end of the day, the agency's interest in urban aspect of the facility. So we're very much keen on those fresh set of eyes and also an approach that will include stakeholder participation. The last few items that will be graded constitute about 30 points. Theories their adherence to city policies, our goals, our desire to have a harassment-free workplace, take into consideration small and local preferences, council's policy on labor peace and desire for us to understand how they plan to subcontract out the different aspects of this project. So total 100 points of this is what we're proposing and asking for you to approve today. On the next slide, and we wanted a very short presentation but on the next slide is kind of where we are right now. As I said next week we will be short-listing the contractors. By October we will have them ranked, actually the ranking will probably occur in the September time frame, it takes a while to write it up and get it back on the council agenda. We will likely be back to you with a ranking in October. Joining me is Paul Krutko who is work closely with our finance director Scott Johnson putting together the safely bonds and council will be making that financial decision in the fall. And then what we see coming together at the end of the year, November through January, is the contract, the design build so we can

begin this very important project. Bill Ekern, myself, Paul Krutko and Harry Freitas in the back are here to answer questions. That concludes our presentation.

>> Mayor Reed: Thank you. I have a couple of questions. First of all, I support your recommendation. We know the design-build process can work and work very well as we have great evidence of that at the airport. There's some things that I think are still up in the air, and I had some questions about that. The financing plan, of course, there is always about having enough money to do that. We had some conversations over the past months about how we were going to finance it. So could you just talk a little bit about it? I know we're not approving a financing plan but we need to know that we have the capacity to do it, specifically how much of the T.O.T. and the sources of funding and how we're going to put it together.

>> Paul Krutko: Yes, mayor, I'll field that question and maybe Scott can join us and answer some additional-- provide some additional information. I mean, the key element has changed and we did inform the council on several months ago that the effects of the agency's financial situation are limiting in a serious way now, their ability to participate in the project. So we are moving forward with the financing plan that is going to rely solely on T.O.T. resources, as the basis for sizing the bond and financing the project. As the council will recall, the hotel community, in a very creative way, moved forward and created an additional 4% in T.O.T.-like capacity. It's got a different nomenclature to it. But it's essentially on the bed tax. That resource is an additional 4%. Our initial analysis, in terms of the financial team, is that 4% would be insufficient to enable us to move forward with the scale of the project that we have talked with the council in the past, which is essentially an expansion project that would fit into place in front of the convention center, as it currently stands, partially on the site where the old Martin Luther King library is, that would come down and this is where the expansion would go. So our thinking now mayor as we expressed to the council in several other meetings is that we do have the 1.5% which is within the existing 10%, existing T.O.T., that goes to CVB activities. Legally, those dollars can be used to support a financing. And so the plan that we are working on now, what Katy's team is working on now, is identifying what can be built, and can it fit within certain broad parameters. We will then come back to you with the financing plan that will rely in the 5.5% to move forward. Now, the ramification of that is that 1.5% is currently being used at we speak by the CVB to do the work that the CVB does. What the plan that we have talked about in a preliminary

way is to a degree the T.O.T. revenues increase and we don't need to take all those dollars to support the debt service in a begin year, we would release those dollars to the CVB for additional marketing. But the concept that we have very much is that the key thing we need to be competitive in the marketplace at this place isn't more marketing, it is an expanded and enhanced facility, because we are losing business because we don't have the square footage that's necessary to compete for business. So that's where we are at this point, mayor. I think when we come back, as Katy said, in the fall, your decision at that point will be informed by what the design procurement reveals. And what we'll know more about what current T.O.T. trends are and what is going on in terms of room rates and occupancy and be able to project forward from that point.

>> Mayor Reed: Another question I had was about the process. And this may be a little bit early to talk about the process. And once we get into the construction phase, but to the extent we need to build that into the selection of the contractor, I think it's certainly relevant. I know we just finished a billion dollar project at the airport, with hundreds of decisions being made along the way. In the design build process with very close collaboration between our professional staff and the contractors and architects and everybody making decisions very quickly. And that delaying a decisions by weeks while you argue about it or seek clarification from the City Manager or seek decisions from the city council is a recipe for disaster. So I don't want to take that risk. And I want to make sure we build into the process, however it worked at the airport, some way to make sure we are not seeing disputes here at the city council. I don't want the council involved in selecting the color of the carpeting or value engineering or anything else that, you know, that won't work. And so that needs to be built in somehow with the agreements that everybody signs into on that. Because if we're going to get this over the goal line with the amount of money that we have, we really have to do it right. So I don't know if that's something that we need to build in up front or you'll take that up as you get further along.

>> Paul Krutko: Mayor, I have a comment and I think Katy has one as well. What we will be providing to our partners, which is the hotel community, you would be mindful always that they are providing the financial resources to make the project happen. But nonetheless, it's very important that we have some rules of engagement about how we're going to proceed with the project. So we will be providing a very simple document to our partners in the hotel community and to the Team San José leadership, where they are agreeing to the fact

that we are going to proceed as you described, mayor, that we have worked very successfully in managing the airport project and keeping those decisions at the level they need to be and that they are not decisions that need to be brought into other venues. We are going to be putting that forward and having sort of a charter on rules of engagement. Katy has got more thoughts on it.

>> Katy Allen: Mayor, what I wanted to add was kind of in two areas. One is the procurement process, and the importance that we have it be very fair and that all contractors have access to the same information. We're doing the best we can to manage that communication with a single point of contact. It's working well, and we just want to make sure that there is no competitive advantage or that contractors all come to the interview process with the same amount of information. But I think the other point that you raised is much of the efficiencies of design-build really hinge on quick decision making and also through the design development stages. At the airport we had a fixed budget and we had a very strong team that was empowered to make decisions, people with a vested interest in the outcome, making the decisions. I see that happening here. I see the operators, the maintainers, the owners of the facility, working with the contractor, with the architect, making good decisions, having that done in a framework that is very efficient, not only in making quality decisions, but also making decisions timely. So those are some important aspects and I think it's going to be to the degree that we can replicate at the convention center will be a good project.

>> Mayor Reed: Had one final question, that's in the area of who sits on the small group, to screen the contractors to begin the process. And it's not clear from the people that you've suggested that will have somebody from the private sector from with construction experience, a builder or developer, and we might have, depending upon who gets selected. But I'd like to get your thoughts on how important it is to get a private sector perspective. We have a lot of people with great government construction experience. You guys have certainly proved that. But ask there value in having a private sector representative that just has a different perspective?

>> Katy Allen: Yes, I believe that when we looked at the panel, what we want certainly and foremost is someone that brings a value to the decision make process and can advise us on different aspects of the project. Whether it's the business side of a convention center or on the construction side, private sector. Along those lines, until we

get short-listed with the contractors it's going to be hard for us to actually put names to positions because we wouldn't want a conflict of interest to occur. But I think to your point about having a private sector design experience, there's a couple of difference avenues that we can use to make sure that that happens.

>> Mayor Reed: Good, I think that that would be helpful. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Seems like we've been working on this for a long time. And I remember whether we first started to talk about design-build we had no clue whether we would be able to do it and we had that whole discussion about how we might be able to get to this point. So I'm just thrilled that we're at this point, making serious progress. I think everyone here agrees we've had vote after vote around the convention center and the priorities. And it's just something that we need to do and we need to do it now and we hopefully will have the same success as we had at the airport with on time and under budget. I'm counting on you guys for this. And I'd like to make a motion for approval. Where all right, we have a motion to approve on the floor. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Hey Katy, a quick question on the selection criteria. It's stated slightly different on the memo and on the screen. What you've got listed in the memo is delivery quality projects on time and within budget, I assume that's just the shorthand up there. And the reason why I ask is, if you were to ask I think most of us as we observe whether or not a particular project has been successful, we tend to use two criteria, independent of however we feel about the architecture, and that is, is it on time, is it on budget. Here, we've got 20% of the -- I guess the points or whatever units we use for selection criteria. Only 20% would be on those criteria. And so it raises within me, why wouldn't we make that -- why wouldn't we place much greater emphasis on that?

>> Katy Allen: I'm going to look to Harry Freitas to help me out. I think that brings the importance of managing the resources that you have on the project. But the quality aspect is just equally as important. And so to the degree that -- when you look on attachment -- attachmentA is that attachment that you're look at?

>> Councilmember Liccardo: No, I'm looking at page 4 on the main memo.

>> Katy Allen: Attachment A, it's item number 2, really goes into a lot of details regarding what the quality of a project looks like, and it speaks to the demonstrated success for quality projects with the resources that they have but also reflects the importance of the caliber of the facility that ultimately gets built.

>> Councilmember Liccardo: If I could interrupt for just a moment, I'm sorry Harry. I agree quality is most important, three most important criteria, quality, on time and on budget, the three of them still account for 20% of the selection criteria. They're all in the same category. So I recognize there may be some overlap with other categories, but it just seems to me that's what we really care about, is those three criteria. Why shouldn't that be 80% instead of 20? I'm sorry to cut you off.

>> Harry Freitas, deputy director of public works. I mean, I think there's some professional judgment that went into this, councilmember. One of the things that we tried to do, as Katy was talking about, was put 70 points towards what was referred to as their project-specific approach. Our project, our building, at the corner of San Carlos and Market. And so we put about 70 towards that. And sure, you could easily increase the quality projects on time, on budget. But you'd have to take some points away from other places. For instance, in the experience area, we were looking at a lot of convention center experience, and in addition to that, working in an operating convention center environment. So that's very important to us, as well. Stakeholder participation, understanding that you can't drive piles at night because you've got a hotel next door. And then the project specific approach, you put 20 points towards that because we wanted to see how they could tell us about our project, how they could tackle our project in a way that's perhaps differentiating from the other contractor. We tried to balance it, 60, 70 points towards the 30 points on the regulatory side and that's where we came down. If you doubled it you really have to borrow the points somewhere else.

>> Councilmember Liccardo: I understand that, I understand you give points. But I'd be happy to volunteer those points to any of the other categories to make sure we are emphasizing quality, on time, and on budget. I mean, I appreciate that you disagree, I think our emphasis is not in the right place.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. There has to be many kudos for the fact that this is faster, better and cheaper. Would you agree with that? Yes. A couple of things I wanted to check on. There are some activities that we'll be able to continue, even though the building is going on, would that be correct?

>> Paul Krutko: Yeah, and I think that's getting to Harry's point, Harry Freitas's point relative to experience. One of the challenges with this project, which we successfully managed at the airport, I mean, planes landed and took off, right? People got on planes. And we are going to be continuing to operate that center. In fact, our financial plan is predicated on managing the fund balance that we have in the operating account to take us through the construction period. But we still need to have business happening in that facility, or we won't have sufficient fund balance to cover us during the transition. So yes, councilmember, that's absolutely critical. You know, there are many projects where people sort of build green field things, they build a new building and they know how to do that. This is going to require a great deal of finesse, I would say, in terms of managing how this goes.

>> Councilmember Pyle: And lots of cooperation. I wanted to say, too, as a plus that we're going to be able to put people to work a little more quickly than we normally would. This will be about three years total time.

>> Katy Allen: Yeah, we're actually going to be pushing for 24 months. So from January of 2011 through December of 2012, that's the construction window.

>> Councilmember Pyle: I like that. I must have read the chart a little differently. But that's great, that's great news. I wanted to understand too, in reference to the bonds, I know that's tougher than nails to get money from banks for a loan. But for a bond, tell me it's easier.

>> Paul Krutko: I think councilmember, I think one of the things to the mayor and council's credit is that, and the management of the city, that we have done a good job in managing our financial affairs. And Scott Johnson will

get us a great rate for this project. But that rate really is very much based upon the strong financial management of the the City's affairs. We have the top credit rating. And Scott should come and tell you exactly that. But we have one of the best credit ratings for a city of our size in the United States. So we should -- we have a dedicated revenue stream. We have 5.5%. They will size that based upon their assessment of where we are in the marketplace. But we should be able to achieve as good a rate as any project of this size. The other thing, if you will indulge me just a second, and Katy can speak to it, we, in terms of the initial responses, as Katy sought feedback from the construction community, we have some of the largest construction companies in the market. This is going to be a significant countercyclical project. I think one of the reasons we did better in the last recession is we were building this building. We would be building this building, hopefully there are a couple of other major public facilities we would like to see move forward as well in this period. I think you've heard how much construction unemployment there is in the community. This will be a real shot in the arm.

>> Councilmember Pyle: Absolutely. I just had one last question. That has -- by the way, putting people to work on several levels, it would be a little more striated. And then what is the difference in square footage? I looked through here several times. Maybe I missed it, but it's going to be going from what to what?

>> Bill Ekern: Mr. Mayor, members of the council, we're anticipating about 125,000 gross new square footage. The original design was closer to 200,000 new square footage.

>> Councilmember Pyle: Okay, so you're saying, 125, plus 200, is 325,000?

>> Bill Ekern: No, it's 125 new is the anticipated. The existing building is over a million square feet gross.

>> Councilmember Pyle: Okay. And so that 125 will be enough to be able to enable us to attract conventions that we normally wouldn't be able to?

>> Paul Krutko: Councilmember, I'm going to take back several presentations. We looked at made an assessment of where this would put us competitively. And this moves us into the, I would say the high 80s, 90%

of competing for convention business. We're never going to compete and we need to be -- to be clear about that, managing the public's expectation, this isn't an Orlando, this isn't a Las Vegas level facility. But what we were concerned about is our own businesses. The mayor talked a lot about several that were here. We aren't able to house the main solar conference that occurs, and it moved from here to Anaheim because they had the space capacity. This addition will enable us to do that. The other thing it will do for us that we don't have now is we will be able to hold simultaneous events. With the different move-in and move-out requirements this is going to be a real shot in the arm. And then the other piece is that the way the team is thinking about this and the way we're going to go through the design-build process is this would be a much more flexible space in terms of what we have now, in terms of responding to the marketplace.

>> Councilmember Pyle: Thank you. It is faster, better, cheaper and I appreciate the fact that you all work so hard to make it that way. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I just want to say I've been supporting this project all along. I'm glad to hear we're moving forward. It is an absolute priority. It always has been for me and I think for other councilmembers, an economic priority. It is going to help the whole city. I think it's great when we think about our new airport that now we'll have a new airport and our convention center when it's built. And those two combinations I think we absolutely need as a great city. I again want to commend the hoteliers for stepping up and really taking the active role they have with the T.O.T. I think that's fantastic. And I'm really happy to hear that we're going to benefit from the lessons learned on the airport project. We're going to take that and apply it to this project and I think that moving forward we're going to have a really good chance of this design-build to do this thing as Councilmember Pyle said better, faster, cheaper. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: So regarding the RFP criteria, two areas that I'm look at that I know that would help put local people to work, and that's the local subcontracting and small and local preferences. Tell me your thinking behind the points that you allocated for those particular areas.

>> Katy Allen: Councilmember Campos, there is no equation that we used. It was just basically based on experience. So let me help out with this. It might also add a little bit of context to Councilmember Liccardo's question as well. So on local -- we thought that when you have 100 points, that 70 of it would go towards the specific way that the design-build project contractor is going to approach our project. So we were looking at their track record. Their ability to work with a stakeholder and make I will say project decisions, their inclusiveness with that process. And with the 30 remaining points we had to by policy, by council's policy give ten points to small and local. That is a qualification. So that then leaves the local subcontracting, the city goals, policy and codes and then the labor peace. Labor peace is a requirement of measure D. It was grade -- excuse me, it was not graded at the airport so we decided to add five points to that, to actually not have it be a pass-fail. Kind of taking a long way to get to an answer. But in balancing all of the criteria, then, we did look at the local subcontracting and based upon our experience at the airport, what happens in the design-build process is, the team brings forward what they called named subcontractors. But then there's also additional work that happens. And we want to know when we select them how they're going to procure the remaining of the subcontracting role. So we thought their approach to the outreach and their approach to attracting labor that's readily available in the local market and that was assigned ten points. That was kind of the rationale, that was the thinking behind how we distributed the points. But certainly today's action is for council to weigh in on it and so if there's a recommendation that would you like to reshuffle how we distributed the points, this would be the time to do that.

>> Councilmember Campos: And you wouldn't think that -- because one of the things I think we are all eager to see is putting people back to work. Encouraging someone that you were look at to make that a high priority, versus having workforce come from elsewhere. I don't even know when you say local subcontracting, what is the -  
- I guess the net that we're going out to. Because the Bay Area is pretty big. So is it --

>> Katy Allen: I'm going to answer the question then Harry can speak firsthand from the airport. What generally happens is, your general contractors come from all over the country. And we know that there's a lot of interest in our project. We're very, very pleased with the caliber of firms that are look at it. But that's the general contractor. In their team they're going to name subcontractors. If it's like what happened at the airport, their subcontractors and many of the labor pools are actually coming from the South Bay. Okay? They're drawing from the local labor resources that are here. I'm going to ask Harry to give us a little more specifics on that detail, though.

>> Thank you, Katy. I guess one of the things I'd want and being able to reflect on this a little bit more is to draw distinction between the RFQ and the RFP in response to Councilmember Liccardo's comments. The RFQ is about a 30-page questionnaire that was distilled into three bullet points on that presentation that is very much kind of a pass fail document where we determined that we've got a really good pool of contractors. It's graded very similar to a multiple choice examination, there really is no discretion. When you get to the points associated with the RFP, you're doing a discretionary, basically a qualifications based process with a group of experts in the room, using this as a guidepost to select a contractor. So I think that the looking at those numbers as hard as they are on the screen, and we debated whether or not we wanted to put these numbers up here, if you look at those hard numbers, it's a little softer than that because there's a discussion going on in a room in a tightly controlled environment for the acquisition of this contractor. I just want to tell you without rendering the names yet because you'll get those soon enough. We know exactly who's downloaded our RFQ from our bidsync Website. And we have about eight interested contractors. All of them are highly competent contractors, highly qualified and they are all signatory to the union. I understand your desire to focus in on these but I don't think it's the black and white when you get into the qualifications based selection.

>> Councilmember Campos: Well, thank you for that explanation, and it reassures me a little bit more about the hard numbers, and not focusing so much on that. It -- I know that you can't disclose right now who some of the people who have downloaded, but I think with the wording that you described, who are some of the people that are interested or companies that are interested in working on this project, it is encouraging and I think you said a lot without saying a whole lot. So that's encouraging. With that, I'm looking forward to this. I -- it's a project that I

think will change the whole dynamics of the City of San José. And with us opening the new airport, and we know how well that went, and I was here at the beginning, when -- with the airport when we were sitting in a room just deciding what it was going to look like. And that was a pretty deciding process. So this is another opportunity for us to design and build something that will also serve as another model project in the City of San José. So with that I will be supporting the motion.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I had a couple of questions, one regarding the time line. On the slide it indicated June, July, the short list and eventually going to an award November to January. On page 5 of the memo it shows a 24-month period from design to construction, and the acquisition designer is ten months, which would seem that the slide is a little bit more aggressive in the -- unless I'm reading it or unless the summary doesn't accurately reflect what is in the memo. Are we looking at a little bit faster time line in the acquisition of the designer?

>> Katy Allen: Actually, the ten months that is reflected on page 5, councilmember, that's the ten months from February, last February to the end of this fiscal year, or calendar year. And then the 24 months start in January. Does that make sense? January of 2011.

>> Councilmember Kalra: Essential from the acquisition of designer through the process of acquiring a contractor.

>> Katy Allen: That's correct.

>> Councilmember Kalra: Okay, that makes sense now. Thanks for that. And then also in regards to the stakeholders, I appreciate the stakeholders that are referred to in the memo and I think in particular both in terms of the construction period, in order to not negatively affect, at least to the greatest extent possible, ongoing business at the hotels and Team San José are the key stakeholders for that purpose, is to make sure that we

don't injure the potential business of those facilities. But even going forward in terms of the administration of the facility, as well as kinds of the back of the house, of operating between the hotel, the hotels smoothly with the convention center, I think that those stakeholders are probably the most critical as we go forward that this project is built in a way that's most efficiency. And the last comment I have is in regards to the criteria in the selection criteria, I am comfortable with the selection criteria, in your professional judgment on it. In reading it the quality selection project, for 20 -- when I read that in looking at the criteria in the memorandum, to me that sounds like kind of a record, the record that an individual contractor has in designing projects on time in the past. And I think all 70 points really speak to being able to deliver a quality project on time. So that's-it's all kind of past tense in the quality project selection, have they demonstrated prior that they have been able to build on time with appropriate quality assurance. I think the total 70 points particularly the project specific approach, and the previous project experience can speak to the ability for them to be able to build a quality project, and be able to do it on time and hopefully, under budget. So I'm comfortable with the criteria that are laid forth especially with some of the explanations that staff have given today, and I've been -- I've been very up front about my support for design-build as a general concept. I think that we will end up having a better product because of it, airport's an example of looking at a positive example of how it can be done appropriately, and there are -- there are examples of at least for large projects, if we look at the substation example, what can happen if you don't have that coordination, it can end up being costlier in the long run. So I'll certainly be supporting this motion, thank you.

>> Mayor Reed: I had another question about process integrity guidelines and when they kick in. Because under our system, once the RFP's out there, then the politics of it stops. And the staff is allowed to do their job, until they make their recommendation. And then the politics can start again, basically. That's it. So when would be the date for us to stop talking to anybody who wants to talk about this that might be in the bidding process and refer them to you?

>> Katy Allen: The clock has started, actually started about four weeks ago. I encourage you not to engage in project specific discussions with a contractor until the middle of August. So that's when the RFP is due. If it's helpful to council, mayor, we will include kind of that time frame with very specific information in our info memo that will go out with the listed -- with the short-listed contractors and we can make sure that that's real clear.

>> Mayor Reed: Good, that would be helpful because it is not just us, it's our staff that need to be aware of the time lines on that. I'm going to support the motion very happily to get there. Because I started on this a long time ago. I'm just hoping that it doesn't take as long to get this convention center expanded as it did to do the airport project. Because that was 14 years in my count. And I think we're about eight years into this so we might be able to beat the airport project a couple of years.

>> Paul Krutko: When I started here the first meeting I had was on the convention center expansion project. I've been here a little over eight years.

>> Mayor Reed: Okay, so these are tough projects. I want to thank Team San José. This got started even before there was a Team San José. Our old convention-visitors bureau and the staff were taking the lead on this over the years. Certainly our hotellers deserve a bulk of the credit for making it possible because of the 4% tax they voluntarily imposed on themselves, otherwise we wouldn't be having any conversation. But really, this is a joint effort of city and redevelopment agency. As you can see, you have got staff members from both agency and the city working on this, they have been, so I want to thank Deb and Harry for their leadership to make sure they are collaborating. We just approved the collaboration agreement, and we are already collaborating. It's really great. I know it takes a lot of work by a lot of people to make these happen. I'm looking forward to a lot of collaboration soon. Councilmember Liccardo.

>> Councilmember Liccardo: I want to thank the hotellers for staying in this financially. Knowing that we're -- unfortunately, due to our financial situation, the agency unable to stay in at the same level, and obviously we hope that that situation improves and we're able to make a strong go of it. I very much support the design-build approach. I think it's the right approach. And I appreciate all the work that staff's done on this. I continue to be concerned about, I've looked closely at these attachment A and I think the end result is going to be judged by the 20%. Whether it's quality, whether it's on time and on budget and everything else is going to not matter five years from now. And it seems to me so I'm not going to support the motion. I do support the general approach of design-build. I certainly hope that what we end up having is something that's is of high quality, that is on time and

on budget. I'm hopeful we are going to get there. I'm confident we have a good team to get us there. I'd just like to see that made explicit. If we are going to have point criteria, then we ought to use them. If it's really just soft issues, then let's take away the points and let's just have a conversation. But if we're going to say only 20 of the 100 points are in those areas, I think that sends the wrong message, that's what I'm concerned about.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I already spoke.

>> Mayor Reed: Make sure anybody else? On this? I didn't have any other cards from the public on this as far as I know. No cards, all right, that's what I thought. On the motion, all in favor? Opposed? One opposed, Councilmember Liccardo. Passes on a 10-1 vote. Now, since we've been at this at 8:00 in the morning, it's 3:00, great to get to the consent calendar, which is where we start our meetings in the afternoon. So we're going to turn back to the items on the City of San José agenda. Starting with the consent calendar which is item 2. something or other. See if there are items -- before we talk about items to pull off the consent calendar, take public testimony, on any items on the consent calendar. I have one request to speak on the consent calendar, Scott Jangrew, you're going to tell me if that's correct when you get here.

>> Good afternoon, mayor. My name is Scott Jangrew, I'm the current owner of Hog's Seafood Bar, and you guys are going to vote on a lease for our space here shortly. Our lease on a month to month basis and we are aware that you are going to approve a new tenant hopefully today and we have no objections to the new tenant. We just -- I just wanted to make the city aware of kind of a lack of communication that's gone on between the city and you know we are one of your businesses that has been here for ten years. And we were not made aware of this city council meeting or vote leer today we had to about it secondhand there our customers and Mercury News, that put us in a very awkward situation with our employees, our customers and it has caused us to set an early close-date of July 17th. While that may have happened anyways because on today's vote, I think the city needs to be aware of more lines of communication of the city and their businesses.

>> Mayor Reed: Sorry your time is up. Is there any other testimony on the consent calendar? All right, any items that the council would like to pull off for discussion? Councilmember Liccardo?

>> Councilmember Liccardo: 2.20.

>> Mayor Reed: Anything else? Is there a motion on the balance? Motion is to approve the rest of the consent calendar. All in favor? Opposed, none opposed, that's approved. Item 2.20. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. This is the item that Scott just spoke on. We had some conversations and I certainly appreciate Scott's very difficult situation. And appreciate that hog's has been there for a decade, certainly difficult times in the downtown particularly in the last couple of years. What I wanted to do is, we've had an opportunity to sit down with the leaders of the business group that are going to be moving into the space. We're certainly enthusiastic to see activation because obviously, we wanted to make sure, this is a really critical building in our downtown. We also know it's a very sensitive location, given all the residential uses adjacent to the building. So we have had a conversation as recently as yesterday talking about some reasonable reductions and certainly if they have any concerns, I encourage them certainly to speak up. But what we talked about was first, and I'd ask to make a motion with the following conditions, that there not be an entertainment permit granted on this site. That the business would be closed by midnight, with any deviations from that midnight closure coming through a special use permit, and limited circumstances as dictated by that permit. That if there's any outdoor dining or activities outdoors that the doors be closed and activities be moved inside by 10:00 p.m. in that the noise limitations appropriate for the proximity of the site to residential be imposed either within the lease or the SUP. That would be the motion.

>> Councilmember Herrera: Second.

>> Mayor Reed: We have a motion on the floor. City Attorney.

>> City Attorney Doyle: Council council I just wanted to make sure in your motion, I heard the last part, but most of this, if not all of it we would want to take care of through the lease. As a landlord we have a lot more flexibility than as a regulator.

>> Councilmember Liccardo: I'm certainly happy to leave that to your and staff's discretion. It may be in the lease, I don't care.

>> City Attorney Doyle: It may be both.

>> Councilmember Liccardo: I'll leave that alt to you folks to figure out.

>> Mayor Reed: At least as landlord we have more flexibility than we do on a lot of these things. Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. You indicated you had talked to the ownership group that these all conditions that there's a mutual agreement on?

>> Councilmember Liccardo: Yes, certainly if they have any concerns I'd encourage them to come forward at this time. I did talk to them yesterday. Essentially a sports bar with a dining component, so it would be more of a family place like double D's in Los Gatos. Not a nighttime concept but more a daytime and dinner crowd.

>> Councilmember Kalra: I think we'll be hearing from at least one of them, thanks.

>> Mayor Reed: We'll hear from the prospective --

>> My name is Mike Holmes, serving as CFO. Of the management team. We did meet with city staff redevelopment agency staff and Councilmember Liccardo's staff. The other owners, two of the other three owners are actually here in chambers with us and just wanted to confirm that that was the conversation we had. Earlier

there was a conversation about wanting to be a leader within the whole night club stay open late aspect. We definitely understand I personally understand the sensitivity of this location since I was a city council staff with Mayor Hammer back when this thing was getting started. But we are very confident that these restrictions actually be in the use of what the space is. The layout will stay the same. The only difference, it will be a marquee sports bar in the Los Angeles Chicago. If any of you travel through international airports in the domestic U.S., you have seen many of them in some of the larger terminals. It will just have about 20 screens, 30 screens, which is going to be in addition to the area of the booths and around them. I think it will be a whole addition tot sharks and the general sports theme that we've got going on in the downtown area. If there are any questions, I'm happy to answer them.

>> Mayor Reed: Thank you. I'm looking forward to watching the hockey game and a baseball game in the same day in your establishment. Vice Mayor Chirco.

>> Councilmember Chirco: I'd like to address the first speaker's concern, because I know several months ago I was contacted by the real estate agent, who happens to be a friend of ours that we've known for years that was struggling. Maybe the City Manager could address some of the concerns that he voiced, and I also heard from their agent as they were trying to work in transition of this from one business to another, and how we want to improve our communications so that when we have a small business owner that we are true partners.

>> City Manager Figone: Thank you, Vice Mayor. Yes, I think we probably should do a debrief offline. But as I talked with staff and they can certainly jump in here over the course of this transaction, development. I too received complaints. I've talked with Councilmember Liccardo periodically. I think what we were trying to strike a balance between as landlord which is very rare for us, is getting the best deal that we could for the city, while, from a compensation perspective, you know, cost per square foot, et cetera, and recognizing this is a very important space in the downtown, that we really didn't want to go dark. And also, recognizing the business needs of those who were in the space. So, you know, perhaps we missed some beat in that regard but we were trying to hammer out a very good business transaction, and still be sensitive to the other issues as I mentioned. And I don't

know, Paul, or Peter, if you'd want to add to that. But I mean clearly there's always room for improvement and we're very open to where we might improve.

>> Paul Krutko: I think the City Manager captured it accurately.

>> Councilmember Chirco: Well, I would be grateful, I know this can leave hard feelings, and disillusionment and that's certainly not where we want our partners to be. So just anything that we can do to make it a better process is what we should engage in. So thank you very much.

>> And we've also got some other issues that we want to work with hogs on in terms of their assets which may enter the deal which is I think their interest as well. So we'll follow up as the City Manager described.

>> Mayor Reed: We have a motion on the floor as outlined by Councilmember Liccardo with those additional conditions to be incorporated in the lease or SUP wherever they are appropriate. All in favor? Opposed, none opposed, that's approved. That concludes the consent calendar. I'll now take up item 3.1. Report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council I know we have a very long meeting today but I would be remiss if I did not take up the upcoming retirement of chief Darryl Von Raesfeld. Darryl is in the audience today, he has a well earned retirement at the end of this week after 33 years of wonderful career with the city. During his career Darryl held nearly every rank within the fire department, including 12 years as battalion chief, one year as deputy chief, and two years as assistant chief. In 2006 he was named interim fire chief, and in 2008 I officially appointed him, with your confirmation, as our fire chief, where he has led the department, I would say successfully, through very challenging times. Throughout his years with San José fire department, Darryl marked a number of accomplishments, too many to name. But he's particularly proud of the work that he did to strengthen bilingual skills in the department, establishing a captain's academy, and spearheading the heart safe city effort. I can honestly say there is no one who's been more committed to preserving life and property for San José residents through fire prevention and emergency response. He is a man

of tremendous integrity and strength of character. He has cared deeply about this city and about the success of the department for 33 years. I want to personally thank you, Darryl, for your willingness to step in and lead the department through very challenging times. I think you were very successful, and I do appreciate all of your support. So please, mayor and council, join me in thank Darryl Von Raesfeld for his 33 years of service. [applause]

>> City Manager Figone: That concludes my report.

>> Mayor Reed: Thank you, City Manager and thank you, Darryl, you've done a great job for us. We'll now take up 3.4, that's report of the City Auditor on the audit of the city's licensing of card room owners and employees. Sharon Erickson is here with us to present the report.

>> Sharon Erickson: As described in our report on the City's oversight of San José card rooms, my office found that the city's processing of card room key employee and owner licenses was overly rigorous and should be redesigned. We also found that the City's processing of card room work permits has been slow and needs to be improved. Our report includes a total of six recommendations to improve these processes, I am confident with implementation of these recommendations, that will happen. The administration is moving forward to implement all six recommendations at this time. I'd ask for you to accept our report.

>> Mayor Reed: We have a motion to approve. Councilmember Constant.

>> Councilmember Constant: I was actually going to make the motion. I wanted to make a statement at the Public Safety, finance and strategic support committee, we had extensive discussion on this matter and I would urge my colleagues to join in the motion.

>> Mayor Reed: I have no cards from the public on this. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Good work as usual, thank you. That takes us to item 3.5, settlement with fire employees re fair labor standards act overtime claims.

>> City Attorney Doyle: Mayor, there's no presentation here, just we're here to answer questions. This is settlement of a long standing litigation that the council's already approved in closed session. And this is memorializing that.

>> Mayor Reed: We have a motion to approve the staff's recommendation. All in favor? Opposed? None opposed, that's approved. 3.6, ordinances to implement retirement board's governance changes.

>> Move to approve -- was that deferred?

>> City Manager Figone: I'm sorry, mayor, those are deferred to August the 3rd.

>> Mayor Reed: Okay, I don't want to do all the work today anyway. I want to save something for August. 3.8, actions related to retiree health care.

>> City Manager Figone: No report, just here to answer questions.

>> Councilmember Chirco: Move to approve.

>> Mayor Reed: We have a motion to approve. All in favor? I'm sorry, I have a card from the public on this. Before we take the vote, Bob Leninger.

>> Mr. Mayor, members of the council, thank you. On this item I'd like to appreciate the concept of more time. But the retirees and some of our legal help and others over the years working through the retirement board, we disagree with the interpretation, and we -- the concept of more time is a good one, but the consequences to so many low-income people are such that we think a good idea for you right now would be to direct the City Attorney to perhaps add one more year onto that. Which would give us sufficient time. Four to six months going out with the disagreements that we have, there's really no impact on your budget by doing this and we can work together

over a period of time, and come to a much more acceptable solution and avoid what will be an onerous impact on the people least able to bear that. And we think if you just took this direction for an ordinance and just put on one more year, and give us the appropriate time to work, direct the administration to work with all of us and see if we can go through policy, the Muni interpretations, maybe Muni the way the negotiation coming down it seems like only a small percentage of the actives are taking on these additional medical changes. Why should you put it on the low income people.

>> Mayor Reed: Sorry, your time is up. Anybody else? I only have one card from the public, so that concludes the public testimony. All in favor, opposed, none opposed, that's approved. Item 3.flynn, response to civil grand jury report, money-logs Hayes mansion, a San José city council responsibility and Dolce Hayes mansion consultant services. It is our response, satisfy has approved it, it ultimately is the city's response. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor, not sounding like a broken record on consultants but in this case, part of this is also the consultant services, is that right, subsection B?

>> Mayor Reed: Yes, that's correct.

>> Councilmember Liccardo: I'm not certain why we're spending money on a consultant as opposed to going out to the market, to see what private entities might be interested in buying this site and allowing them to explore with their own resources rather than the city undertaking that with taxpayer dollars.

>> Scott Johnson: Thank you, Mr. Mayor, members of the council, Scott Johnson, director of finance. The reason why we are requesting the additional funds for the consultant fee is that council has directed us, working with general services on our asset management plan, to look for alternative uses of the property. So there -- Horwath is our current asset manager for this particular property. They work directly with us in assessing and evaluating Dolce in regards to their management agreement with the city for the Hayes mansion. So due to their expertise we 30 that there could be significant value on their assessment on the feasibility for alternative uses for

the appropriate we think there be great value that we bring the report back with those alternatives and the analysis to the council.

>> Peter Jensen: And councilmember, if I could just add, Peter Jensen, director of general services. With their contacts in the industry and their knowledge of the market they can help us out in terms of market outreach, who is needed to reach out to, who with the analysis -- who is really in a admonition to be serious and who is not. So we see it as sort of a combination of their efforts along with the efforts of staff, to analyze what's the best options for the city.

>> Councilmember Liccardo: Peter, I appreciate there would be real value in that, in terms of being able to find a buyer. But I assume we'd be paying a broker, also, is that right? Or --

>> Peter Jensen: Not necessarily. We would be aping --

>> Scott Johnson: Let me add the scope of the study. It is not simply looking to putting the Hayes mansion on the market. We could do with that and just work with the broker. But we do know based on our work with the consultant in the past, that it would not generate enough dollars for the debt that we have outstanding. So the direction was that we look at alternative uses, in addition to the sale, to look at can this facility be used for different purposes, or what other type of options can we look at you know for this property.

>> Councilmember Liccardo: Scott, that's all fair. My recollection though the last council discussion was, and it was news to me at the time, was that we believe that with other uses, this property could be significantly more valuable. And could actually enable us to get out of being underwater. That is, actually, being enough to pay off the debt service which was news to me, because I'd been proceeding along all these years thinking we're stuck with this piece of property because we're always going to be underwater until the market comes back. And I can't imagine there would be another use that the city would employ, a public use that would generate the revenue to take care of debt service. So I just always assumed at least from that day going forward, we're looking for ways to either sell the property or if we can't get enough money for it, then wait until the market returns. So you know, if

really what we're doing is buying services for somebody who can help us find a buyer, great. But I think that's a little different from the consultant that we've got. So I guess that's really where I'm going. And if this is going to help us unload the Hayes mansion to somebody who can really utilize it for higher best use, great.

>> Scott Johnson: Councilmember, I'm not aware that you know your comment in regards to this property could be more valuable, at an alternative use. I guess the reason why we need this study is, I don't think we really have that information yet. And I don't think we have the information on what really is feasible as an alternative use. And also, I don't think it's been determined on whether or not there would be a public -- it would continue to be a public asset, or we would you know put it on the market as for alternative use purposes. So we're trying to have a very broad scope, is what we're working with this consultant on looking at all the potential options that have come to us through suggestions, and others that this consultant can advise us on, on looking at other ways that we could look at this property.

>> Councilmember Liccardo: Okay.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I share the same concerns as Councilmember Liccardo. And we always sort of repeat ourselves every time this thing comes up. Oh, you know it's not worth enough to pay off the debt. The mayor has to remind us, if you sold it for a different use, it would. For me it's kind of like why not have the opportunity to have a meeting with the brokerage community, say, hey, here's this whole Hayes mansion because these folks are incentivized to go find a buyer. And then they can swarm the assisted senior living facility corporations to have them do a tour. And work it that way. But it just seems like, I mean I know we lose \$5.9 million a year and \$500,000 is just a fraction of that but it seems like that approach would be you know much less. I guess my question is Scott let's say we do this consultant report and they say okay use it for this purpose and then this person or group or company comes in to buy it. How are we not paying a fee for a real estate transaction to happen?

>> Scott Johnson: Councilmember, I want to make it clear that these are not brokerage services that we're recommending for procurement. At the end of the day, if the council decides that we are going to sell this property, for whatever use, I would imagine that we would probably most likely pay some kind of brokerage fee. But this particular contract is not a brokerage contract and we are not paying a commission. It is basically looking at alternative uses.

>> Councilmember Oliverio: I know that but eventually you will. If these people that are going to make a commission will do the legwork for us for free and not spend the half a million it's worth considering. Sorry City Manager.

>> Mayor Reed: Let the City Manager break in there.

>> City Manager Figone: I don't think staff has done a very good job of describing the scope which would then allow us to go out to the brokerage community. I guess that's one thing I would want that dialed in on. The second is, this is an increase to an existing contract of \$32,000. So how much do you anticipate spending on the consultant for this purpose? Because it's not clear to me that it's the full \$500,000. So what are we talking about? If I could, I'm sorry councilmember, but I'm not hearing the answer that I think council is interested in from the staff.

>> It's just the additional amount we're talking about for this study. So the full contract is for consulting services during the year, with our existing relationship with the Hayes. This is -- this is an incremental amount for the work that we're talking about, that really is meant just to prepare us to put this on the market, and find out what's there.

>> Councilmember Oliverio: So that's 32,000, not 512. So that we're talking about \$32,000 for this service?

>> Scott Johnson: Yes, we're talking about the incremental increase.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: That makes it easier. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to join in on this trio and I would like to make a proposal. Wouldn't it be a lot easier to send letters to all of the institutions in the City of San José who have anything to do with retirement places? And then we could lease it. It's not always the best thing in the world to just sell property. If you can lease it, you're going to have income until it falls part or something. But I just -- half a million dollars just -- that blows me away. I just don't think that's the smartest way to go.

>> Scott Johnson: Councilmember, I don't think we're at a place yet to determine whether or not this particular property, the condition that it's in with the restrictions that it has, is ready, you know, to be a retirement community. I'll actually speak from personal experience. My mom was in assisted living for five years. And just -- I go to the Hayes mansion to meet with Dolce once a month, at least. And looking at the size of the rooms you know, whether or not there's handicapped access and so on, that's what we need the consultant to work with us on to see what would need to be done to convert it for that type of use for example before we went out to the market to market that as an assisted living or retirement community.

>> Councilmember Pyle: Well, let me try another way. We all know we're in a crisis and we all have to make changes. And when you even think about half a million dollars to market this property, I just can't accept that. I'm just not ready to say, half a million dollars to do something where that property is acceptable. We're all make some kind of sacrifice and looking for the least costly way to do something.

>> Ed Shikada: Councilmember, Ed Shikada, chief deputy City Manager. Perhaps I could clarify. The scope of services is for \$32,000. Not for half a million. I know it's a little confusing in the way it's described. That said, staff hears the concerns being raised by the council. If it is the pleasure of the council we'd defer item B, to bring that back in August so staff can make consideration for the appropriate next steps.

>> Councilmember Pyle: I'd really appreciate that.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor and I appreciate the staff report on this and I don't think we do know away the best use of the facility is, or whether we can find a use that's going to get us from underwater in terms of our current debt. And so I think that you have to keep in mind, Scott being out there quite often, I've been out there quite often as well, millions of dollars spent on ball rooms and conference rooms and what have you. And there maybe be certainly a private sector partner that would be willing to go in there that could market it in a better way than the City of San José or even a partner than Dolce could, if it's a large corporate type of hotel chain, what have you, where they have a greater marketing capacity. There are opportunities, we have to keep in mind Scott, as you stated the currently condition of the facility. I think all options should be on the table and certainly shouldn't be heading towards one direction or the other. And so I appreciate the fact that you've indicated that we just don't know at this point what would be the best use of it. I think that before we can determine how to proceed, we need to have all the information. And so, you know, I'm certainly reluctant for us to presume what the best use is, especially -- and I would certainly await the consultant's suggestions as to how we can best utilize this site. I think one issue that's not sufficiently raised in the grand jury report is, and I don't think it was a question posed to them, is to the degree to which we're in debt and whether -- and I think the ease of which that we'd be able to sell the property. And right now in this economy is not the time to sell it. It doesn't mean that outside of selling it there are not other units that we can further maximize the opportunities. Thank you.

>> Mayor Reed: I've forgotten who has the motion on this, and do you want to contemplate a change to defer item B to August to stay with the grand jury report. Who had the motion?

>> Councilmember Constant: I think that was me, I'm not sure. I think it was. You know, I'm kind of split on this, because I think we've been talking about this so long and we finally have a chance to take a critical look at it and it's really not half a million, it's \$32,000 which is really a small investment in determining what our options are, and the more I think about it, the more I think I would not like to defer that. Because I think -- we've been talking about

this as long as I've been here and I want to make sure we do something with it. So I do not think I'll support amending my motion.

>> Mayor Reed: Yeah, I think we ought to move ahead with it. \$32,000 is about one week's worth of losses to the General Fund on the Hayes mansion operations and the sooner we can get the answer and find out what we can do, the better. \$32,000 is not a huge amount for the work we're asking them to do. Maybe when we're done we can put it on eBay and not have a brokerage commission, we don't know. First we have to know what we have to sell. I'm going to support the items both items moving forward, the motion A and B, all in favor, opposed none opposed, both of them. 4.1, hearing on business improvement districts reports for FY 2010 and 2011. We have a motion on both reports. I think we have to go through some sort of process here because we have got protest rights. And I've got a whole chart here that I'm going to have to study and figure out what to do. While I'm doing that, the clerk actually knows the answer, so she's going to tell us.

>> Lee Price: Mr. Mayor, members of council, no written protests have been received from the hotel, Japantown or downtown BIDs.

>> Mayor Reed: No protests?

>> Lee Price: No protests.

>> Mayor Reed: Wow, that's good. So that means we can have the hearing on all of them, and that is the one two three business districts. I would open it up now for public testimony on all three of those. Anybody who wants to talk about any one of the three, we'll take all the public testimony at this time. I have no cards. No protests and no cards. That's a red-letter day on business improvement districts. So somebody must be doing something right out there. That's good to know. So since there's no public testimony, and no protests, we just need a motion.

>> Lee Price: That's right.

>> Mayor Reed: We have a motion to approve all of them. We got it, yes we do. All in favor, opposed none opposed, those are approved. Congratulations to our business improvement districts. 4.2 is a public entertainment permit ordinance. We have a motion to approve the public entertainment permit ordinance. I would just like to note I did get a letter from the downtown association recently. I think the clerk has a copy. The clerk has a copy, so that's part of the record. Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to thank Lee Wilcox and Paul Krutko and their team for all their hard work. I know they've been working hard on many of these initiatives. This is a great one to get over the goal line, and I know they've done it with the assistance of the city attorney's office and police department. Also just wanted to clarify our conversations. It appears that we're going to be coming back soon, we hope, with some new regulations relating to those entertainment venues, mostly restaurants that want to have occasional entertainment. We know we had a lot of concerns from restaurants who were facing various fee permit requirements for just an occasional event, so I just want to make that clear, that that is coming, and we hope to finish all that up very soon, thank you.

>> Mayor Reed: Councilmember Liccardo, those would handle things like Left Coast Live kinds of things where we just once a year have some live entertainment.

>> Councilmember Liccardo: That's coming to your downtown this week. Get out there, particularly on Friday and Saturday nights.

>> Mayor Reed: Live music, 100 bands, 20 venues. Okay, we have a motion to approve this item. All in favor, opposed, none opposed, that's approved. That will take us to item 4.3, agreement with Coleman airport partners for the purchase of the former FMC property. Motion is to approve. All in favor, opposed, none opposed, that's approved. Item 4.4, actions related to the San Pedro public market. Motion is to approve. All in favor opposed, none opposed, that's approved. Item 4.5, the 2009-10, 2010-11 appropriation ordinance and funding sources resolution amendments for the federal and state workforce investment act funds. We have a motion to approve. I just want to thank the federal government, for lots of appropriations and funding for our recovery, through the

recovery act as well as the annual appropriations that helps us run the workforce investment board and Work2Future programs, we have this great summer youth employment program that came specifically out of the stimulus funding that's helping us keep kids employed in the summertime. And we have a board of directors, a very big board of directors, that has a composition of public, private, labor, business, and Jeff Ruster manages all that for us, and it's good to see the money coming in from the federal government to fund these programs. We are happy to spend it and we do it very efficiently and effectively. The motion is to approve. All in favor, opposed none opposed, that's approved. 5.1, actions related various parks, recreation and neighborhood services agreements. Motion is to approve. All in favor, opposed none opposed, that's approved. 6.1, master agreement with Santa Clara Valley transportation authority for the BART extension to Berryessa project. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 6.2 is the automated transit network agreements and funding actions. We have a motion to approve. All in favor, opposed none opposed, that's approve. 7.1, solid waste service agreements, Councilmember Chu.

>> Councilmember Chu: Mayor on the advice of the city attorney's I'd like to recuse myself.

>> Mayor Reed: Okay, on solid waste service agreements. I have no requests from the public. Motion -- yeah, we do have a motion. All in favor? Opposed none opposed, that's approved. We need to go back to 5.2. Because I skipped it. Right, staff? 5.1, that was a lot of actions for various Parks, Recreation, and Neighborhood Services agreements. 5.2 is the report on resource allocation plan of the San José bringing everyone's strengths together, B.E.S.T. program for the fiscal year 2010-11. Councilmember Chu had the motion. All in favor? Opposed, none opposed, that's approved. We have the automated transit network agreement and funding actions. We have a motion to approve. One card to speak. George Belltramer.

>> You caught me way up at the top. Honorable mayor, city councilmembers, thank you for allowing me to say a few words. I want to start off by thanking the city staff for working diligently on this partnership agreement amendment, particularly Ed Shikada, John Stufflebean, Mansour Nasser and Mollie Dent. This was a cooperative effort and we really appreciate what they did. This is a win win situation for both the city and for San José water company. We are going to reduce reliance on potable water, we have a new water supply for San José water

customers, for both irrigation and industrial use, we're going to promote further the city's and San José Water Company's Green Vision goals, and we're going to expand South Bay Water Recycling nonpotable water use and provide significant revenue impact to South Bay water recycling. So San José water company is very proud to partner with the city on this very important project and we thank the city's efforts in making this happen. Thank you very much.

>> John Stufflebean: And Mr. Mayor, John Stufflebean, director of environmental services. We are very appreciative with San José water coming forward and helping us expand the recycled water system. Thank you.

>> Mayor Reed: I think this concludes our discussion of this. We have a motion to approve, all in favor, opposed, none opposed, that's approved. Next item is 3.10, is it after 3:00? Yes, it is. We can take up 3.10, the municipal regulations and enforcement of medicinal cannabis. Staff presentation and public testimony. Let everybody know that public testimony today is limited to one minute. Before the staff gets started I want to publicly apologize to the staff for all the work we put them through over the last few weeks. I think we -- I certainly underestimated the amount of work that it would take to get us here. And staff has done a great job with putting everything together. A lot of staff from different departments working to do this and I for one wish that we had given them more time because this is not unusual but occasional the staff is way ahead of the council and they are certainly way ahead of me in understanding this. This is a more complex topic than I thought, more complicated than I thought but staff has done a great job, that council could certainly take action today, if the council wanted to do that. Personally I'm not prepared to make the decisions today. I have had a few other things I'm working on. Whatever they were, I've already forgotten them. Now I'm ready to focus on this. But I just want to thank the staff for doing a great job and getting it here, and I'm just personally prepared to make the hard decisions today. With that, we'll take a staff presentation.

>> Deanna Santana: Thank you, Mr. Mayor, good afternoon. On March 30th the city council directed a multipart referral regarding medical marijuana. Since March 30th as the mayor mentioned we have evaluated and developed a response to the above referral. Staff's response to the city council's referral includes policy development based on the application of the law. Today's presentation will cover the draft medical marijuana

ordinances, both the regulations and land use policy, policy alternatives within the ordinance as well as alternatives to the ordinance itself. As well as the ballot measure and taxation analysis. But before we get into the specifics of our response, it is important to first review the legal analysis which sets the framework for this issue, and as the mayor noted, it is very complex, as well as sets the basis for our policy development. I'll pass the presentation over to Angelique.

>> Thank you, honorable mayor and members of the council. Medical marijuana is a challenging area of law for several reasons. First the cultivation possession, transportation use and sale of marijuana remain illegal under both state and federal law. Second although California has carved out an exception for individuals suffering serious illnesses and those caring for them and the U.S. attorney general has indicated that resources will not be allocated to prosecute medical use of marijuana in compliance with state law, the prosecution of the sale of marijuana for profit remains a priority. And third, though the state statutes and case law controlling this area of law are clear, the issues surrounding medical marijuana law have been clouded by various interpretations of that law in a manner that far exceeds the authority provided therein. State law, as it relates to medical marijuana is very limited in its scope. The draft regulation you have before you reflect that limited scope and recognize the true intent and spirit of the compassionate use act. As well as the medical marijuana program act. Simply stated the compassionate use act and the medical marijuana program allows seriously ill individuals and those caring for them access to marijuana without the fear of being prosecuted. The compassionate use act and the medical marijuana program do not authorize the operation of marijuana retail dispensaries that sell marijuana and/or provide marijuana for a profit nor do they contemplate a model where the dispensary is a primary caregiver for members of the dispensary or where the members of the dispensary contribute nothing to the collective cultivation of marijuana. What state law does contemplate is a collective model where patients and their caregivers come together to collectively and cooperatively cultivate marijuana for the treatment of the patients. With membership in that group limited to qualified patients and their primary caregivers, where all activities related to the collective cultivation of marijuana are performed only by those members, where the collective does not engage in the sale of marijuana and does not make a profit, and where the collective is not and cannot be the primary caregiver. This is the model that the law authorizes, and this is the model that the proposed regulations support. For these reasons, our office is confident in the legality of the regulation submit to you for consideration.

>> Good afternoon, Donald Anders, deputy Chief of Police for the San José police department. I appreciate the opportunity to speak this afternoon. I've been asked to speak particularly bullet number 1 on this slide regarding the increase in medical marijuana ads in local publications what some of these ads may represent -- and I'll embellish on this just a little bit -- what's happening in San José is a track that appears to have occurred in other jurisdictions. For instance, if we look south to Los Angeles, in a proliferation of medical marijuana dispensaries, collectives or cooperatives, basically establishments that engaged in providing medical marijuana to qualified patients and/or their primary caregivers, it is fair to say that five years ago the City of San José likely had very few cooperatives or collectives or dispensaries. As of this morning, our review of a local weekly publication I believe I was told indicated about 40 separate ads for medical marijuana collectives or dispensaries. Or establishments. On the Internet there is a particular Website that as of this morning the count was about 67 that were advertising their particular establishment for the provision of medical marijuana to qualified patients and/or their primary caregivers. What we have in the city staff as a whole has a concern about has to do with how some establishments may in fact be operating their enterprise and whether or not the cultivation of marijuana, the transportation of marijuana, the warehousing of marijuana, the sales of marijuana, the source of supply of that marijuana, whether or not that is actually occurring within the parameters of the compassionate use act of 1996 and the MMP of 2004. And if outside that, we would have concerns whether or not some of the activity strongly suggests felony criminal activity. For instance, the cultivation of marijuana, if marijuana is being cultivated, outside of a typical collective or cooperative model, if marijuana perhaps is being cultivated in Northern California on U.S. forest service lands and being transmitted into San José by a third party well outside that marijuana collective model does that in fact represent felonious criminal activity? Those cause us concern and lead us to believe there is a need for some kind of regulation that clearly defines what a collective model might look like in San José. Certainly we know, as the city attorney's office just mentioned, much of what I have just discussed with regards to trafficking, warehousing, manufacturing, cultivation and so forth is a violation of federal law. The collective model, as will be outlined with much more specificity, as we proceed with the presentation today, within that model, closed-loop, members being primary caregivers or qualified patients. As the proposed ordinance has been drafted I think likely keeps us away from concerns about a substantial criminal activity that may be possibly occurring as a result of some establishments here in the community. And I'll leave it at that for now.

>> Joe Horwedel: Thank you. As it relates to the existing dispensaries in San José and the collectives, in the fall of last year we had three active code cases that we were working through. Those were the results of complaints from adjoining neighbors or community members. In January of this year, we opened up 24 additional cases. We continue to go and receive cases and continued to go through and resolve cases. This Friday was supposed to be in court on another one and we reached a settlement where they closed the business and paid their penalties and moved on. We do have tools that we are using to deal with the businesses that are creating problems for the community. Those are the ones that we have focused on. We are not doing proactive enforcement at this point. It is like other code enforcement, based on complaints of problems in the community. And where we've seen cases of that such as the community Naglee park complaining about a specific business worked very diligently with the attorney's office to go through and to resolve those issues to make sure we don't have problems with the businesses. As it relates to the regulation of collectives, dispensaries, one of the things that we're looking at is, how should we regulate these businesses? Is it -- how much of it is a land use decision and how much of it is more of a police regulatory decision? As a part of looking at this issue, one of the things we think is important is, should there be a maximum number of these businesses? We note in some communities in Colorado, the proportions that they are at are many times larger than we're at today, and that is a concern of how many should be in the city. Staff is looking at 10 as a number that we think, based on the staffing, to then keep up with these facilities, to monitor them appropriately, that that's a workable number. As it relates to where the businesses should be located in the city, should the city council ultimately decide to approve regulations for dispensaries, collectives, we really believe they should belong in the industrial areas, and these are businesses that are supporting the residents of San José and that we should be providing access as a compassionate act that the state regulation are around. We've heard a lot of community concern from patients that depend on access to medical marijuana, that they feel very uncomfortable going into industrial areas in other communities, especially depending on friends or relatives to go through and drive them to those businesses late at night. So it is something we thought quite a bit about. We do think that it is important to really be thinking about do we want to do conditional use permits, versus should we really verify that the business is in the right spot and really depend on the police regulatory structure to look at these businesses, and from a staff standpoint, we really think that that's the most appropriate way to do it, as opposed to making a noticed public hearing, and large community

process around it. Let's really be certain about where we want them to be and then move back out of that, and as it relates to that, staff has looked at a number of different issues. We've heard a lot in the paper about the neighborhood proximity and some of the problems that happened with that. We've also heard about with schools and preschools near dispensaries and collectives. So we've put forward some what we consider sensitive uses, originally we had started with a thousand-foot separation and we've now changed that to a 500 feet. We think that's a more reasonable number. I think as we go through the process, the more it's one that you know we have continued to refine how best to look at the best separations. But it's one that certainly the more you create a larger distance, the more things you add in, the tougher it is to find the sites that we're trying to balance that to make sure that being able to have collectives, if council ultimately wants to do that, that we have places that are appropriate in the city. So I think most of these, I've talked through as a part of the alternatives that the council ultimately will have in discussing this issue, industrial lands certainly are a location that is possible for locating dispensaries and collectives, staff would go and caution that the that the premise of not doing a conditional use permit I would ask to rethink, certainly for industrial lands, that not all industrial lands are appropriate. For locating collectives and dispensaries both from an access to public transportation, that it's areas that are accessible to residents coming in and that make sure that we really appropriately sensitive to our prime industrial lands, so it's one that I would say we want to talk a little bit more about. The whole issue of noticing something that is worth talking through. That there are a number of models that we use for a number of decisions in the city, whether it's the offsale of alcohol program or a normal public hearing process, to a reasonable accommodation process where we look at different types of notification, recognizing that there's different levels of decisions possible. I did mention the larger separation. It's also possible for smaller separations. Offsale of alcohol, we actually use 150 feet as a separation from residential. As one of the triggers, triggers a higher level permit. So you know, one idea might be to not have a separation at all, but then that really would put you more, I think more under the lines of a conditional use permit, so it adds more cost, time frame process to the decision. Then lastly the whole issue of cultivation. We've heard a lot from the operators of the collectives that it's very difficult to grow the different strands of marijuana on site and square footage required based on the size of some of the collectives. So that is an alternative that the council could consider is to actually do more of an strum agricultural type use, industrial areas where you do offsite growing. We do believe that as you heard from the police department having some chain of control of the material, there is a real important safety issue related to that. And so it's one that if we are

going to go in that direction it does have consequences on staffing to go through from the city side to ensure that those are operated safely. It does have consequence about how the material is actually put to the market for the patients, so that there's a little better control of quality, the safety related to that, and we'll talk some more about it.

>> Deanna Santana: Before Deputy Chief Don Anders reviews more closely and quickly the detail of the key features of the regulatory ordinance, I just wanted to provide some overview comments. The policy that we have developed today is within the law and compliant with the legal review that Angelique outlined. We have provide policy alternatives as we did for the land use regulatory policy that Joe just covered. For the regulatory program as well. With that said, we have a nine-part or nine-section ordinance that's outlined here before you. It does cover the general provision such as the purpose, definition, as well as provides some regulatory provisions for the personal use of medical marijuana. I'll pass this over to Don so he can review the key features of the regulatory program.

>> Thank you. So just as a premise, one of the primary challenges the city staff faced, of course, is, this is, in essence, it's an unregulated industry. In other words, if we look to our community for a particularly food product, or if we look to our community for a particular prescription drug, i.e. codeine, we know that those particular products, from the day they were born, have followed particular state, local or federal guidelines with regard to certification of personnel on site, with regard to prescription drugs, medical doctors, transportation, sanitary conditions, the safety of packaging, and on and on and on. And yet there is very little to look to in this country with regard to medical marijuana regulations and how in fact a model might be structured that, one, ensures that qualified patients or their primary caregivers are in fact provided the product to which they are legally entitled but at the same time, providing for a public safety and trying to find that balance really has been quite a pioneering effort. And so with that, I'll go through our list here relatively quick. The first is the collective structure, as compared to a dispensary structure, or simply calling it an enterprise or an establishment or a cooperative. City staff elected to go with what is referred to as a collective structure. A collective structure primarily is closed-loop. In other words, it's comprised of members. Everybody within a collective structure are either a primary caregiver or a qualified patient under law. A collective structure is an association of at least four members. They

convene at a -- or operate at a particular location for the purposes of cultivating medical marijuana. It involves the principals, managers, operators, but we have chosen to go with a collective model, again, involving four or more primary caregivers and/or qualified patients. And it is closed-loop. What we are proposing is a registrations process as compared to a permitting process or a licensing process. We felt that a registration process quite frankly is probably the most accommodating, the least bureaucratic, and will likely involve the least amount of cost to both those looking to initiate or establish a collective as well as to city employees who are responsible for fostering or facilitating a registration process. Willing what this would look like. Individual or individuals interested in initiating a medical marijuana collective would initially provide an application to the police department, expressing an interest, I'd like to be considered to register to manage or be a principal to operate a medical marijuana cooperative. That application would be made to the police department. Assuming there would be not obviously disqualifiers, i.e., the person is currently on parole for a major felony, that individual would be entered we envision into some sort of very transparent public monitoring system. This is basically an equal opportunity for parties who initially qualified, who have an opportunity to be considered fairly for snare medical marijuana collective. We envision a public lottery occurring. For instance, as Joe indicated, if in fact it were determined that the city were to register ten collectives, perhaps in that lottery 20 different applications would be drawn, and they would be ranked based upon the order in which they were drawn. Assuming that the full ten may not qualify for full registration there would be individuals who would ultimately have access who would draw further down the list. Once an individual or group was selected through this lottery process and they qualified for the registration process, then we would advance our registration process. This would involve looking at a very basic business plan or something -- an operations plan, a schematic for what they might envision this particular collective might look like and how it would function on a day-to-day basis, certainly criminal background checks, onsite visits and so forth. A number of city departments would be involved in this registration process. Ultimately it would be the Chief of Police who we would envision would approve registration for a medical marijuana collective here in San José. And initially, we are proposing that if somebody is in fact approved for registration, that that would last for a period of one year. Hours of operation have initially been proposed from 9:00 a.m. to 8:00 p.m, seven days a week, but I'll talk about policy alternatives here in just a second. Regarding safety and security, again, it's a pioneering effort. It's very difficult to look around the country and find a template that works for our community in San José. So in the ordinance we have addressed a number of areas related to safety and security such as how

much money is allowed to be retained, how much cash is allowed to be retained onsite, particularly overnight. Monitored alarm systems, closed circuit T.V., records retention and ensuring that those records remain secure in fire proof safes. How much or whether or not marijuana that is being cultivated or marijuana that has already been cultivated is actually accessible to the public or visually accessible to the public. We've addressed that in the safety and security measures. Onsite security, state licensed security personnel being required to be on site of a collective. We're all familiar with an incident that happened here recently in San José that illustrates some of the risks involved in having marijuana and cash on site. We've talked already about a closed-loop system. The ordinance contains provisions with regards to packaging of medical marijuana. In other words, we believe that when medical marijuana is packaged and provided to qualified patients or their primary caregivers, childproof containers should be provided, there should be information on these packages that indicate where that marijuana came from around some disclosure with regards to what products were utilized to actually cultivate that marijuana? So there's full disclosure if an individual chooses to consume marijuana for medical purposes, they have a clear understanding of how that marijuana was cultivated, and what products were used in that cultivation. We're also focused on individuals who belong to a medical marijuana collective, that those individuals can be provided marijuana no more than one time per day by that collective. Which of course would involve other primary caregivers and other qualified patients. The reason for this is basically twofold. One is, we're focused on individuals who may choose to make multiple trips to a medical marijuana collective, assuming the possibility of, after the first trip, there was ingestion of marijuana, and then a decision to then make a second trip, and the possibility that an individual may not be functioning with full capacity or full faculties at the time they choose to engage in some sort of conveyance to make that second purchase. The second reason for that just has to do with the nature of operations, record-keeping, tracking and auditing, which I'll talk about here in just a second. With regards to sale of ancillary and manufactured products or paraphernalia, we have crafted in the ordinance that these be prohibited. What we're talking about here is retail sales of what you might read in some ads with regards to edibles, brownies, maybe some sort of other consumable or related items such as pipes and bongs or other retail products that may facilitate the ingestion of medical marijuana. And our primary reason for this quite frankly is we begin to mix the spirit and intent of a medical marijuana collective being a nonprofit nonretail enterprise with sales, retail sales. And this really gets complicated when it comes to mixing those two types of models into one particular establishment. We have suggested in the proposed ordinance that consumption of medical marijuana

onsite be prohibited. We do have quite a bit of language with regards to maintaining records and also addressing the issue of independent audits. We think it's exceptionally important to maintain very accurate, contemporary, and strict records with regards to day-to-day operations, transactions, supply, warehousing, packaging, provision of marijuana. This allows qualified, independent auditors to engage in a professional audit of a medical marijuana collective to ensure. So the community is assured that the day-to-day operations are in fact occurring within the parameters of ordinance and state law. With regards to personal use considerations and regulations, in this ordinance we have also provided some -- a bridge information with regards to personal use consideration regulations. In other words, if three or less individuals, primary caregivers and/or qualified patients chose to cultivate marijuana and consume marijuana amongst themselves, the overwhelming majority of this proposed ordinance would not come into play. It would not apply, because that would be three or less individuals. But we do have language in there with regards to for those three or viewer individuals, cultivating marijuana inside of a private residence and what those conditions would be, i.e. growing that marijuana inside that private residence would be secondary to that residence serving as a residence, the amount of square footage allocated within a legitimate residence for the cultivation of marijuana, whether or not marijuana that is being cultivated is actually visible to the public eye and so forth. So we have chosen to incorporate this into the proposed ordinance, as well. And finally, we are looking to this ordinance to sunset in a period of two years. We gave an awful lot of consideration to this, certainly we had a very informative meeting, public outreach meeting here a few weeks back. And what we are focused on is a sense of two years. Our sense is that to sunset in one year may be a bit premature, and there just may not be enough information and data available from city staff, as well as community stakeholders to come to the able and make whatever adjustments may need to be made, or to terminate the ordinance, or whatever ultimate decisions are made by council, our thought is allowing this to advance for a period of two years is going to allow the council to be much more educated and informed about how this ordinance has been executed in the community over that period of time. Now, policy alternatives. The number of medical marijuana collectives, obviously council has the discretion to make that less or make that more. What we wanted to emphasize is for there to be more medical marijuana collectives than then 10 that Joe talked about will very likely encompass much more cost to the city. Because then, we're into many more geographic locations, and just it's quite frankly very simple math. The more geography, the more time, the more sophistication and robustness of audits and day-to-day monitoring. Hours and days of operation certainly are subject to revision and

consideration by council. Operating regulations and conditions, with regard to safety and security, there are a number of issues with regard to safety and security that council may choose to revise or consider. However we're feeling very comfortable that what we have proposed certainly would meet minimum responsible standards with regards to safety and security issues. Cultivation, I think the primary alternative available to council maybe, whether or not council may choose to incorporate a clause that would allow cultivation offsite. We have only included at print time cultivation onsite. With cultivation offsite, that comes with many more issues i.e., much more robust and time consuming auditing, monitoring, track of information, source of supply and so forth. But certainly, that does remain an option. Collective operations, certainly, there are some -- there is discretion available to council, with regards to how they may want to restructure the proposal with regards to operations. Owner and management requirement, the same. We're looking at now some criminal history criteria, convictions, an individual's demonstrated history with regards to conformance to law that might disqualify them from a principal, managerial or operations role. We currently propose the age of 21 or higher to be involved as a principal or a manager in a medical marijuana collective. Certainly that is subject to reduction perhaps down to 18 years old. Packaging, we just feel that with regards to packaging, we've been exceptionally diligent, vigilant and responsible in our proposal with regards to how medical marijuana might be packaged. The records, the same, and of course the audit process pretty much speaks for itself in the ordinance. We feel that having professional, independent auditors engaged in audits that abide by contemporary professional standards is absolutely key to ensuring appropriate management and implementation of the proposed ordinance. Thank you.

>> Deanna Santana: We're almost done with the presentation. I know it's been rather lengthy. We have four more slides that cover taxation analysis and the ballot measure analysis.

>> Scott Johnson: Thank you, Deanna. Scott Johnson, Director of Finance. I'd like to briefly talk to you about the taxation analysis and really focus on the council referral, and that referral is the proposal to modify our current business tax structure to allow the taxation of marijuana collectives at a rate of 3%, and that's equivalent to \$3 for every \$1,000 of gross receipts. So I want to make it clear that this model, we're not talking about a sales tax model. We're talking about changing our business tax structure specifically for marijuana collectives. Our current business tax model is based on employee county. We collect a minimum business tax of \$150 per year for up to

eight employees per business. In addition, employees are taxed at a rate of \$18 per employee. Our existing business tax ordinance has a cap, maximum cap of \$25,000 per business. And under state law certain nonprofits are exempt from paying our business tax. The payment of the business tax and the City's acceptance does not entitle the taxpayer to engage in business in the city unless the operator complies with all city requirements and applicable laws. So it's really important to note here that whether the business is legal, or illegal, I'm still charged as the city's director of finance to collect the City's business tax. So the state law prohibits collectives from generating a profit. And there in our analysis, our analysis is very limited because we don't have a lot of information on this particular subject. But the potential tax revenues generated under a collective model is limited, as opposed to a retail model. And a lot of that is due to the state law prohibits collectives from generating a profit. So there is not a profit motive with these operatives in operating their collective facilities. I want to also clarify that the gross receipts is not strictly limited to monetary money exchanging hands. Gross receipts also entails in-kind and barter contributions, the value of the in-kind and barter contributions. I also want to talk a little bit about the state initiative. We do know there is a state initiative moving forward to regulate, control and tax cannabis act of 2010. So if the voters approve the state initiative, then local governments would be allowed to adopt regulations to permit the retail sale of marijuana. And that it could be very different than the collective model that we are talking about here today. The federal government, however, could decide to intervene if California voters do pass the state initiative, and if the state initiative and the city's gross receipts business tax for marijuana are approved by our voters, then it would be subject to the council's decision to permit the retail sale of marijuana in San José. The city could begin imposing and collecting the new gross receipts business tax on all cannabis businesses in San José including the retail sale of marijuana. But our ability to forecast potential tax revenues at this time is very difficult. I also want to say that we have had some correspondence with the State Board of Equalization regards to sales tax, because the State has confirmed that medical marijuana is subject to state sales tax, which means that the City of San José would expect to receive our 1% of that local tax related to sales tax. And then finally, on this next slide, one of the things that staff did look at is to present council with a policy alternative for a city tax measure. So in lieu of the business tax for medical marijuana on the November 2010 ballot, council can also decide to delay any potential city tax measure taxing cannabis businesses until after the November election to see what happens at the state level. So if that occurred, then the next election opportunity would be in 2012, unless the council unanimously votes to declare a fiscal emergency. So that would -- then a

special tax can be voted on at any election, but it requires a two-thirds voter approval, and the tax revenues must be dedicated to specific purposes. And now, with that, I would like to turn the presentation back over to Deanna.

>> Deanna Santana: So with the release of the the mayor and Councilmember Oliverio's memo on Friday, we immediately touched base with our polling consultant on Monday. If the council were to direct polling on the development of a ballot measure, we have proposed the above time line. Between June 23rd and July 2nd we would complete the development of the survey. From July 2nd through 12th a consultant would conduct the survey, and this time frame has been already confirmed with the consultant. On July 15th we would receive from the consultant top-line polling results that would allow for us to prepare a staff report by July 23rd, as well as a proposed ballot measure question to bring to the city council for its consideration at the August 3rd meeting. If the council were to approve placement of the ballot measure, our filing deadline would be August 6th. We have included the cost, the estimated cost for polling as well as for the ballot measures, about \$450,000. The council has already appropriated funds for two ballot measures, and with the recent extension and increase in the consultant contract, we would be able to fold in polling questions into the existing efforts. This timeline does require some sunshine waivers. And I'll just mention what we'd be asking. We'd be asking the council to waive the review of questions polled. I know in the past the council has asked for questions to be reviewed before we go out with the polling. Since we would immediately start July 2nd, there is insufficient time, and so we could either put those questions out by info memo, but we would request a waiver. That review, as well as the July 23rd, is a sunshine waiver. This item would need to be prepared and ready to go by July 20th under the open government requirements. With that, here's the options for the city council today. The city council directed us to develop regulations for the control of medical marijuana. While this is a complex policy, we have fulfilled a direction and have developed a regulatory program that complies with the law. We have also called out policy alternatives for the council to be fully aware of all of its options. As an alternative an urgency ordinance which establishes a ban on medical marijuana establishments has also been developed, should the city council not wish to adopt the regulatory program. A ban rather than a moratorium has been proposed so that it is clear that existing dispensaries and collectives are not permitted use under title 20 and because there is concern that some establishments' activity exceed the law. There was an alternative proposal put forward, and while it's doable, it does raise some concerns and sends mixed messages regarding how we move forward. And I'll just review two

of the key concerns. The first is the number of noncompliant establishments that may open from here through when the city council puts a regulatory requirement in place, as well as the possible chaos when we are then asked to put in place the implementation of the city council's policy. The proposal does not address the city's longstanding policy concern for industrial zoning conversions, and with approval of the proposed sensitive uses only, it may have unintended consequences of allowing the industrial zoning areas for medical marijuana establishments which staff is not recommending. If the council prefers to accept the Mayor and Councilmember Oliverio's recommendation, it should be very clear that the direction is to focus enforcement on those operating in identified areas, and is limited to civil action, not to criminal action. And with that, that concludes the presentation. We are available to take questions.

>> Mayor Reed: I guess there will be a question or two. I'd like to start by recognizing Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. I wanted to start off with moving the memo that you and I and put together, and then speak to that, so if I have a second. Okay, thank you.

>> Mayor Reed: We have a motion on the floor based on the memorandum.

>> Councilmember Oliverio: So a limited number, limited places, regulated and taxed, this is a theme that I started back in October of 2009, seven months ago. I want to thank the council for acknowledging state law and voting for the compassionate use of medical cannabis in San José back on March 30th. Compassionate use for residents with a doctor's permission that suffer painful affliction is allowed in 14 states. I want to thank the staff and I do mean that adamantly for all the effort in coming back with recommendations. The urgency to come back was really based on the opportunity of having this on the November ballot, to capture revenue as well as do the regulation and management of medical cannabis. So that was why we were kept trying to press to get something back. Understanding it is a very complex thing, and I think my councilmembers would say, today was one of the first days that we have actually had a lot more information. And that's why in the memo incorporates the idea of a study session, there is the ability to understand from different viewpoints a complex issue such as this. There is a difference, though, on what staff recommends and perhaps some of the things I've brought up, and definitely

some of the things that have come from the collective community, and that was very well heard on June 7th here in this room with 200 people. Unfortunately, the city attorney's office was unable to attend, where many of the questions were legal-oriented. And you know, I understand our city attorney and this city attorney's office has a narrow view of the law, and that's fine. Other cities do it different and have a different perspective of the law, and the narrow view is fine, because I understand it's to minimize risk for our city, and I'm accepting of that. Just give you a quick example, other cities may sign off on a software license agreement of technology. No problem. But our city attorney's office may take several more months to red-line the contract. So kind of what I, from a layman's perspective, know this as a culture, which is fine. I respect that. But we're here today in absence of state law. So state law permits the compassionate use, but it doesn't do anything to regulate it. So every city is left with this dilemma, how do I manage this problem. And to chief Don Anders' point, we're not in the agricultural business. We don't have an understanding of how, you know, pesticides and mold and those things much more would be at the federal level, so that's the case for us. We do have the alcohol beverage control, which regulates alcohol in the state of California, and I really think that should be renamed alcohol, beverage, and cannabis. Because the state would be much better off offering one set of guidelines for all the cities, so that every city doesn't have to spend this much staff time trying to organize that. And I want to be clear, the discussion is strictly about medical cannabis. This isn't about recreational legalization. The voters will have that opportunity in November. So speaking to, I think, the memo, the idea here is -- and it was heard loud and clear at the only community outreach meeting that we've had -- was where there's a separation, there's a distance between where we are as a staff on the regulatory system and where the legal questions raised by the collective community. And I'm here to tell you, we're not going to make everyone in the collective community happy. Had we maybe tackled this six months ago, before all these places were open, it would be a different story. But there's no way I can make everybody happy. With that said, we shouldn't pass regulation that open us up immediately to lawsuits, and so therefore if we can minimize the amount of legal issues we may be confronted with, I think that would be best. So the idea here is to essentially put on the shelf for right now the regulatory system proposed, have the community outreach meeting, which is already scheduled July 20th, and to understand if we can find other things that might make this move closer. Give you the example: At the last meeting originally the proposal was that anyone, to be in a collective in San José, you must be a San José resident. So if you live in Milpitas, Campbell, Los Gatos, you wouldn't be able to partake. City staff heard that, city attorney's office heard that. It was a legal

argument that was represented. That was dropped. I think there may be other things that might come forward to make this a more doable regulatory environment. So I think it's important to wait until July 20th. I think what every side agreed on that night, though, whether they were the neighbor of the collective or they were the parent that has the child at the daycare center or the collective member, that they recognize being in close proximity to sensitive places: Schools, both public and private, daycare, preschool, libraries, parks, et cetera, it wasn't the best place, and there are more than enough places in San José to manage that. So I think moving forward with the mayor's memo and myself is that both sides agree that the land use side of the fence should be put forward immediately, meaning any of those places that are within the 500 feet, whether it's walking distance or 500 feet, Joe maybe you can talk about that before the end of the day. That should all be done immediately, we all agree with that. Secondly, commercial zoning, planning staff would like to see commercial zoning. I should be able to get to it in various different ways, public transportation, other ways with, that said though, industrial has been you know for many reasons another alternative that I would really like staff to examine. How is it we can manage these collectives in a way that doesn't interfere with the economic strategy of San José? Not all industrial parcels are equal and not all industrial neighbors are the same. We certainly do want to make sure that our marquee companies like a civic or something else are good. I haven't heard any complaints from those companies outside of the heavy industrial uses, other than the industrial park or lied industrial. Industrial does provide an area to where you can provide security of a building, adequate parking, differently things that you can't always do in a commercial strip mall. So I think that that's something I'd like to have staff come back with some ability, understanding Joe, the CUP process ties that use to the land, and so you were saying well, maybe there might be some alternative, and maybe we give you the ministerial ability to manage that. And you use your best judgment as professional planning staff to decide, this would not cause a nuisance, this seems appropriate, et cetera. But clearly, and for any of those that have opened a collective right next to a preschool or someone's house, it can't happen. It has to change. Continuing on on the question of polling, certainly I've had the opportunity -- you know we've looked around the country and any time this has been on the ballot, it's passed, again, it's one of those things, people don't mind taxing people other than themselves. So with that said, these things always poll in the high 70s to 80s. My two web surveys which were unscientific, granted, but was getting over 85 and 88% approval, especially when you only need 50% plus one to pass. I will admit that it is unknown what we would raise from revenue because frankly we don't know what the sales are. So we know if we raise a utility tax in the city will

garner \$13 million. Because we know what that is. Or if we raise the sales tax a half a cent, we're going to get \$60 million. But we don't know what that is, but I can tell you in the state of California, medical cannabis is about \$1 billion. The State of California in sales tax will be taking in approximately about \$100 million. So there's something there. And what I think it behooves the council is to have the polling data out there, have us consider it. Because I'd sort of hate to miss that opportunity of waiting until 2012 when there's two years of this possible tax revenue that we're losing. I know some would say, well, why would you tax medicine? Well, the reality is, a pharmacy is for profit. A medical collective under state law is not for profit. You're only taking away the revenue that would be -- what you would be paying a shareholder. So in a way it equates to not really increasing the true cost to the actual patient. On the case of industrial, also, you know, this use is not converting the land forever and putting housing on it, which obviously we've had our suffering in the past. It's really just allowing a use that is employment -- frankly, it is employment-based, and we know that we've talked about how the other collectives in other cities, you know, the average wage is 40-plus dollars an hour. So it's not like these are terrible jobs, by any means. But they are a use that is not housing, and it's not permanent. So I think that's why I'm thinking that would be good. And then also, the City Attorney -- and Angelique, thank you. You know, the law is in flux. We're in the midst of court challenges in law, court cases going before different levels of courts in here in California. And so it's fast-moving, and it's moved since we started talking about this. So those are just some of the -- speaking to the memo, but I think at this point in time we should do what we can control, and we can definitely control the land use, we can bring harmony to neighborhoods and those that are parents, to make them feel good. You know, at some point in time it might be a different zoning regulation, but in 2010 we're not there. And I think we just need to manage this today.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I appreciate Councilmember Oliverio's approach of really taking a harder look at the regulation, because these are complex issues. And despite the extraordinary work done by our staff, I think we all recognize that we're treading into some challenging waters. I'm not a proponent of legalization. I certainly won't vote for the measure that's currently heading to the ballot in November from the stateside, but I have to say one thing about the federal law right now, and I think the city needs to take the

legislative position pushing the federal government to properly schedule marijuana. Right now we have under --  
[applause]

>> Councilmember Liccardo: Right now under title 21, under schedule 2, which are drugs that we know are dangerous in many circumstances but have some recognized medicinal use, we see drugs like cocaine, methamphetamine, Ketamine, these are drugs that can be regulated, prohibited, but most importantly regulated by the federal government. Marijuana is on schedule 1, meaning it is absolutely prohibited, can't be utilized at all for any medicinal use, can't be regulated by the FDA. You've got this bizarre situation where heroin is in one category which is more permissive and marijuana is more restrictive. And really, I think all of us would much prefer if this were a drug that is used for medicinal purpose, that it be distributed by pharmacies, by trained professionals, and not in neighborhoods, and not out there with a thousand different jurisdictions making it up as they go along. So I think this is a failure of the federal government, frankly. I think we ought to be taking a strong legislative position on this. I've had conversations with folks at the federal level, particularly in the Department of Justice and elsewhere, and I recognize that nobody is ready to jump out there, given the fact this is something of a political hot potato. But they are going to get out of there if enough jurisdictions push and enough local police departments recognize, this is a mess that we don't want on our hands, so you guys figure it out and get back to us. So I think we ought to be looking at that as we look at our legislative priorities in the coming year. The one question -- actually I had a couple of questions. One is, I'm still trying to get my head arounds this notion of how we are going to tax something that is not sold. [applause]

>> Councilmember Liccardo: I'm sorry, I --

>> Mayor Reed: Audience participation is okay, at certain times. When somebody is speaking, it's not. When they're done speaking, it is. So hold your applause until people are done, and don't interrupt them, please.

>> Councilmember Liccardo: So I guess where I'm going with this, I appreciate the presentation, and Scott, I know you have to do a lot of linguistics gymnastics. I know we're pushing it into the business tax category, if I'm not mistaken, to avoid some of this. But if we're dealing for instance with a cooperative, and they're bartered

goods, then we have to get into this business of evaluating bartered goods before we can assess on a tax, is that right?

>> Scott Johnson: That's correct. Councilmember. We have acquired on the state board of equalization, on how they are dealing with cooperatives, because they indicated that cooperatives are subject to sales tax. We would like to get more information on the state board of equalization on how they would apply it. So simplify the concept when you're doing a barter because barter is subject also to federal and state income taxes. So just because someone's Bartering goods or has like kind some kind of exchange they are still subject to paying taxes. So to the extent there is a value attributed to the exchange, there would be a value for the tax.

>> Councilmember Liccardo: Okay. I think this could be challenging for us. I'm thinking about the guy who gets -- receives some medicinal marijuana, and in exchange, is washing the car of the individual who provided the marijuana to them, and now we're going to try to assess what the value of that in taxes. This is going to be challenging, to say the least, and I don't know exactly how we're going to craft ballot language that's going to ensure we capture all of that and still survive what will inevitably be the flood of lawsuits.

>> Deanna Santana: The timing for receiving the tax opinion from the state board of equalization is early July. And so we would fold that into our analysis and develop a ballot measure question that's broad enough to capture marijuana. In the event that November 2010 passes, either way, we would be ready to go. But I do want to correct or just help clarify expectations. The ability for the city to tax marijuana is dependent on three steps. The first is that the state initiative passes successfully. The second would be that the city's ballot measure passes, and then the third would be that the city council approves the retail sale of marijuana. And so we could engage in those three activities and monitor each in order to successfully put in place a tax on marijuana, in the event that first the state initiative passes.

>> Councilmember Liccardo: Okay, thanks, Deanna. And then on this issue about where we allow cultivation, and I can appreciate Chief Anders' concerns, I'm sure they are certainly serious. I assume the primary concern is about having multiple sources of marijuana for a particular cooperative. And I can recognize that is a serious

concern. At the same time, I'm not sure that concern is entirely eliminated if we tell them they have to grow it onsite. Because certainly folks will find ways to get around it. And what I am concerned about is what happens, and we've seen this -- I know you have, chief -- that when this is forced indoors, then you've got heat lamps, then you got fire risks, not to mention the fact it is not the most environmentally great thing in the world to do is pushing all the stuff indoors. But in terms of energy consumption, I'm a little concerned about what the outcome might be if what we're doing is encouraging a lot of indoor cultivation. I'm sure you've considered this at some length. Do you have any response?

>> I do, thank you. And you're right, we've given an awful lot of concentration to that, and you're right, I've seen the consequence of illegal operations that are indoors where electricity, for those who may not understand growing indoors, particularly with a hydroponic operation, requires a tremendous amount of electricity, and at times those that choose to do that in an illegal fashion will also procure their electricity illegally. And that, then, results in a very tragic situation. Most recently here a couple of weeks ago a well-documented news story up in the North Bay where a multimillion dollar home burned as a result of a marijuana grow operation. There has been a lot of conversation, in fact, there is some language in the ordinance that addresses the amount of wattage, how electricity will actually be provided within legal and safe parameters. It is my guesstimation that the fire department certainly would have some role in this registration when it comes to indoor grows. But your point is well taken, and that is do we provide some options that also allow for outdoor grow operations, besides just indoor.

>> Councilmember Liccardo: And I recognize you do allow for it where it's adjacent to the site. I wonder if at some point we play get to the point where given the fact we are restricted to commercial areas right now and commercial corridors, where having restricted areas of cultivation, where the city's able to monitor or whatever, maybe safer approach. I don't pretend to know the answer but I just throw that out there.

>> Deanna Santana: I'd just like to note that we did mention in our staff report that we are open to evaluating the offsite cultivation. It was a function of time navigating through the regulatory concerns. And any land use evaluation we just needed more time. But we did note in the staff report we're very open to evaluating offsite

cultivation, as you just suggested, and would be prepared at a later time during the study session to complete our analysis and present it to the council.

>> Councilmember Liccardo: Thanks, Deanna. I guess my last question or concern is around this issue of notice to neighborhoods, because I can tell you in downtown we've certainly seen our share of concern in Naglee park and a couple of other neighborhoods where the dispensaries have shown up and I know that there's some sense that if we have restrictions around location, that that may take care of it. I think we really are going to need council policy 10-6 or something analogous to really address dealing with notice wherever these folks under up. To ensure that everybody is aware, if nothing else at least there are lines of communication, when concerns arise. I'm still trying to get my mind around the idea of the registration being portable, as opposed to being portable in a set location. Because I imagine there are lots of uses in this city, businesses that would simply love to pick up and go where they go, you know car clubs or whatever that may decide that this is not -- under the equal protection laws that somehow or another collectives or dispensaries are being treated differently than other businesses. Whatever we do we're probably in a second but that's just one more.

>> City Attorney Doyle: Yeah and typically under the analysis you'd have to have a rational basis for any distinction. I think you could craft something. The noticing issue though is something I think we haven't really thought through but it is important given particularly in your neighborhood or your district you have a lot of these issues coming up.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I do want to tell you Sam and everyone else as well, Canada does sell pot through pharmacies, so we do have at least a model to look at maybe for future times. I had a question about the hours would the 9:00 to 8:00 p.m, was that true chief anders?

>> Yes.

>> Councilmember Pyle: And how do you regulate that? Is that something that the police officer that happens to be on that particular beat would remind?

>> That certainly would be we're look for volunteer compliance, plenty of due diligence provided at the front end. Part of schematic with regard to enforcement includes two police officers and one police sergeant and that would be part of their responsibilities to ensure compliance not just with regards to hours but all facets of the ordinance.

>> Councilmember Pyle: The other thing is we have a lot of harmful things in our house, especially when there's children around. So the children in the home is one area that really I'm concerned about. And I don't know what might have been put into the thought process in reference to that.

>> Well, with regards to that, I can just speak to the issue of the childproof containers. So certainly it was something that was on our mind and we did have conversation with regards to what would happen when you purchase legitimate medication at a local pharmacy. Certainly if I purchased 800 milligrams of ibuprofen, that's going to come in a childproof container with disclosures. But with regards to children in the residence, I'm going to have to defer to the City Attorney. That may be more of a legal issue with regards to liberty interests. I'm just not sure.

>> Councilmember Pyle: That may be something that requires, what am I going to say? Education? I'm speaking more not just the little kids, I'm talking about did teenagers who happen to find the booze in the -- they can find that very readily because not too many parents take extra efforts to control that. So I can just see them having a grand old time with liquor available and this available as well. It wouldn't necessarily be in their best interest to have it. So it is something that I think should be part of the notations. And then the underground operations, I don't know what we do about that. Does that just one other situation where the police have to take that on?

>> I'm sorry, with regards to --

>> Councilmember Pyle: Underground operations.

>> Well, I -- there's always going to be underground operations, no question about it. And there is a perpetual debate with regards to do you regulate medical marijuana, and failure to do so, does that perpetuate underground operations? Or by regulating medicinal marijuana do you actually take the profit motive out of underground op -- and that is an interesting conversation we could have for several hours.

>> Councilmember Pyle: I would imagine.

>> But underground operation regarding manufacturing transportation and trafficking of marijuana in an illegal capacity certainly remains something that the police department is aware of and provides focus to.

>> Councilmember Pyle: And is there any talk at all about the users providing some sort of identification from a doctor? In other words, if the doctor orders this, I hear a lot of at this timering up there. I can -- this is said by somebody that doesn't -- I don't use dope, so --

>> Mayor Reed: All right, hold it down. There will be a chance here in a minute to speak. You're going to have to be polite, that's one of our rules. If you don't understand the rules they're on the back of the agenda.

>> The ordinance and state law require that a qualified patient as defined under state law, submit a written doctor's recommendation or provide a verbal recommendation from their doctor, essentially indicating that the patient is seriously ill and would benefit from the use of marijuana for medical purposes.

>> Councilmember Pyle: Thank you. And then last but not least I do think that the load, the extra load that might be put on the police department is certainly a consideration. Thank you.

>> Councilmember Oliverio: Point of order Mr. Mayor.

>> Mayor Reed: I'm sorry, I can hear somebody, Councilmember Oliverio.

>> Councilmember Oliverio: Point of order I just want to mention that many great questions have been raised, part of the motion is a study session to dive into further understanding of a fairly complex topic.

>> Mayor Reed: All right. Councilmember Pyle. Anything else? Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. You know, I'd appreciate Councilmember Oliverio for even bringing this issue forward. The voters have spoken in regards to this issue and I think that it's better to have some kind of legal setup, in which we can monitor the effective access to medical marijuana than to have nothing at all. In fact, even look historically at how marijuana has been treated, I made -- I may differ on the ballot measure in November, because I think that we certainly from Councilmember Liccardo we certainly have seen the consequence, I think particularly in terms of criminal activity and danger to the community, from having marijuana as an illegal substance to begin with. And more people have been put in jail or prison on marijuana possession than all other drugs combined, I think that's just a shame. That being said, I think the question for us is certainly, is an important one. I do have some issues with some of the suggestions by staff, and I do definitely want to thank staff for all the tremendous amount of work during a very busy time as it is to do all this including staff from the police department. Some of the concerns I have, have to do first of all with some of the restrictions. One of the restrictions I have a concern about, and I understand the reasoning behind it, but I have a -- somewhat of a concern about it, is the no marijuana products and I speak of of someone that frankly have never smoked marijuana or cigarettes or anything. But if I were in a position where I needed to have relief for medical marijuana I certainly would prefer having something edible than smoked and I'm sure there are many other people who maybe in that category, where they prefer not to smoke something. They have asthma or emphysema and they don't like smoking. I understand the flip side of that, I see the point that was being raised is you don't want medical marijuana sales to be an ancillary of what the other situation was about. The other question regards to paraphernalia, I understand the same logic hind that. I'm wondering if there's a way that we can take into account the need to have you know, to have the ability to sell products that aren't strictly for smoking or to sell the paraphernalia that would allow for the ingestion, with some limitation, it could be a certain display area, certain

distribution of products. Without doing a complete ban. Because without a complete ban, we're not allowing all potential patients to benefit from access to medical marijuana. And additionally you know if someone is going to purchase -- if they're going to purchase medical marijuana from a facility to have -- it wouldn't be a stretch to be able to allow to at least have the ability to provide something to smoke it from. Now again, I understand you don't want a store, basically that's 99% pair per name ya and then they happen to sell medical cannabis, too. I think there might be a way to do that. I would be very interested in seeing if something like that could be incorporated or at least given as an option. Do you have any thoughts on that?

>> Deanna Santana: I do and I'm ask for assistance from Angelique. There are two issues here, first is the ancillary or manufactured products. We really looked into this because we realize that for patients how critical, they have expressed concerns how critical it is for their well-being or illness management. However, the manufactured products and ancillary products are -- exceed the law essentially. The paraphernalia and the ability to sell, it is something that is doable as a policy alternative that we did not recommend, and part of it was because we wanted to be able to manage regulation, start small, and then obviously, that would be a feature that could be added into, either upon a one-year or two-year evaluation. But the issue regarding manufactured products or ancillary products is driven by the legal review and I'll let Angelique add additional comment.

>> I would just agree with what Deanna has just said. In terms of the paraphernalia, that's more of a policy decision and something that can be considered. I think it was just because of the focus, as Chief Anders had said earlier, the focus was on maintaining an environment where retail sales didn't occur. To combine retail sales with something that was not retail would confuse the issue.

>> Councilmember Kalra: I think there may be a way of limiting it, and so I think that I would be interested in at least considering some alternatives that maybe this isn't an open blanket, kind of all the paraphernalia you wanted to sell, but rather at least recognizes there may be a need to at least have access to paraphernalia, as well.

>> Deanna Santana: I'll add just one additional comment, though. The hours of operation and the conditions of operation allow for one pickup per day, and there is no quantity in terms of what could be imposed. And so that is

mindful and consistent with the legal review for anybody who wants to manufacture on their own or have their patient caregiver provide the manufacture or development of the ancillary product for them. So we were very mindful to make sure that we listened to the input and to understood that there are ways to comply within the law.

>> Councilmember Kalra: Okay. Additionally, in regards to the number of collectives that would be allowed, the number 10 is certainly a very clean number. I don't know -- and my concern with it is not that I think we should have necessarily allow for more, it's just given the population and looking in comparison to other jurisdictions, I know Oakland, they were only four although there's a consideration I believe of increasing to six. And looking at San Francisco, L.A., Sacramento, both in terms of size of the city as well as population, a commensurate number in San José would be anywhere from 18 to 26. So somewhat closer to 20. However I'm not suggesting that should be the number. My concern and I understand the need to maybe start on a smaller side and see how it goes, a concern raised is that if there's a limited number and there's a high demand, some of the issues that we may be concerned about in terms of having -- in terms of having the collectives, in some of the commercial areas, if there's -- if there's not enough capacity and you have pull kind of lined up through the door and what you have, that can cause an issue. I think at this time, I feel okay with 10. I think that there may be a need at some point to evaluate that. That said, we certainly have plenty of time to evaluate it. But I think there may be some consequences if we do limit the number too much. I have a really significant issue with some of the privacy issues that are raised in the language. Giving the log, having the log of the cannabis with the name of the member to whom it was provided, if we are providing this as access to medical cannabis, then reviewing the records would concern me because these would be patients. I know that in Oakland my understanding is they require records to be maintained only using the I.D. card number to protect the confidentiality of the card members. That is of grave concern to me, that the individual's identity would be so easily accessible. Not necessarily to the -- obviously the collectives themselves would have some sense of who the individuals are but, to give kind of free and open access to the city to look at that information is of great concern to me. I think it could potentially subject us to a lawsuit. So before I'd have to feel comfortable, the assuming the motion peace as it is, I know it will come back to us August 3rd. That is something I certainly would have to be very comfortable about before voting in favor of going forward. And then in regards to taxation, I'd indicated before, I don't believe in taxation just for taxation sake or to create revenue. Again, if this is about access to medical marijuana, we should be focusing on access to the

medicine. That being said, I do understand there are costs involved, but we don't have the ability to charge fees and licenses beyond what it costs us to regulate it. And the reality is that we know it's going to be a burden on code enforcement to track down those that are not operating legally, it is going to be a burden on the police department to track down those that are not operating legally. So I'm okay with taxation for the purpose of using that money to make sure that those who are not in compliance or do not have a permit are shut down appropriately, and those that are in operation can operate safely. The state law does prohibit collectives from generating a profit and I know that the ancillary -- this also goes to the ancillary services provided. I know that there are some other jurisdictions that allow for more holistic facilities that go beyond just the sale of medical cannabis. It could be, you know, it could be herbs and it could be other types of acupuncture services, and I know oftentimes those services are funded through the revenue that comes in because it could be a nonprofit or other type of entity. So they just want to give it back to the membership. By not allowing -- by being so strictly defined in what we allow in the facilities, I think we are closing out an opportunity to really create these centers that can truly be about healing, and I think ultimately really lead to a more safe environment than those that are strictly just about dispensing marijuana. And so these are all issues that concern me, including potential litigation, I don't know if Rick has any thoughts on this, about the closure of preexisting dispensaries that would have to -- that would have to be closed due to zoning restrictions. Do you -- what is your fear of litigation from that action?

>> City Attorney Doyle: The -- my concern is the resource allocation and resource limitations. It is not the law. I think the City of Los Angeles is in very much the same position and they've been very aggressive in closing down dispensaries or the operations that are not legal. I think currently it isn't a permitted use and we are trying to craft something that allows it and to the extent it doesn't comport with what the law would be, we would move to shut down. But quite candidly, it's a resource issue, city resources.

>> Councilmember Kalra: To offset some of the resources we need, we may be able to presume we're going to need in response to going forward.

>> City Attorney Doyle: Yeah, and I don't know if that would cover cost. At the end of the day, whatever you come up with we're going to have to have something that's not just workable but then allows us to enforce whatever regulations we have in place.

>> Councilmember Kalra: And I know a lot of this is still a moving target and there's a lot of litigation continuing and the final comment is regards to zoning, I certainly have hesitation as has been suggested and I think as reflected about going into the industrial areas because I think it encroaches on industrial land where we have other goals. I think that there's transportation issues, issues of convenience and I think safety issues frankly, you know look, whether it's a collective or it's a liquor store, there's always a risk that someone is going to go in and take out a gun and rob them. But we know that stores that sell alcohol are typically in trafficked areas where there's at least some disincentive for someone to conduct criminal activity. Industrial areas after 5:00 oftentimes are pretty empty, and I don't think we want to subject either the patient or those that operate these centers to be subject to that kind of environment and really make them more vulnerable than they otherwise would be. I do agree with the recommendation of Councilmember Oliverio and Mayor Reed that in the meantime immediately we should move to do what we can to close those right now that are near sensitive receptors, that are near neighborhoods and schools. That is reasonable to take action on right away. I think the council has spoken previously and today in agreement that those are issues that are very important to us to make sure that while we're trying to determine how to go forward that our neighborhoods are at least not subject to what is now still uncertain action going forward. So I think that, Joe, you had indicated that that's something that is high priority, so I appreciate that and I appreciate that recommendation in the memorandum. But for some of the other concerns I've raised I'm still, I'm going to reluctantly support this today but there are some issues I have particularly regarding patient privacy, location, and as well as what amenities would be allowable on these facilities that I'm going to be doing more homework on and looking forward to further staff comment on.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. This is a very interesting discussion. I guess when we first started throwing this idea of legalizing the medical marijuana dispensaries, I have talked to many, many of my

constituents. Some of them say no, some of them say oh, yes. And then there is a group of people who just say hey, leave it alone. Don't do anything. I think the third group was actually right. I mean, when we start out with only two dispensaries, now we grow to 60 in the City of San José. And just on one of those illegal lights, Asian ancient herb, you know, if we make this exception for marijuana, I probably can name another five, ten Asian herbs that are considered illegal in the United States. So are we going to make an exception for all of them, as well? And back to this memo, I definitely will support, if it's limited to the C.G., the commercial general zoning district, I don't know, Joe, can we sell shoes in an industrial area?

>> Joe Horwedel: The zoning code does allow incidental commercial sales in our industrial zones. It's a limitation of percentage in a building. So that's one of the things that is Deanna noted, in kind of the rush to move this forward, we really didn't drill down in some of those areas. I think there may be places in the commercial zones where there's commercial support where we have commercial retail occurring in industrial zones that maybe that's a place to do it. But look at is there some other permitting process that happens there? Because you are thinking of using some discretion about it's appropriate there as opposed to next to the wrecking yard.

>> Councilmember Chu: Okay, great. And with the tax revenue still a big uncertainty, you know, councilmember Pierluigi indicated there's professional more than a billion dollars of sales of marijuana just in the state of California, I questioned that number. I felt that there, if there are that many people that really depend on marijuana for their medical symptoms, I mean, I just felt that probably another alternative medicines for that. I don't know. What's the street price of marijuana? How much is an ounce, and \$1 billion divided by the street price, that yields how many tons of marijuana we consume every month -- I mean every year in California. So there's big uncertainty on the tax revenue and knowing that we need to at least \$450,000 to put the ballot -- to put the measure on the ballot for November, I'm having a hard time to support this memo. Yes please.

>> Councilmember Oliverio: Councilmember Chu, state board of equalize collects the sales tax, it is roughly \$100 million. Means the sale of medical cannabis is approximately \$1 billion. That's where the number came from. The argument is there is some amount of I hate to say the word commerce, it is not commerce or profit, there is a certain amount of industry in the collective, that's the question to the council for August 3rd. Do you

want to go forward or not? If you choose on August 3rd, to go forward, that's your discretion. There's obviously something fairly sizable with the state of California collecting that revenue. I just wanted to throw that out there as the option for the council to consider on August 3rd.

>> Councilmember Chu: Again, I still haven't decided. I like the spirit of the memo to limit it within 500 feet from the sensitive use area. And knowing that the number of those outlets would grow from two to 60, but in general, I don't think I will support dispensing of marijuana in the City of San José.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Councilmember Chu, I just wanted to clarify something. The memo, and I'm looking at subsection A, from the mayor and Councilmember Oliverio, it speaks of focusing enforcement efforts on these sensitive areas who are CG. It doesn't permit, it's still illegal, and it doesn't permit it anywhere in the city. It just says, to the extent that you have resources that you can use to enforce, this is where you should focus your resource efforts. You may remember last week when we went through some of the discussion on the employment agreements, the City Manager, the charter provision that requires the City Manager to enforce all laws, that still applies. She has that obligation. And I any what -- if this memo passes it's telling the City Manager this is where we want you to focus your efforts but it's not totally where -- she still has an obligation to enforce the laws everywhere in the city.

>> Councilmember Chu: I just want to make it clear that if we were to limit it, the location, I would like the contain in the commercial general zoning.

>> Mayor Reed: Let me just speak to that item as one of the signatories to this memo, the 500 feet from the sensitive uses is the place of most trouble. We should focus our efforts where they're having the most trouble where they have the most complaints and where the community is most concerned, he let's focus on that. The CG area is the area where they're probably going to have the least trouble but once you're outside the CG you still have trouble and it's a question of focusing our resources as we have over the last few months, focused our

resources on a complaint-driven basis. That's really all we're trying to say with that particular direction. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. First of all I want to thank the staff for this very detailed analysis and presentation today on this subject. I also want to thank the mayor and Councilmember Oliverio for this memo. This is a complex issue. It got more complex as time went on for me. Last time it was brought up I strongly voiced my support for medical use for patients, I still feel that way and for me I'm framing this in terms of the medical marijuana aspect. I think the memo is good because it gives us a bit of a time-out to actually get some information. It's not make decisions today on are we definitely putting it on the ballot. It's letting us go through and figure out the land use issues and all of these very important and complex issues which I don't think we have answers to, today. So I'm going to be supporting the memo. And supporting the motion that's on the floor. I also want to say that, like Councilmember Kalra, I'm really not putting the tax issue first. I feel that's the cart before the horse. Certainly I'm interested in that, but I don't want to get so driven by the prospect of that that I lose sight of looking at this issue and primarily again, I'm concerned about people being able to have access to this drug, that request alleviate pain and other things as has been already described. So that's kind of my decision. I also want to commend my council colleagues for their stamina, I appreciate the questions that have already been asked and I appreciate the audience for their patience. Thank you.

>> Mayor Reed: Speaking of the audience, it's time to take testimony at this time. Again we're restricted to one nine. When I call your name come down to the microphone so we can cut down on the transit time. We're polite here, there are a lot of people who want to speak so let people have their time, don't interrupt them because you'll want the same treatment when you speak. Jeremy Pieri, Susan landry, Sasha Lemkoff, come on down, there's room in the front to sit while you're waiting. Jeremy Pieri, Susan landry, Sasha Lemkoff, Sue Campbell. Any takers? Come on ma'am, you can be first. Give me your name so I can keep track here.

>> My name is Susan landry and I'm a resident of San José. I'm very concerned about the violation of hipaa rights that are in the proposed ordinance. Currently states that every member should be identified and their names should be submitted to the police and I think that's a violation of our hipaa rights to privacy. I submitted a letter

yesterday, several pages long, I don't want to go into all of that. The other rights or the other issue that I'd like the bring up is currently in the ordinances proposed, it says that nobody shall adversely effectuates affect their neighbor through odor or smoke. If anybody has smelled marijuana you can tell it has an odor. I think this is going to be an issue ever where do we smoke where do we consume where do we eat? I think consumables should be allowed at the dispensaries, some people can't smoke, they may use butter or other items.

>> Mayor Reed: Your time is up. Jeremy, Sasha, Sue.

>> Hello, good evening, I represent university avenue wellness center. I definitely appreciate the city council here considering this initiative. And the main points that I wanted to point out is that there are several dispensaries which have started operations in San José. And simply limiting it to the ten that you guys had requested, I think, would be very detrimental to patients getting safe access to medicine. Not only is it because of the variety of strains that each different collective would be able to offer but also the different areas. By having multiple collectives, there are you know shorter distance on public transit, that kind of thing. With the growing onsite provision as well, sometimes that can be an issue because of same kind of thing, having the variety of strains that would be useful for different ailments. But more importantly it does create an element of crime that if people know that there's onsite growing where the dispensaries are it's going to be much more of a target. So in terms of the number of collectives, I think that it should be looked at closer to 50 or maybe 100.

>> Mayor Reed: Sorry your time is up. Sasha Lemkoff, Paul Campbell, after Paul Campbell, Vaughn Wilson.

>> My name is Sue Campbell. In December 2009, a smoke shop selling drug paraphernalia and body piercing opened next door to my preschool which has been operation for 29 years. You may want to refer to the Google map that staffed passed out to you. On May 4th, 2010, a medical marijuana dispensary opened in the adjacent space. On May 24th, I spoke to the property management company expressing my parent concerns. She confirmed that both she and the property owner were aware of the nature and legal status of these businesses as well as the presence of the preschool. Her response was, they had spoken to an attorney it and it was okay. The owner also did not want to get involved. When property owners and management companies have no moral or

community conscience they behave without regard to public welfare or safety. Common sense tells us that these businesses do not belong next door to a preschool. I thank the council for their response in immediate action on removing this facility.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Paul Campbell, Vaughn Wilson, Kim Jelps. Kim Moseley.

>> Mayor Reed and city council, my name is Paul Campbell. I'm co-owner of alphabet soup preschool. I support the council's attempt at setting urgently needed medical marijuana ordinances. I just wish the council had started sooner before it became a problem or a concern. When these regulations are set, I hope the city will move quickly to shut down any established dispensaries that do not meet these regulations which brings me to my main concern. Location and distance from schools, daycare centers and preschools. The further away the better. This is a note from some of the parents that had to leave. Three were here to speak. But they were forced to leave due to the young age of their children who need dinner and bedtime. Each will e-mail councilmembers with their prepared comments recommendation restrictions on zoning for sensitive areas. Please read these concerns and allow their voice to be part of the public record. Thank you.

>> Mayor Reed: Von Wilson, Kim Jelps, Kim Moseley.

>> Good afternoon, councilmembers. With regards to --

>> Mayor Reed: Go ahead, you're at the microphone. Only got a minute so take it.

>> My name is Sasha Nemkof, regard to sensitive land use I think there needs to be more flexibility. Away from schools and daycares et cetera but I think somewhere in there needs to say you know exceptions. Whether

there's a fence, whether there's a railroad. Because when you are make it that specific it's going to be very difficult for collectives to, you know, to accommodate that. So in all fairness I think they need to say special exception somewhere.

>> Mayor Reed: Von Wilson, Kim Jelps, Kim Moseley, Bridget Krimkowsky.

>> Dear council, I appreciate the in depth analysis you're taking into these issues. The two issues I have is as a parent of two children in public and private school in San José, I request that you urgently vote to restrict dispensaries and collectives, a minimum of a thousand feet from our children, our schools, and my other concern, with them being so close to schools, is -- excuse me, and I also do not want them to be allowed to smoke onsite. The concern for me is secondhand smoke of our children. And marijuana smoke is considered a cancerous substance under prop 65. Thank you.

>> Mayor Reed: Kim Jelps, Kim Moseley, Bridget.

>> Good afternoon, thank you councilmembers for your extensive work on this very thorny issue. As a parent of a preschool child who is currently in the building that's adjacent to a medical marijuana dispensary and a smoke shop I have severe concerns regarding her welfare and safety. I'm not here to say whether or not the dispensaries should or should not be allowed in San José. I think a win win can be found for everyone. I do urge to you move forward with the emergency ordinance to at least restrict them to sensitive use areas where further action is being taken. Thank you.

>> Mayor Reed: Kim Moseley, Bridget Kimkowsky.

>> I'm Kim Moseley, I have two children that attend the alphabet soup preschool and others will be attending in the next custom years. I urge you to pass this ordinance, it is urgent that these dispensaries be located in a more safe location away from our schools. And I'd also ask that you consider the proximity. I don't know what can be done as far as code enforcement of the smoke shops and other place wrest drug paraphernalia are sold as

well. Since the smoke shop opened two months ago, I believe, next to our preschool two drug pipes have been found in the parking lot of our preschool and I just don't think as a community that's something that we would all find appropriate. So again I would ask you for your support in this measure.

>> Mayor Reed: Bridget Krimkowsky, Lisa Forsland, Shannon Morgan.

>> Hi, I'm another mom from the preschool, I'm a registered nurse and a pediatric nurse practitioner. I support the regulations restricting the location of the medical marijuana collectives being at least 500 feet away from all preschools, daycares libraries, et cetera. And I would also like to say that as a registered nurse I have seen patients battling cancer and HIV and on palliative care benefit for medical marijuana. And my hope, my personal professional hope is that medical marijuana will one day be manufactured prescribed and distributed with all other medications. From a traditional pharmacy with a licensed pharmacist, providing education and oversight. In the meantime please give these collectives a place to care for their loved ones that is separate from our children and our youth, thank you.

>> Mayor Reed: Lisa Forsland, Shannon Morgan, John Messina.

>> Hi, first I'd like to say I really appreciate all the work and effort you've put into this complex issue. There's so many things, the safety, security, cultivation when it comes to the marijuana dispensaries. But I hope our goal is to accommodate those who truly do need medical marijuana but also to remember that we really want to do things that are going to complaint the health, safety and well-being of our children. Therefore having that safety, that sensitive zone of fined feet, actually there's a state law AB 2650 where they've indicated 600 feet. I would suggest we would not only do the 500 feet we would extend it to 600 or more. Also I would like to say I know I'm putting my trust that you are going to use compassion and integrity whether it comes to make a decision because we really do want safe communities and we want our children -- so often we have politicians who say children are our future. Well, we really want you to act like that. You say you want our community --

>> Mayor Reed: Sorry, your time is up. Shannon Morgan, John Messina, Janet Weiss.

>> Hi, I'm Sue Baconis, and I'm speaking for Shannon Morgan who had to go be with her children during the dinner hour. She is also a parent of children there at alphabet preschool, very concerned about the location, that it has to be a minimum of a thousand feet from our facility and those facilities that deal with young children. Thank you.

>> Mayor Reed: John messina, Janet Weiss, Julie Kline.

>> John messina, I do understand the need for some reasonable regulation of these establishments but that should not be extended to some of these figures that would totally ban them. The thousand-foot from everything, that was used before, is what cities have used to ban child molesters from their city limits. That's going to too big of an extreme and also if you want to regulate it to ten who's going to decide which ones get shut down? Are you going to grandfather them and let them simply if they go out of business not be replaced?

>> Mayor Reed: Janet Weiss, Julie Kline, Jade Kline.

>> My name is Dr. Janet Weiss. I'll be addressing product safety testing, quality assurance and packaging guidelines. I'm a physician specializing in Public Health, preventive medicine, medical and environmental toxicology and pathology. I've been practicing for 35 years and I serve as a public policy expert regarding the issue of medical marijuana. I'm currently director of steep hill lab and I also represent the citizens of San José who use medical cannabis. I've reviewed your most recent draft ordinance and compliment staff on your thoroughness. While I see that you've made an excellent start adopting childproof packaging and some elements of a labeling program aimed at limiting diversion, your ordinance doesn't quite go far enough to comply with state and federal law. I'd encourage you to include language that assures that all medical marijuana provided to patients is tested as well as labeled for safety health and dosage. I suggest that you adopt a safety monitoring program, that includes that all cannabis is identity and strength of the active ingredients are known. Thank you very much.

>> Mayor Reed: Sorry your time is up. Julie Kline, Jade Kine or Keene, and Gary Salvador.

>> Thank you. As a medical cannabis patient I'm both outraged and dismayed by the City of San José's urgency ordinance regarding regulation of medical cannabis dispensaries and by extension, of patients, as well. The city's proposed ordinance is in direct conflict with the spirit of proposition 215, as well as with HIPAA laws and my rights under the state and federal constitution to free association and privacy. The city cannot and should not treat me like a criminal, because people have irrational, uneducated fears about medical marijuana and medical marijuana patients. The city cannot force patients into dangerous areas in order to pander to the irrational fears of people who do not understand who medical marijuana patients are. Surely the city has far more important issues to concern itself with, to go after six people who are conducting themselves completely under the guidelines of proposition 215. Though apparently some politicians wish to go after us as an easy target instead of tackling the really tough issues that the city faces like the enormous budget deficit or a crumbling education system.

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

>> Mayor Reed: Jay kind, Gary Salvador, Craig lipman.

>> My name is Jay kind, I have worked in the medical cannabis industry for the 12 years, I've overseen the production of somewhere between 1.5 to 1.8 million cannabis plants in my career. I'm considered somewhat of an expert on commercial cannabis production, I have a school that teaches people about cannabis. On the single on site cultivation of cannabis, it is impractical, it is actually impossible. At a consumption rate of 100 pounds a day, and the greater San José area consumes vastly more than that, you would need approximately 100,000 square feet of canopy, just canopy, that's nothing else in the greenhouse. So divided by ten locations, each one of them would need about a 15,000 foot warehouse. And that is not the meet the market demand, that is to get anywhere close, that is just to get in the right ballpark of even satisfying that. So it's a major, major logistical hurdle of space and power considerations, that's why urban areas consumption has long relied on more rural areas geared towards cannabis cultivation.

>> Mayor Reed: Sorry, your time is up. Gary Salvador, followed by Craig Litwin and Stephanie Tucker.

>> Thank you, city council. I'm here today to say that this is not a recreation use, this is absolutely for medicinal purposes. As a patient, you seem to be severely limiting my access to have the ability to go ahead and get medication. Limiting it to ten closing down the shops that are already open, offering me medication would severely limit me in being able to medicate myself. I would also like to ask that there's a tremendous amount of question still out there. Take the time to really, truly find out, and don't do things in haste. Thank you.

>> Mayor Reed: Craig litwin, Stephanie Tucker, Patrick Goggin.

>> Hello, I'm Craig litwin, I testified last time. I'm the -- an ex mayor, I should say, from the city of Sebastopol. And I really appreciate what you are doing here today. I'd like advocate for action 3, the motion on the floor to postpone this action here tonight, conduct your study session. This is a very big issue. I think that you should take the time to do your due diligence and make sure you get all your questions answered. I appreciate the debate here tonight. I believe that you should ultimately support sales because it makes a very clean way to collect sales tax and then also to levy that special tax in the future. You should if you have a chance take a look at the front page of the San Francisco chronicle today, there is a very good story on Sebastopol and the experience that we had so I'd like to -- I'll forward that to you as well. I know the time is short here so I'd like the stay flexible, I'd recommend staying flexible in your zoning and that's it, also Councilmember Pyle, I'd like to thank you for your great questioning that you've been asking.

>> Mayor Reed: Your time is up. Stephanie Tucker, Patrick Goggin, John Lustig.

>> Good afternoon, councilmembers and mayor. My name is Stephanie Tucker. I am a member of the San Francisco medical cannabis advisory task force which is an official body that exists to help the Board of Supervisors in all medical cannabis policies in San Francisco. I'm here today to advocate and ask to plead you to please do number 3, postpone the action on this regulatory program and encourage you to engage in a study session and would like to make all of my resources available to you. My address or my e-mail address is

Tucker\_LSH@yahoo.com. My phone number is 415-240-9111. The emergency ordinance that I read which is before you today is Draconian at best, and it really does infringe on patient rights and civil rights and HIPAA protection. So I want to thank you so much for your very open minded comments.

>> Mayor Reed: Your time is up. Patrick Goggin, John Lustig, Paul Stewart.

>> Good evening, mayor and councilmembers. My name is Patrick Goggin. I'm an attorney. I submitted a letter to the council and to the mayor. I will let that letter speak for itself. I also want to encourage a continuance of this matter so a study session can occur, because as drafted, these ordinances are a de facto ban. Number one, they don't allow for dispensaries to recover their operating expenses. That's in violation of the AG guidelines. They require that the collective must cultivate all of their medicine, that's a violation of the AG guidelines. The record keeping requirements basically are a setup for criminal prosecution and finally the patient representation not being protected is in fact a hipAA violation. Thank you, I encourage the continuation of this great discussion. [applause]

>> Mayor Reed: John Lustig, Paul Stewart, Roger --

>> John Lustig, a fourth generation Mountain View resident. Initially I was against collectives locally until San José city council suggested taxation of the medicine. There's a never-ending supply of cancer patients, multiple sclerosis patients, Crohn's patients, severe arthritis patients, soldiers coming back from the war with PTSD, epileptic patients or anorectic patients, AIDs patients and other seriously ill patients. These people use cannabis several times every day to mitigate their anguish, and I believe there's potentially a lot of money to be made off of them through taxes. We got 'em right where we want 'em, ailing and desperate. To all those people who oppose the taxation of medical cannabis, we don't care that it was called the Compassionate Use Act. We don't care that these people were in pain. We don't care that prescription drugs aren't taxed. We don't care that tax is a detrimental burden of patients who have high medical debt already. We don't care that insurance companies don't cover the cost of cannabis medication. We don't care that we're taking advantage of our fellow citizens by exploiting their suffering and sticking it to them financially before they get better, before they die. We don't care

because we're barbarians. Recommended drugs, prescription drugs, it's not the wording, it's the principle. We should all be ashamed of ourselves.

>> Mayor Reed: Sorry, your time is up. Paul Stewart, Roger Jackowitz, Denise Gomez.

>> Mr. Mayor, members of the council, my name is Paul Stewart, I'm the director of public policy for the medicinal cannabis collective coalition. I'm here to support Councilmember Oliverio and your memo. Number 2, I note that one of the points is to analyze appropriate level of concentration of collectives. I think that helps recognize the fallacy of a lottery and to utilize the RFP process. Number 3, it also knows an analysis of other appropriate zoning designations. I think that recognizes that light industrial can join CIC and CG as an appropriate zoning designation. One of the things I've mentioned before, locating collectives in a light commercial zone is not a conversion of the use. If it were, in all due respect to my Councilmember Nguyen, how in the world did you site Costco on Senter Road? They have, quote, incidental retail sales. Number 3, isn't it interesting -- and this is a bad quote -- sorry. What happened to my three minutes?

>> Mayor Reed: Roger Jackowitz, Denise Gomez, Jonathan Stigmond.

>> Good afternoon, Roger Jackowitz. I just wanted to make two points. I would ask that the council also invoke a phrase that our Chief of Police mentioned, use the simple math. There are upwards of 55,000 card holding patients in San José. If you allow only 10, that equates to 5500 patients per collective. Talk about nightmare for parking, things like that. Support the lottery and the RF -- the chance process of getting approved, but it certainly would raise the number. My second point is, the -- trying to grow it onsite, I think what the -- as the other gentleman said, the expert, it's probably way unrealistic to do that and you also will have an audit process in place. So this source can also be verified as legitimate growers or providers. Thank you very much.

>> Mayor Reed: Denise Gomez, Jonathan Stigmond, Stephanie DeAngelo.

>> Good afternoon. I am a student and a medical cannabis patient, and to address council Oliverio's concern or suggestion that it should be combined with alcohol and tobacco guidelines, I think it's different because it's medicine. There are children who also need cannabis. It's a good alternative medicine for parents who don't believe in Ritalin and also the long term effects that we're not sure about and I think that if a parent is responsible enough to get a card for a child or themselves then they are educated and responsible enough to know what to do with their medicine and how to handle situations like that.

>> Mayor Reed: Jonathan Stigmond, Stephen de Angelo, Ed Esters.

>> Hi, thanks for hearing our comments here. A combination of ignorance and insults today that has been a little disturbing to hear, especially the demonization of medical cannabis patients, all of whom are suffering from an ailment, and they find that medical cannabis helps them. There has never been a single credible report of a single death from cannabis in all its human history, all of its use. The DEA has said so in 1988, the World Health Organization said so, the Institute of Medicine said so, so really we're lot of hysteria over something that's really not very dangerous. It should not be compared to alcohol, which kills 50,000 or so people a year, and it should not be compared to tobacco, which kills hundreds of thousands of people a year. Cannabis is a very safe, very effective medicine, and I urge you to make it available to all the residents who might need it or want it, which could number into the hundreds of thousands in San José alone, once this becomes more well-known. Thank you very much.

>> Mayor Reed: Stephen de Angelo, Ed Esters, Naveen Agerwal.

>> Council, thank you very much. Steve de Angelo, executive director of Harbor Side Health Center. I'd like to speak in favor councilmember Oliverio's motion today for two reasons. One, because I do approve of the proximity limits which I think are urgently needed and are appropriate. Secondly, because I believe that the study session that the motion recommends is also urgently needed. As an industry professional I can tell you that the interaction between regulation and business is frequently complex and unforeseen, and I would encourage you to

include industry professionals on that study session so that we could examine that interaction, make sure we don't have any unintended consequences. Thank you very much for your time.

>> Mayor Reed: Ed Esters, Naven Agerwal, Victoria Fox.

>> First of all, I'd like to say good show last night. Secondly, number 3 is the way to go at this point in time. It's the one that makes sense for everybody. The city needs to find a way to create revenue, not get caught up in litigation. Light industrial, it's a good place to be. You're not going to have any unwanted exposure. There's no preschools in light industrial. And lastly, the lottery system. You want people that are most qualified running the collectives in San José. Not people that one the lottery. Thank you very much. [applause]

>> Mayor Reed: Naven Agerwal, Victoria Fox, Kim Q.

>> My name is Naveen Agerwal. I'm an employee at Harborside Health Center. The main point I want to touch on was about the location. A lot of our patients that come, appreciate that we're in a light industrial location because of the privacy that louse them. They are not forced to go and see people, possibly their neighbors or people they know in a commercial area. So I definitely don't think that that should be not considered. I think light industrial, as far as patients are considered, actually a lot of them prefer that and would prefer to come to those types of locations. The other thing I wanted to touch on was, like Councilmember Kalra mentioned you know our collective is a perfect example ever a place that gives back to the community. We just held a Red Cross blood drive a couple weeks ago, and we have regular acupuncture and other services that we do every day and have appointments every day set up for that stuff. The last point I want to touch on was the lotto system, like any business, there's good people running business and bad people running business and if you create this lotto system you might just --

>> Mayor Reed: Time is up. Victoria Fox, Kim Q., Doug Chulpick. Come on down. Followed by Jermane King.

>> Hello, my name is Kim Q, I'm a chemical engineer, and I've also been a patient for 12 years, I'm the director of the 408 compassion center, we have nearly 4,000 patients there. Madison Nguyen, we're in your district. There are several things going on here, you guys need to separate medical cannabis, versus recreational cannabis, versus the black market. That will help you guys see where we're coming from. We're the medical cannabis industry here. We need many collectives. Ten is not right. We have over 1,000 patients, and we're classified as being a medium to small collective. You times that by the 70 collectives that are here in San José, and you're looking at 70,000 patients. Ten collectives cannot handle that. Patients will be waiting in line two to four hours to get their medicine. That is not safe access. Industrial zoning needs to be allowed for medical cannabis distribution. Don't go and reinvent the wheel. This works in Oakland, San Francisco Berkeley and Sonoma. Onside growing is not safe at all. Special operations --

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

>> Mayor Reed: Doug Chulpek, Jermaine King. James Silva.

>> Thank you, councilmembers. My name is Doug Chulpek, I'm one of the founders of Medmar Healing Center here in San José. A few things, one, I thank you very much for considering this topic. It is a very sensitive issue to all the members in the City of San José. However zoning's strictly just commercial would set aside a number of cooperatives, one like ours which is light industrial zone that does have 18 private off street parking stalls. Does have a private parking. We do have VTA that stops directly in front of our building. We're two and a half blocks from the main San José CalTrain station. We have no adjoining neighbors, and we do business with our closest neighbor, who is our security company who monitors us 24-7. So businesses like ours, if you were to strictly put us with a commercial zone, we now no longer have a chance to operate, even with our health center that we have and the other service that we're able to offer to our patients. So please, reconsider, or at least add in the light industrial. Please also don't group all businesses together because they are all not ran the same. So you do want whoever's going to operate the right way in the City of San José to be most appropriate --

>> Mayor Reed: Germain king is the next speaker followed by James Silva and Johnny ward.

>> Thank you, councilmembers. I thought it would be first you know beneficial for me to say I appreciate everything that all the councilmembers are doing for a subject matter that's very, very difficult. I understand a lot of us don't want, you know, this type of thing in our communities. Or next to our homes but we also have to realize there are patients like me who have a legal recommendation to have access to medical cannabis. I think we all like some of the people that have come up and spoken have said that we're all kind of ignoring the issues that there are issues where this can be illegal where people aren't getting the right access to this medicine. But I want you to look at somebody like me who had lost their legs a couple of years ago, and had never touched anything like cannabis. I found out taking something else didn't allow me to work, I work and live in Councilmember Pyle's district have a home and pay good taxes to live here. I just ask that you take consideration to those people such as myself who need access to this medicine and start criminalizing it.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: James Silva, followed by Johnny Ward, Julie Englebrecht and Dave Hoveland.

>> I just want to briefly touch upon the fact that we are dealing with medical patients here and when it comes to medical patients I want you to consider yourself. How would you feel if it was your mom, your son your daughter your father or yourself. Look at the mirror and think about that because if you were in need you know you would do anything that you could to help someone that you love. These are patients, these are not criminals. I do not agree with giving police the right to see patient information. That's our right to privacy. I also agree on keeping it in an industrial area. Like was said before, that allows us to keep this private and patient, just like you would any other kind of medicine or any other patient records. Like I said again look into your hearts, figure out what's right and realize this could be an opportunity for San José to be a medical hub, for San José to be a place where people come and we respect health and we respect well-being. So please consider that and really when you think about this don't pass it.

>> Mayor Reed: Your time is up. Julie Englebrecht, Daniel Hogland, Pat Knoop.

>> I'm Julie Englebrecht I'm a resident of downtown that Councilmember Liccardo has worked very hard to help. There has been a lot of talk about passion and access. But I would tell you that access is easy to abuse, and compassion is a two-way street. Where is the compassion for residents who were here prior to these clubs, and where is my right to privacy and the peaceful and quiet enjoyment of my home for my daughter who is six and a half years old? For five months we were prisoners in our home abused and threatened by clients leaving a cannabis club and their security guards. This is not the behavior that I expect of someone who is simply filling a prescription. If these clubs want to be respected, if using medicine, then using all of their clients need to start acting like that's what's happening. The abuses we saw downtown with drug deals, high volume, traffic going in and out of the parking lots at unsafe speeds on residential streets was unacceptable, and I urge the council to pass the urgency ordinance and to look at a distance further than 500 feet. Our club closed, and three days later a new one opened up across the street.

>> Mayor Reed: Daniel Hoveland, Pat Knupp, Darlene Welch.

>> My name is Daniel Hoveland. Most of the people have touched bases on most of the things I wanted to talk about, but there's a few things I want you to take into consideration. First off I would like you to move with motion 3 to postpone because there are a lot of issues that need to be taken into consideration before we move forward. First off is, that we have a patient in my collective that cannot smoke and so they can only eat edibles or take lotion for example with severe arthritis. They need a lotion and that's the only thing they can be offered so why would you take away that consideration. Another I had a terminal case of you know she was going through key chemotherapy, she's passed away now and I literally had to teach her how to use marijuana which was actually given a recommendation for her by her doctor because it was the only thing that was able to give her an April night of tight. By having to teach her that I had to physically bring a vaporizer there, and not being able to bring those to them we wouldn't be able to give them a way to use is.

>> Mayor Reed: Your time is up. Pat Knoop, Darlene Welch, followed by Brennie Wilson.

>> Hi, my name is Pat Knoop. I've been a resident of San José for over 47 years. I would like to urge the council to defer decision on the ordinance. The emergency ordinance in its current form is completely unworkable. The lottery system is ridiculous. It's the exact opposite to intelligent approach to regulation. Growing medicine on site is completely not only is it not safe it doesn't make sense. And as far as collectives, should be commercial, light industrial. Not just commercial general I mean commercial neighborhood is basically the exact same thing. My mother-in-law, my mother is 86 years old, she's a medical cannabis patient she's going blind. I don't want her to go into commercial, but something closer to her home. I think you should delay until you get more input from everybody. Thanks.

>> Mayor Reed: Darlene Welch, Brennie Wilson, Lauren Vasquez.

>> Good evening. I want to thank Mayor Reed and Councilmember Oliverio and the rest of you for all your work on this, and I wanted to speak about some things in the ordinance. My friends just lost her battle with nonhodgkin's lymphoma and she worked for the state and her husband lost her job and she was afraid of losing her health care so she went to work every day. The ramifications of having her name on a list are severe, with the budget cuts going forward. I want to speak to edibles. My husband's 60 and has had many replaced parts and they're the only things that work without getting him high to be able to function. Pharmaceuticals did not work. His neurologist recommended it to maintain the neuropathic pain, and it's something you can dose without getting high that gets rid of the neuropathy. I want to speak to the \$95,000 for the permit. This violates prop 215 in my opinion. It means you're going to be taxing the wealthy to shut down the smaller locations for use.

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

>> Thank you.

>> Mayor Reed: Bernie Wilson and then Lauren Vasquez. And Christine Wagner.

>> I'm Darlene Welch. I'd like to thank all of you for your words this afternoon, I appreciate it. But I do think that 10 collectives is enough. It's far too few and the lottery system seems rather ridiculous to me. There are a lot of people who have put their heart and soul into helping people like me, that really are sincere and they deserve to continue operating. And I hope that you'll take your time not hurry into things. You're right what you said about the federal government needing to be involved. And as far as where it's grown, it's been being grown for years and years, and you know, wherever it is, sometimes maybe Clinton said it best, don't ask, don't tell. Why do we need to have so much information? Let's keep focused on getting help for people like me. Don't put a young woman's name on a list and give it to the police that's 23 years old.

>> Mayor Reed: Sorry your time is up.

>> She has no hope then.

>> Mayor Reed: Bernie Wilson, Lauren Vasquez, Christine Wagner Matt Krish.

>> My name is Lauren Vasquez, I'm a patient I'm an attorney and I'm also director of the Silicon Valley chapter of Americans for safe access. Hundreds of our members have signed these post cards addressed to you. You have many constituents who want to you vote no on this urgency ordinance. And I ask you to choose number 3, please postpone all action. I want to apologize to each and every one of you on city staff. You have been roped into the Los Angeles city attorney's campaign for attorney general. He has chosen medical cannabis patients to campaign against in order to get some votes. I also want to give the city attorney's a second chance. I think we need to scrap everything that's been presented here. Our members oppose 99% of the recommendations. Especially the personal use. Regulations that is not what the council asked for and we will not accept any of those regulations. Right now we're talking about regulating the unregulated. This is the worst-case scenario, and it's not that bad. What you are doing is, you are adding regulations that will make it harder for sick people to get medicine and easier for criminals to make money. Thank you.

>> Mayor Reed: Sorry your time is up. Christine Wagner. Matt Krish, Mary Waggle.

>> Hi, my name is Matt Krish, thank you again city council for the tremendous amount of work that has gone into putting this together. As a family member of a sick patient I have experience with this. I have my mother who is suffering from cancer who is a patient. I hope while zoning is considered it will also be considered that the purpose for prop 215 was completely marijuana, medical facilities also around the hospital. My mom travels to the hospital often and I know it's a great deal for her to be able to go directly to get her medical marijuana by the hospital, and not have to travel all the way across town into a light industrial area. In fact, I don't know if she can handle that. Also -- I also oppose the lottery system. I think that would ultimately reward people who were not worthy of being rewarded with the right and the privilege here. Thank you very much.

>> Mayor Reed: Mary Waggle, Christine Wagner, Brennie Wilson, come on down.

>> Good afternoon, council, my name is Christine Wagner I'm a medical cannabis patient and an attorney. And this proposed ordinances, all of them are fraught with legal complications for the city. They're overly restrictive unequally applied as currently presented regarding location, application, requirements for registrations, fees and police access to records. The city is making this more complicated than it needs to be. You're requiring surveillance as if acquiring medical cannabis is criminal activity and it is not under the laws of the State of California. And the city attorney has a severe misunderstanding of the state's medical cannabis laws. And as was presented at the June 7th meeting over and over which is not contained in this June 15th memo to the council that time and time again, the city was challenged with --

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

>> Litigation moving forward -- thank you.

>> Mayor Reed: Mary Wagley, Tili Ayala, Jenny Rutherford.

>> My name is Mary Wagley with Smith Wagley commercial management. We represent the owners of a commercial condo building at 1850 South 10th Street in San José. Two of the owners have a cannabis collective as a tenant and they're causing problems for some of the other owners and their tenants. Two main issues are proximity to a sensitive location and the type of clientele visiting the building. The collective is located right next door to the Vietnamese American Academy where children are tutored. Children are dropped off at the academy frequently and at various times during the day and evening when the collective is open. This lack of a local public policy is causing our clients and our company a fair amount of heartburn. The majority of the condo owners want the collective evicted, but our clients first need the backing of city officials to close down this illegal operation immediately. Thank you.

>> Mayor Reed: Jenny Rutherford, Tini Ayala.

>> Thank you, council. I'm a 12-year resident of San José and an eight-year medical marijuana patient. I smoke every day, and I'm a very functioning citizen of this city. I now run a small medical marijuana collective, and the fact that this is supposed to be a nonprofit enterprise, and you have the gall to say you are going to charge \$95,000 a year, you are encouraging big criminal activity, versus the small people that are actually working together to have a true collective. I really ask that you take that into consideration as you move forward and respect the need that the patients have here in San José and vote to -- on option number 3 right now, thank you.

>> As you can see security didn't want -- didn't let me bring my sign. My sign says cannabis is a fancy word for drugs. I'm here to be a support to you Mr. Mayor. I have a letter from several patients at a nursing home, and I will leave this for you but I just want to read one or two. Mr. Mayor, you're a good guy, thumbs up. Honorable, a woman stated Mr. Mayor, Chuck Reed leave a message, a legacy behind. So when you are long gone, the citizens of San José can say wow, Mayor Reed sure did a kind deed. And the last one, a woman stated, Mayor Reed, cut the blank blank clubs. Cut did blank blank pot clubs. And give us what we need. Put yourself in our position. We would -- please don't take services away that we need. Such as the fire department, and the police department. They are much better off.

>> Mayor Reed: Sorry your time is up. That concludes the public testimony on this item. Let's see if the council has any additional discussion? I'd just like to note that in the memorandum that Councilmember Oliverio and I signed, which is the basis of the motion, we do recite the principles that the council approved back on March 30th, 2010. Let me just relate what those principles are. San José recognizes that California law allows the patient's primary caregiver to cultivate and possess marijuana for the personal medical purposes of the patient upon the recommendation of the physician. San José will follow the guidance of the California attorney general and the United States attorney general in criminal enforcement of the laws regarding medicinal use of marijuana, and individuals or entities that cultivate or distribute marijuana for profit are operating illegally under state law and are illegal under San José municipal code. So all of these folks that set up dispensaries in San José are currently operating illegally. And we have in this motion given direction to where we should focus our enforcement efforts. I hope the council will support the motion and we can move ahead. I'm sorry, sir, did you have a card?

>> I did.

>> Mayor Reed: Did I call your name?

>> I do not believe my name was called.

>> Mayor Reed: What's your name?

>> James Silva.

>> Mayor Reed: I did call your name. Go ahead.

>> Okay. And good afternoon, my name is James Silva, and I'm an attorney from Oakland. I'm urging the council this afternoon to vote for option 3, to postpone action, largely because the proposed ordinance not only is Draconian in its actual terms, but I would like especially the city attorney to recognize that some of the provisions of the ordinance require people to provide information in violation of their fifth amendment rights to be free from

making statements that might tend to incriminate them in a federal prosecution, and therefore, the ordinance would be unconstitutional. It would also require almost a de facto waiver of the right to be free from unreasonable search and seizure in many of its provisions. I will tell you that I have been consulted by several interested parties and I'm prepared to file an injunction against the city for the implementation of the ordinance. So until you have further opportunity to examine these dimension of your ordinance understand this is a community that wants to reach out to you and wants you to reach back.

>> Mayor Reed: Your time is up.

>> Thank you very much. [applause]

>> Mayor Reed: Back to the council for discussion. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. First of all, as has been indicated that part of what's going to be used to take action against some of the collectives is complaint-driven plenty of people here from the preschools, I think that's probably -- is that one that's recognized Joe, the collective that is near that preschool that was mentioned as one that would fall within the category of those that are not going to be allowed to be in operation?

>> Joe Horwedel: The list I have did not have that one on but it -- the list is a little bit old and I know from what when we had the recent testimony we were going back to look at a couple others. So it is one of the ones that clearly would not meet the criteria for separation from residential.

>> Councilmember Kalra: But it's not at this point -- I mean with folks now it will be one that will be added to the list.

>> Joe Horwedel: If I have a complaint as we will move forward on that one, so it's one that if there isn't when it's in we're free, leap to take a complaint from one of the interested parties.

>> Councilmember Kalra: So the folks that spoke today they would have to follow up on that?

>> Joe Horwedel: Correct.

>> Councilmember Kalra: So anyone who spoke would have to follow up with the Planning Department. Secondly a comment was made that it doesn't allow for the covering of expenses at the operation of collectives, is that accurate in terms of what's allowable in terms of taking in any funds for the operation of the collectives?

>> I'm sorry, your question dealt with the overhead cost?

>> Councilmember Kalra: Yes. Is that part of what's allowable in terms of the cost that's taken into account and what they receive for dispersing cannabis?

>> Yes, councilmember, it's intended to be consistent with state statute which allows for only the primary caregiver of a qualified patient to be compensated for their expenses, involved in caring for the qualified patient. It doesn't provide for a collective or co-op or dispensary to be compensated for those types of things, nor does it allow for a collective or a co-op or a dispensary to be a primary caregiver.

>> Councilmember Kalra: So the overhead that -- the overhead that a dispensary has would not be allowed to be taken into account in how they're compensated for providing the cannabis?

>> The salaries and wages and things like that would not because that would be the members paying towards the employees of the collective versus the primary caregiver who works for or with the patient.

>> Councilmember Kalra: So how would they survive? Allow would they even exist, then?

>> That's -- [applause]

>> That's not to say that the collective can't itself charge these fees, or actually pay for the employees to engage in certain things on behalf of the collective. It's the only compensation that's provided under state law is the compensation between the qualified patient and the primary caregiver. So I understand what you're asking but that's not the type model that state law contemplates. It's a co-op model where everyone contributes to the collective cultivation of marijuana.

>> Councilmember Kalra: What with in Oakland, which I know Councilmember Oliverio initially presented to staff as San José to analyze as you prepared some of these -- the analysis before us. Does that also, or do you know how they how they operate? I mean, do they allow for the overhead to be taken into account?

>> I think with the Oakland model, they actually allow in the statute or in initiative for the collective to be the primary caregiver and that's how they get into the definition of whether or not the collective can be --

>> Mayor Reed: All right I'm going to have to clear the room if you can't be quiet. We've got work to do here and we're all tired. We've been at this since 8:00 this morning and we have a very low tolerance for messing around. Be calm, and we'll work this out. City Attorney.

>> City Attorney Doyle: Angela, it is my understanding that the draft ordinance allows for membership fees to be charged I guess to cover the overhead cost of a collective. So it would be through membership fees is that correct?

>> Correct. Provide that those fees go to the actual expense of cultivating marijuana versus the other expenses that we carved out of that definition.

>> Councilmember Kalra: In regards to zoning I know there were some folks that were suggest industrial, Joe in one of the alternatives suggests that that's one of the counties to consider. I've been reluctant to consider that, but given the scenarios that are set forth do you have any thoughts on those that seem to be operating, and some of

the suggestions that they are giving regarding the type of zoning allowable, light industrial, commercial light industrial?

>> Joe Horwedel: We do have several of the -- I've got a list of 36 collectives that we're tracking versus the 65 that was mentioned earlier. Of the 36, there's about four or five that are in some sort of industrial zone. The vast majority of the collectives are in commercial office zones in the city those are zones that typically back up to residential. So as a part of where industrial might be appropriate, I do think that there are some industrial zones, combined industrial light industrial even industrial park where we have the mixed industrial overlay in our zoning where we allow things like Costco to go in. Those are things we should take a look at as a part of coming back with this, that is something that staff is going to take a look at.

>> Councilmember Kalra: And then commercial general, would that allow for medical office?

>> Joe Horwedel: Correct. All our commercial zones allow office, all the way C commercial to CG.

>> Councilmember Kalra: And in regards to the \$95,000 per collective an argument being made that that would only allow a large scale operations to exist now I understand that part of reason for having that fee is going to be for -- resource intensive for us as a city to regulate the operations. But was that -- I also do fear that it's going to lead to simply large scale operation that doesn't necessarily lead to the best operations. Additionally, the lottery system, why was the lottery system selected? Was it simply out of fairness and is there a fear that by doing that we're not going to get the best possible operators in our city?

>> Deanna Santana: So let me start first, we put out a supplemental memo date June 21st that corrected some of our math calculations that were incorrect in our memo. Based on the anecdotal information that we received from either existing establishments or from the community meeting, we understand that the collective patient population is between 5,000 to 100,000 in San José or in the county. And if we were to look at the \$95,000 registration fee, the impact to a patient that is a member of a collective would be anywhere from 8 cents a month to \$1.58 a month to cover the \$95,000 registration fee. We believe that is low. It covers the cost that staff asked --

that council asked for us to ensure as a cost recovery program. And so I wanted to classify those numbers and have it better put into context than \$95,000. The issue around the lottery, I think as we get lost in the matters of words. And what we clarified in the report here is that the lottery establishes a place in line for how to review and evaluate the application. It does not establish approval or a win for the right to operate. The individual or the application would still need pass all the different reviews that we've put in place to the regulation, through the regulatory program. And should the person or the applicant not be successful, based on meeting the criteria, then we would continue to move on. So in this case, if 14 were drawn, if there's three applications that did not pass, then we would move on to the 14th number. It simply just puts in place almost a virtually line, so there's transparency and predictability where you will be processed through the review. It is not a lottery.

>> Councilmember Kalra: I understand that. The subject, the criteria is a minimal, not minimal but it has a bear minimum so to speak of what would be required, then we're not exactly allowing for a quality establishment, what we're basically saying is it only meets this bear minimum of regulation so you'll be allowed. It still leaves us at some risk of not having the best potential operators just those that will meet the bear minimum. And understanding bear minimum is quite exhaustive, I mean, in the requirements.

>> Deanna Santana: We did create a comprehensive regulatory program to ensure that our needs were sufficiently met on behalf of the council established policy.

>> Councilmember Kalra: And by our action right now that we're about to vote on, by voting on this action, I understand, A, and the mayor and Councilmember Oliverio's recommendations I fully support, means taking action near sensitive receptors, but the draft language for the urgency ordinance, that would basically go into place immediately, I understand we'd have to come back for a full ordinance, but a lot of it won't go into place immediately or has -- I know it's coming back for language to put on the ballot August 3rd. But by acting today what is being put into place immediately?

>> Deanna Santana: There is no action for today, in terms of putting in place an urgency ordinance or a regular ordinance. What we understand, the moment from the mayor and Councilmember Oliverio, is to provide definition

or focus for civil action enforcement. In identified areas. I do want to clarify, councilmember, and I can let Angelique add additional comment. You had asked the question about overhead expenses. In the ordinance, on page 4, section 688.250, it explains that overhead expenses means the actual cost of cultivating medical marijuana incurred by the collective including mortgage payments, rent, utilities, business and property taxes, property insurance, and cultivation materials and equipment. Overhead expense do not include means of salaries, wages or benefits paid to members by the collective.

>> Councilmember Kalra: Okay, so at least some of the overhead seems to be taken into account in terms of rent and what have you. So my understanding -- so today, the only immediate action that we're approving is that there's a specific target for code enforcement to focus on in terms of closing down some of the operators that are within sensitive receptors. Also, of course the analysis of putting it on the ballot, coming back August 3rd with draft language, there's no specific action taken today, the concerns I've raised and were raised by some people in the audience will continue to be analyzed prior to coming back?

>> Joe Horwedel: That's correct. This is guidance for my staff and the police department and the city attorney's office as we do for enforcement on properties that we go and look at, kind of and ultimately where the council appears to want to go, as a part of separation. And then we should focus our resources on those that are the furthest from achieving those goals.

>> Councilmember Kalra: And so there is still an opportunity in particular to speak to you and evaluate the issue regarding access to private information.

>> Joe Horwedel: Correct.

>> Councilmember Kalra: Again I'll support the motion, mostly because we can take action on those close to sensitive receptors, and because there's still an opportunity to evaluate some of the factors, include the lottery system, whether it's most effective, the appropriate zoning, and most importantly some of the privacy issues that have been raised.

>> Joe Horwedel: Councilmember Kalra, I did want to correct the question you asked me earlier about the site on de Anza boulevard. It is on our list at 1193 de Anza boulevard, so we are already working on that one.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks, I was just going to make that same correction, because I know we have forwarded a number of complaints to you. So as long as that's covered, it's late. I don't have much to say except I support the the motion.

>> Mayor Reed: We do have a motion on the floor, made by Councilmember Oliverio, five or six hours ago, I think. Perhaps it wasn't that long, it just seems like that. On the motion, all in favor, opposed, none opposed, the motion is carried. That concludes the work on this item for today. We have no cards under open forum. We have one item that we were unable to complete work on today, item 3.3, that is adoption of the annual appropriation ordinance and annual funding sources resolution for the fiscal year 2010 budget, and resolutions establishing the fiscal year 2010-11 appropriations limit. We're not able to do that today because we just finished making decisions this morning. So we need to defer that item to June 29th, 1:30 p.m. and adjourn this meeting to that time. Is that correct, City Attorney?

>> City Attorney Doyle: That's correct.

>> Mayor Reed: Okay, is there a motion to adjourn to the 29th?

>> Councilmember Chirco: Second.

>> Mayor Reed: There is a motion to adjourn to the 29th. All in favor, opposed, none opposed, that's approved. We're adjourned to June 29th, 1:30 p.m. That concludes our work for today, thank you all.