

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

>> Councilmember Chirco: -- this meeting for September 1st to order. Is there any changes to the agenda? If not, then we will --

>> Councilmember Pyle: Accept the order.

>> Councilmember Chirco: The first item is the September 7th, special meeting. And I know that that meeting has been requested to start at 2:30, so if the amend agenda can reflect that.

>> Lee Price: Yes, it was initially set for 1:30, and I understand that the mayor has requested that we push it back to 2:30. So if the Rules committee approves that, I'll make sure that we get the message out loud and clear.

>> Councilmember Chirco: Councilmember Pyle.

>> Councilmember Pyle: I understand it's 15 to 20 minutes per applicant.

>> Lee Price: For questioning, yes. At this point in time we have eight applicants for the council to consider. Five males, including one attorney, and three females. So we have one applicant currently for the attorney seat and seven applicants for the nonattorney seat.

>> Councilmember Pyle: Thank you.

>> Councilmember Chirco: Of course that's page 1. And if I can have a --

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Lee Price: We have a motion and second to approve the September 7th special meeting to start at 2:30. All those in favor? All those opposed? Hearing none that motion carries. City Manager.

>> City Manager Figone: Vice Mayor, members of the committee. I will let the council know this, but I've asked Alex Gurza to represent me at that meeting so he can serve as a resource to you during your interview process.

>> Councilmember Chirco: Thank you. The next item is the September 14th agenda. Page 1, page 2 and 3? Page 4 and 5? Page 6 and 7, and page 8. We do have mayor and council requests.

>> Councilmember Constant: Motion to approve with adds.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: I have a motion and second. All those in favor, all those opposed, motion carries. Welcome, mayor.

>> Mayor Reed: Thank you. Sorry I'm late. Hated to leave in the middle of Senator Feinstein's speech, but I had a committee meeting to come to.

>> City Manager Figone: If I could just, Mayor, point out. 6.1 we're recommending that that be heard last on the agenda. That's the high speed rail item.

>> Mayor Reed: I'm not sure where we are on the agenda.

>> Councilmember Pyle: Page 6.

>> Councilmember Chirco: Actually, redevelopment.

>> Mayor Reed: Ready for redevelopment agency meeting for September 7th. It's no regular meeting, that's the study session on the budget in the morning.

>> Lee Price: Actually we were talking about the September 14th agenda.

>> Mayor Reed: Okay, September 14th, redevelopment agency --

>> Lee Price: City Manager was asking about 6.1, high speed rail.

>> Councilmember Chirco: We had a motion and second, and it was approved. So we're ready for redevelopment.

>> Lee Price: Just so the City Manager -- we have that so noted.

>> Mayor Reed: Okay.

>> Councilmember Chirco: So we're ready for this one.

>> Mayor Reed: September 7th redevelopment agency agenda, meeting has been cancelled, we're having a special study session on the budget, and that agenda is here. I guess. I thought we approved that last week.

>> The agenda is in the packet and there are no changes since it was published last week and we don't anticipate any changes to what you have.

>> Mayor Reed: Okay.

>> Starts at 9:00.

>> Mayor Reed: 9:00 start, going to noon.

>> Hopefully, a little bit before noon.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve, second? All in favor, opposed, that's approved. I'd like to go back to the September 7th special meeting final agenda. I missed, sorry. Did you talk about what time to start that? 2:30, okay, that will be helpful.

>> Lee Price: Mr. Mayor, I mentioned we had eight applicants so far for the council to interview.

>> Mayor Reed: That's roughly two hours, on average. All right, now the September 14th redevelopment agency agenda. Anything on page 1? Page 2 or 3? Or 4? Any other additions, changes?

>> No, sir, not today.

>> Councilmember Pyle: Move to approve.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Upcoming study session agenda is the only one was the budget one, we've already talked about. So legislative update. State or federal, Betsy Shotwell's here.

>> Betsy Shotwell: Thank you, mayor, members of the committee. Betsy Shotwell, Director of Intergovernmental Relations. If I could just comment briefly on the state recess that began at midnight. I know I don't have it listed. It's pretty hard to predict last week, what would happen. But if I could touch on two bills. One

of the bills the city was actively opposed to, AB 155, which was is a bill that would have required, if a city determined bankruptcy, to go through a number of hoops and entities, including the state auditor. That died yesterday. So that was -- I know we all got a lot of call to arms from the league of California cities and our lobbyist of course was there throughout it all into the wee hours, and that was something that I wanted to make sure got reported today. Some of the bills that I know our City Attorney has referenced recently because they were very recent, gut and amend bills had to do with disclosure of compensation and compensation potential limits and other things and I did want to report that AB 501 which is the salary disclosure bill which was amended greatly, to reduce the amount of disclosure and who would disclose, that passed. And another bill, on disclosure, which was an interesting turn of events yesterday, AB 2064, by Assemblywoman Huber. This was a bill that she said if we are going to require local governments to do this disclosure, officials, et cetera, et cetera, that should also be required at state level. And it failed, it did not move. So it was a very interesting discussion and lively debate. AB 1955, that I know Rick has been updating you on, that was the bill that would have determined from the attorney general's office if officials were receiving excessive compensation, that the redevelopment bonding and all of that would come to a dead halt. Well, that died yesterday. So that was an interesting development. I know we'll learn more about all the nitty-gritty, but that was something that was brought to your attention. We wouldn't have been as included in this, because it was amended with charter cities over a certain population, but it was still a bill of major concern. And another measure, AB 827, passed and that had to do with compensation, again, and which compensation of employees. I don't have a whole grasp of that measure but -- and what the final amendments looked like. But that had to do with performance reviews and things of that sort, determining compensation. So we'll follow up on all of these with you as to what the final bill looks like, some of these aren't even -- pretty much in print. But anyway, they were all in the play, and in the AB 1998, the measure with regards to a statewide legislation on single-use bags failed to pass. It didn't have enough votes to get out. So we're back to the local level with regards to that issue, implementing single-use bag ordinances. The state budget is still out there. The governor at 11:00 held a press conference on the state budget and his concerns over the debt that is acquiring and increasing as the budget isn't getting passed, and it, I'm sure, will be in the press tomorrow. But A frustration of course on his part that he continues to ask or request that he won't sign a budget until he sees reforms in the California tax and budget and pension. So those things remain outstanding of course in his mind. And that's where we are with the state level, and I'll be happy to answer any questions with the federal update. They are in

recess until mid September. They'll come back for just a few weeks before they recess again for the elections, and then we'll probably see a flurry of activities when they return to what we call a lame duck session after the November 2nd midterm elections.

>> Mayor Reed: Okay, questions, Pete.

>> Councilmember Constant: Thank you, mayor. On the Patton Boggs report on page 10 it talks about the Biebrock spectrum application. What have we done and what will we be doing to advocate in that particular area from the city's perspective?

>> Betsy Shotwell: Well I know firsthand that Patton Boggs was enlisted in this activity, an amendment actually to their contract through Chief Chris Moore's actions with the police department, was involved greatly. I haven't talked to Chief Moore recently to know. I know Patton Boggs was involved in supporting the chief when he was there in Washington at each time. And with other clients of theirs, as well, who have been just as concerned and interested in this issue. So we have been very engaged in this, or Patton Boggs is, you again, supporting our chief when he's been in Washington, D.C. on this.

>> Mayor Reed: They have also been working at other times because I know that has been part of the conversation when I was back there on my trips with Patton Boggs, that's one of the items we've been talking about with members of Congress about.

>> Councilmember Constant: I want to make sure it stays on the front burner, and anything that we as a council as a whole or individually could be doing, because I think that's really important, especially given the new activity with the SVRRA being formed and things moving forward.

>> Betsy Shotwell: Absolutely. We will continue to keep that in these reports. It has become a legislative priority this year and will definitely be for 2011, if we need to.

>> Councilmember Constant: Great, thanks.

>> Mayor Reed: Is there comments or questions? I have a request from the public to talk about these items. David Wall.

>> David Wall: Just a couple of questions on Your Honor's statements. With reference to Patton Boggs, I think a review of their services is in order. With reference to for instance what does Zoe Lofgren do for the City of San José. In other words these high price lawyer lobbyist firms are fine and dandy. But we've elected people to do our bidding and they should be doing it considering the hundreds of thousands of dollars of money that goes to pay for Patton Boggs. I believe it's a little over \$600,000, I could be wrong. But that's roughly five firefighters. And I basically don't see the utility in Patton Boggs, when we have elected representatives from California to do our biddings. Also nested in the report is the possibility of why Councilmember Liccardo is going to the Netherlands, for that bike tour, and why the City Manager was a very prudent in the construct of her memo, concerning possible business relationships. So that was of interest. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. I don't think there is any action, just a report.

>> Betsy Shotwell: Just accept the report.

>> Motion to accept the report.

>> Mayor Reed: Motion is to accept the report. All in favor, opposed, none opposed, that's approved. Schedules, public record, anything the committee would like to pull from the public record for discussion? Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I just wanted to pull item A, the letter in relation to the annexation of Cambrian 36. I continue to be concerned about this particular annexation. And my concern originates from my participation on Lafco, I'm the city's representative on Lafco, and have had quite a bit of

contact from the public, both in the unincorporated area and city of San José and the city of Campbell in relation to this item. And I think it is something that has been continuing down sort of a predetermined path. And I think that we need to have some sort of discussion, whether it be the discussion here at Rules, or perhaps appropriately at Public Safety, finance and strategic support, since it falls under the strategic support category. But I think there are a number of issues on this particular annexation, and I've spoken on them on our public meetings before when these annexations have come up and given the very high level of concern in the community. And quite frankly, concern from members of the elected members and administrative members of the city of Campbell. I think it is something that we have to have a closer look at before we continue down this road. It's scheduled to come to council I believe in October, at last I heard with finalization in November, is that correct, Laurel?

>> Laurel Prevetti: That's correct. In fact next week, if it is the will of the committee, we'll be asking you to set an evening session for Tuesday, October 5th to consider just the initiation. It will give the council the opportunity to have the policy discussion that Councilmember Constant is referring to. And we will be considering all of the pending county pocket annexations at that time. So we have several on the Eastside as well as the Cambrian matter. So thank you for your interest.

>> Councilmember Constant: Thanks. And I think it's important if that's the venue that we're going to speak of that, or if it ends up being at a committee or here, that we really need to get some input from the city of Campbell. And how this is being handled. The path has seemed to be set, the train's on the tracks and it's not moving except forward. I don't think that is necessarily best interest of the City of San José at this point. I think that given the number of annexations we have accomplished and the ones that we have in front of us, there's no reason we can't slow this down at make sure we get it right. Because I really am concerned about where this is going and what the outcome will be.

>> Mayor Reed: Laurel, again.

>> Laurel Prevetti: If I may, Mr. Mayor and committee, we are preparing a report that would outline what the various alternatives and choices are to the city council. We are under the agreement with our county to consider county pocket annexations, but that in no way predetermines a particular outcomes, of this one or any others. Oh so you'll have if opportunity to talk through the policy options and we'll be happy to explain what our process has been, et cetera. And we believe that, given the interest in this particular pocket annexation, that having an evening session where the public can participate at their convenience, is really the appropriate way to go. We are not proposing any other land use items for that evening. Those would be handled through the regularly scheduled evening council meetings.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Just this is a matter that's agendized on the public record and really I'm concerned about we're getting too much into the substance and the content. I think at the point where it comes back to Rules with a proposed agenda item that's a time to have a more complete discussion. I just want to caution the committee about going too far in this setting at this time because it has not been properly agendized.

>> Councilmember Constant: Sorry, that's what I had meant to talk about, is when we were going to talk about it, not necessarily talk about it here.

>> Mayor Reed: I'm not talking about it. I'll wait until October 5th.

>> Councilmember Chirco: Me, too.

>> Mayor Reed: Anything else on the public record? I have one request to speak, Mike Chrisman.

>> Thank you, my name is Mike Chrisman. I'd like to echo some of the same comments that Councilmember Constant has.

>> Councilmember Constant: Squeeze the handle and pull it up.

>> Echo some of the comments that councilmember Pete Constant had. Then specifically, community notice. We don't believe we've been properly notified as far as the time lines go. It was less than 21 days that were required. Less than two weeks for our community meeting. The Planning Commissioners made some public testimonies regarding specifically at the last community meeting the issue of zoning was not raised and they were concerned that that was not addressed and our community was not informed on what options were for rezoning that initiate this annexation process. The radius was also not met. So our community obviously, everyone knows from the discussions who we are, we've made contact with the City of San José, we have some serious issues about services as well. I think it's premature we go forward without having services established to our area. We heard at the August 18th meeting that San José had planned to contract with county fire to provide fire and EMS services. We haven't seen that in writing. We probably in good faith that was announced by the fire department of San José. We haven't seen that in writing, we don't have reports or service deliveries established for our neighborhood. Going through with this October 5th plan is premature especially because we are the ones that are going to be harmed if we don't have those services established prior to a decision on the future of our neighborhood. Thank you.

>> Mayor Reed: Staff, what are the noticing requirements for the October 5th meeting?

>> Laurel Prevetti: We've been following the city council's policy on public outreach and again I don't want to get into the substance of the matter.

>> Mayor Reed: I just want to make sure are we giving additional notice for the meeting of October 5?

>> Laurel Prevetti: We will, because it will be a public meeting.

>> Mayor Reed: Okay. That concludes the public comment on the public record. Is there a motion?

>> Councilmember Constant: Motion to note and file.

>> Mayor Reed: Motion is to note and file. All in favor, opposed, none opposed, that's approved. Item G, Boards, commissions and committees. First item is the -- to approve a process to nominate a fire retiree representative for appointment by the city council for board of administration of the Police and Fire Department Retirement Plan. And under that is a ratification of a process, pretty much the same thing I believe, and forward it to city council for formal action, September 15th. That category. City Clerk.

>> Lee Price: Mr. Mayor, I'm going to turn it over to Dennis Hawkins assistant City Clerk to provide a quick summary of this item.

>> Good afternoon, Mr. Mayor and members of the committee. Dennis Hawkins, assistant City Clerk. As the council is aware, there have been changes to the composition of the Police and Fire Retirement Board which will now include both a fire retiree and a police retiree. And this process outlines the procedures in the time line to elect or nominate for the council's appointment the fire department representative. The city council, in the late 90s approved a process for the election of employees and retirees and what we have done here is adhere to the general time lines of the process. However, the specific election date identified in the process doesn't work because of the late-start given the council's approval of the ordinance a few weeks ago. Basically what we're asking is the council ratified phi the process with a slightly later election date. And we also have received a request from the police and fire retirees association to clarify the process, the nomination process, and they are suggesting we clarify that the fire retirees will nominate the person for appointment, but all retirees both police and fire would elect or vote on that nominee. And then when it comes time for the police retiree, the police retiree members would nominate that representative but again both police and fire retirees would vote in the election. So it's a slight modification or clarification of the process, and we'd like to bring this back for full council action on the 14th. And we'd anticipate doing a supplemental memo just to clarify the nomination process as requested by the retiree association.

>> Mayor Reed: Okay, I think I have some people want to speak on this. Do you have cards?

>> Councilmember Constant: I have a question in the meantime.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: My question, to either Lee or Dennis, is how does this fall in line with the other classifications of membership, and when we expect to see those changes implemented?

>> We have coordinated this time frame with retirement services and it will dovetail very nicely with bringing forward of public members for the retirement board. So we anticipate with this time line that the first meeting that the fire retiree would participate would be January of 2011. And we're working on the recruitment process for the council, for the other public members, we'll bring something forward for the council's consideration shortly on that.

>> Councilmember Constant: Great, thank you.

>> Mayor Reed: I've got a letter here from Jay Wendling about the number of signatures required to nominate. Are you including that in your recommendation?

>> Correct. The current procedure requires 10 signatures. We're just clarifying that the 10 signartures for the fire retiree position must be fire retirees, and vice versa.

>> Mayor Reed: Okay, anything else on this, anybody want to speak on this? Apparently not. You now need the approval and to put it on the council agenda for the 14th is really that motion.

>> Councilmember Constant: I'll link that motion.

>> Councilmember Chirco: Are there speakers on this item? Okay.

>> Mayor Reed: We have a motion to approve. All in favor, opposed none opposed, that's approved so that will be added to the September 14th meeting agenda. We have nothing on work plans or annual reports, I think, so we have workload assessment for council requests and referrals, we have the workload assessment for -- no, not the workload assessment. The work plan for the retirement reform task force. H-1A, retirement form work plan, memorandum from the City Manager and H-2 is General Fund stakeholder assessment plan, which we are reconvening for retirement issues. Let's consider H 1 (a) and H 2 together. Anybody wants to comment and then we'll come to the workload assessment. On the retirement reform work plan first. City Manager.

>> City Manager Figone: Yes, I'm prepared to give the committee a high level of what you have in the start report, and then my staff is here to help answer any questions that you might have. So what is before you today is our proposed work plan for the retirement reform, pension reform work that the council directed us to take up at the time you determine that the pension reform ballot measure should proceed. And so what we have here is a framework for that work plan, and so what I'll talk you through very briefly are some of the key highlights of the memo that's before you. First of all, the work plan basically recommends a process that picks up where the structural deficit elimination task force left off on this issue. The idea of pension reform, or second-tier to the retirement system, was one of the items that came out of that task force's work. But they really didn't take it up in great detail because of the many other pressing items and ideas that could have added more immediate value given where we were with our structural deficit. The vision that we have for the work of this task force is to develop major considerations and concerns with the existing retirement system that the council could then consider as informing guiding principles that the staff would use in proceeding to the meet-and-confer process with our bargaining units. The detailed hammering out of any sort of pension reform and the, as you can imagine, the details that would come out of that process really has to happen at the table with our bargaining units. And we are going to be initiated contract negotiations with all 11 of our bargaining units in January. So the work of this task force, as a precursor to the council direction that leads into those negotiations is really a critical front-end piece of retirement reform. In the memo, we have presented a very focused work plan that would take place over the course of four meetings, over about five weeks. And the meetings would begin on September 29th, as the mayor said the composition of the task force is presented in item 2 but councilmember Pete Constant did chair the last task force and would chair this task force. You'll see in the first two meetings, it's a lot of education and an

informing of the task force about our current plan what the issues are, some of the sustainability concerns, key drivers of cost, what is happening regionally and nationally in this topic of pension reform, and that would then engage the committee in a topic that would lead the committee to a thoughtful consideration about the areas that the council should consider as you're setting direction ton meet-and-confer process. This work would be staffed by four departments, currently engaged in various levels of work on this topic. City Manager's office, specifically the office of employee relations, the City Auditor's office the city attorney's office and of course the retirement services department. As you all know resources are quite limited these days and so the work plan does reflect a very focused but value-added work plan. And one that can draw upon work that really has been underway for quite some time as we have been talking internally and thinking about this issue for quite some time. The facilitation of the task force would be handled by Kim Walesh of the Office of Economic Development, our chief strategist and staff has already done a lot of internal discussion about how we would proceed and we would certainly coordinate with Councilmember Constant to support him in his role as chair. So with that, we do know that the committee, if you do approve this work plan today, it's formally reported out to council on the 14th. What we would do is, we would immediately move to get these meetings on the calendars of the task force members as recommended by the mayor and Councilmember Constant so that we ensure there is no down time and people can prepare for the meetings. So with that I will stop and if you have any questions for me or my staff we're happy to respond.

>> Mayor Reed: Thank you. I'd like to just focus on the calendar part of this, because the calendar drives some of the decisions that we have to make. We're going to start negotiations in January, with ten or 11 bargaining units. And the second tier or pension reform is on each of the agendas for the bargaining units. Before we can start the council needs to give some direction on that which means we need to have a meeting sometime, and that would be in December. And that's pretty much the framework. We have to have the work of this task force done, in time to get it to the council, in time for us to include it in our decision making process. Because the calendar is going to keep going, whether we like it or not. So the date for this to come to the council looks like November 18th, which is a budget study session. But then the council would probably take up the direction on the negotiations at a later meeting, and there are only about three later meetings after November 18th, because we have a holiday and then we have December. So we are constrained by that, and that's why it's important to

constrain the scope of the work plan. This is a task force. It has a task force that we're hoping the task force will take on and do that task in the time frame where it can be useful for the council. I know there are people who think it ought to be a different task or a bigger task or something else and we may get to that something else eventually but in the meantime we need to get this work done. Hopefully the members of the task force will agree to do that. We have polled are who was on that and almost everybody are willing to serve on that with the exception of a few people that have other things in their lives to do that may make it impossible for them to serve. We have identified those individuals in the memo from Councilmember Constant and I. We have a group of people who are well educated, well informed and very well connected in our community to serve on this group and if there is a common ground, we will find it through the efforts of the group. So I think this is the appropriate starting place for this work plan. Anybody else? I know there is some people from the public that want to speak. Might as well take that now. George beattie and then Pat Dando.

>> Good afternoon, Mayor Reed, members of the committee. Time limit I have?

>> Mayor Reed: Two minutes.

>> I have two minutes, thank you very much. As we stated, as I stated previously, the POA has been on record with the City Manager's office the chamber of commerce on the fact that we understand two-tier retirement is an issue that needs to be addressed. We said it should start when it starts at the state level, that time is here. But we're also on record saying that this is something that needs to be thoroughly investigated and vetted out. We have had the current system for decades. We need to do a nationwide search to find the best parts of a lot of other retirement statements. The nuggets as you would say. As this work program is currently written, quite frankly, I don't understand how we get to doing a thorough vetting on something that's going to impact us for decades to come, as well as our ability to attract qualified employees to do the kind of work that Police and Fire do. A general understanding of the City's pension, I think we need a specific and detailed understanding of the City's pension plan because I think a lot of our citizens don't even know exactly what the details of the plan. A detail under a -- we have a general understanding of national regional trends. We need a specific and detailed understanding of what the national trends are. Because, once again, this is something that's going to impact

us. Identify the City's concerns. Well, what about the employees concerns with regards to the existing retirement statements? I look at this, we're trying to push something in four, five weeks that's going to have a tremendous implication on the citizens, the city, and the employees. And then we want to connect that to the negotiation process? This thing alone in itself is an animal to itself, let alone to throw it in on top of negotiations. Currently written, the way it will be -- it appears to my members, is that this is basically window dressing, and this plan has already been decided, and it's just going to be -- we'll put it out there, and this is what we're going to go forward with, come January.

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Pat Dando and then Bob Brownstein.

>> Pat Dando: Thank you, mayor and City Council. Thank you for allowing the community to get involved in this again. The structural task force put together some very good ideas. Some of them have been implemented many have been discussed but this is more that we can do. This is one of the issues. I also want to say I think it is important to focus, to be very specific, and I agree with George Beattie's comment that we want to be thoughtful about this, because it will have a long-lasting impact. Time is of the essence. We have been facing this now for over nine years, so it is time to move on. My suggestion is, and it's kind of the elephant in the room, if you will, that there should be probably three very specific proposals come forward. This isn't anything new, with labor unions across the nation. They've been facing this. There are some good programs out there and I think it would be helpful if our friends in labor bring that forward for us to discuss the best. As George said, pick the nuggets from them, I have a feeling this has been going on for some time because this is no surprise. The second is to get the same type of report from the private sector. The private sector faced this about ten, 15 years ago, what are the best of the nuggets in two-tier systems. And then finally, we all want to work towards the same effort. That is, to find a way that we can get out of this deficit spending without having to cut police, fire and other services such as libraries, community centers, and other services that are important. So I look forward to working with you. But I

really hope that we focus on bringing immediately those issues that again that's the elephant in the room that we want to get right to. Bring those examples to us so we can discuss those. Thank you.

>> Mayor Reed: Bob Brownstein and then Ed Rast.

>> Bob Brownstein: Mayor Reed and members of the committee. First, I would hope that the committee would approve this work plan as a tentative suggestion for the committee, even a minimal respect for 20-odd people who are going to be putting time in on this, suggest that they be consulted and have a chance to discuss the work plan. What information they need, what subjects they think are important, whether the time line can be modified in any way. And on the subject of the time line, as the mayor indicated, probably in December, the council has to make a decision. But not on November 18th. November 18th is the budget session, two-tier pension system is going to have virtually no impact on the budget of 2011-2012. So there is time there to put another meeting into the process. Ten hours is not a lot of time for an issue of this complexity. This committee has some intelligent, hardworking people in it. They vary greatly in their background on public finance. Many have never read an actuary's report and they will need time to deal with an issue of this complexity. There are some suggestions I have in terms of the work plan but would I like to discuss those in the context of the committee's first meeting as opposed during two minutes before Rules in terms of trying to have this effort be as effective as possible. Thank you.

>> Mayor Reed: Ed Rast and then David wall.

>> Ed Rast: Hi, Mr. Mayor, Ed Rast. I agree with the comments that George, Pat and Bob said. That I think you have to have input from the committee. I think you have to day focused and thoughtful on it to arrive at a conclusion. Part of the use of a community committee like this is to get new ideas or at least get the consensus of what really people feel about what you want to try to reform or change. One of the things that I think we need to talk about is if we are going to change our compensation or pensions, et cetera, what we really have to take a look at is the total compensation, how it is comparable to other cities who are competing for the best employees like we are. And the city in the past has really not taken a look at total compensation. Because each city has a

different component to add that total compensation together. You have to look at that because otherwise if we're not careful we're going to lose our best employees to another city because we are not paying competitive wages et cetera on a total comp basis. Maybe we're paying the same money out the door but it doesn't have the right mix of things that people will be attracted to. I think it's important to get information from the committee on some of the things. But at the same time, I am aware, and I think everybody else will be aware that we have a deadline that we need to meet within the hours necessary. I think the last thing is, it would be really helpful to get the information out that is already available to the committee and as soon as possible. If there's other things come up in the next couple of weeks before the end of the month, get that information out, so people have time to read it so they can go into the meeting prepared. They don't -- that isn't the first time that they are going to see what the city has been working on for six or eight months or whatever it is. So I think it's important to get the information out as soon as possible so people can get used to it. And if they got questions, we get some answers before we get into the room. Otherwise we're wasting a lot of time on just things that could have been done before the first meeting. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: Previous speakers were quite eloquent in their presentations of what is needed. In reference to what is omitted, is anyone from the finance department with reference to the creation to financial algorithms that could provide for the annuitization of public service employees in perpetuity. Now the seed capital required for this type of function would be significant. But it should be investigated and you have the necessary resources to look into it. With reference to two-tier systems within public safety employees, I object to that wholeheartedly on the base the creation of two second class citizenship within people that are serving and saving our lives is much different than other employees even though they're equal in my eyes. I think the way the city has gone about this has been very substandard. And I don't mean to be disrespectful by any means but the collective wisdom that sits before me goes back to the times of Methuselah, and you've had a lot of time to address financial issues. But financial planning, or strategic long-term financial planning seems to be lacking in the city. Thank you.

>> Mayor Reed: That concludes the public testimony. We'll have a little committee discussion I think. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Just to address a couple of the comments made. One of the speakers mentioned that the task force's only tasked with looking at the City's concerns with the retirement system and I just want to be sure it's clear to everybody listening that meeting 3 is specifically designed to identify any major areas of concern or consideration with the City's system. It doesn't say from the City's perspective, it is the intent I know because I was part of helping create this work plan, is that it's concerns from each of the stakeholder groups and that's specifically why we have such broad stakeholder representation. I do think that, given the amount of time that we have and the limited scope of what we're doing, that this is appropriate. Now, there is going to be a lot of getting people up to speed and putting a lot of information out there. But I think what's important to understand is, we're not determining ore trying to determine what total compensation is. We're not trying to determine what the second tier retirement benefit ultimately is. The intent of this task force is to look at everything from several different perspectives and come up with, for lack of better terminology, sort of a menu of what's out there in the world. What can or could be done in the area of developing additional tiers. I can tell you that while we may not talk a lot about total compensation, in public meetings, it's a critical factor that we use when we're discussing contract negotiations and comparables with other cities. That's something that the council does that is provided to us by our office of employee relations on an ongoing basis, so we do do that. And finally, we already have multiple tiers within the city. We have the redevelopment agency employees that, as you see, sit side by side with city employees doing sometimes very similar work on the exact same projects, and they're in completely different retirement systems. There's examples like Los Angeles police department has multiple tiers, somewhere in the range of five to seven different tiers. It may not be normal as far as our individual bargaining units, but I think it's becoming a new normal for all employees under all different types of employment relationships, whether it is public sector, private sector, locally, regionally or across the nation. So it is just something that we're faced with and it's something we need to deal with. So I do urge the support of the Rules Committee, to move this forward, so we can get this task force working. And I'll tag a motion on the end of that to approve this with this item and the membership roster.

>> Councilmember Chirco: Just -- I will second the motion, but just to ask if the task force is asking for specific information, does it have the flexibility to allow for that?

>> City Manager Figone: We have talked as a staff about the forecast that we think could be helpful to get to the task force before their first meeting. And so we are going to put that together. I'm looking at the team. I think what we would do in distributing that, if there was other information that members would like before the first meeting I'm sure we could get it to them. We are also trying to be real reasonable in terms of how much can be absorbed for some of the reasons that members who spoke today or some individuals, some information I think we would get out is a very good kind of primer and start up packet for the committee members to kind of get them to the same level.

>> Councilmember Chirco: I really respect that but if you let the members know if they have any specific requests to let you know. But the intents, is that to make a focus not get so broad based that you dilute the purpose of the task force?

>> City Manager Figone: Absolutely. We would be happy to do that.

>> Councilmember Chirco: Okay, thank you.

>> Councilmember Constant: If I could jump in, one of the key considerations, when I started talking about this with the mayor, in bringing together the previous task force, is the fact that they have been through this process. And during the last process we had a very good response from staff, and the task force members asked for a lot of specific information and different materials. And I think they were very satisfied with the response that we got from staff in each of those areas. So I think they're going to be coming into it expecting to operate as we did in the past. And I think that's the expectation that we're going to lay out as we start the meeting, as well.

>> Councilmember Chirco: And I certainly respect that. I just heard a couple of comments made about particular kinds of information. It sounds like it didn't happen, it just -- I wanted to call that out in a public setting. Thank you, City Manager.

>> Mayor Reed: I want to talk about the importance of the November 18th date. Yes, there is some time after that. But I want to avoid putting the city council in a position, on the last meeting of December, where we have these kinds of issues on the agenda along with hundreds of other decisions. I do not want to back the council into the corner, and that's why I'm trying to get the information, get the decisions, get the recommendations to the council sooner so the council has time to think about what the council wants to do with that. I think the November 18th date is important to get us the information earlier, so that we're not the ones trying to make a decision with really not enough time to do whatever the council wants to do with it. And I understand it may be an overly optimistic date, but I think it's really important for us to set that parameter, so that allows time for us to do our work. I know that puts the committee in a little bit of a box, with less time than perhaps the committee would like. But we have our own box that we have to deal with, and I want to give the council a little more room in that box for making good policy. Anything else on the motion? Motion is to approve as noted with comments from Vice Mayor, information which will be provided. Anything else? All in favor? Opposed? None opposed, that's approved. That's approved. That was H-1. H-2, we have H-1 (b).

>> City Attorney Doyle: Mr. Mayor, excuse me. I want to note just for the record, the clerk and I were discussing whether this needs to go to council for approval. The Rules Committee is giving authority to approve work plans of council standing committees. But I don't know if the delegation by the council -- I don't have the record in front of me -- was -- how broad it was of authority. This may need to get on. If it is, we're going to bring it back on the 14th.

>> Mayor Reed: Okay, this will be ultimately reported out with the Rules committee on the 14th. Right?

>> Lee Price: Actually, the report wouldn't come for a couple of weeks yet, so -- and typically, since you blessed the appointments, even though the committee approved them, you know, perhaps we should move it forward --

>> Mayor Reed: Yeah, we need to get moving.

>> Lee Price: -- as a separate cross-referenced item, so that we can get moving, especially since the first meeting is September the 29th. Okay? So we'll turn this around on the 14th.

>> Mayor Reed: September 14th, okay. The item H-1 (b), workload assessment for proposed ordinance prohibiting smoking in outdoor and common areas. City Manager.

>> City Manager Figone: Actually, assistant City Manager Ed Shikada will be presenting this item.

>> Ed Shikada: Thank you, city manager, Mr. Mayor, members of the committee. Ed Shikada, assistant City Manager. I'll lead off for staff our brief overview of the report we have before you. I'd like to express our appreciation to Councilmember Kalra and Campos for bringing forward this opportunity for us to discuss this topic. Clearly, the issue of reducing the impacts of secondhand smoke is an important Public Health issue. And so the item brought forward has given us an opportunity to look at our preliminary review of the level of effort that would be required in order to take on a regulatory approach in this area. Also, allow us to look at other -- its relationship to other work plan ideas already, under way between the administration, as well as some options we'd like to present to the council. With that I'd pass it on to Mike Hannon to provide an overview of our report.

>> Thank you, Mr. Mayor, members of the committee, Mike Hannon, code enforcement official, joining me Laurel Prevetti, the assistant director of Planning, Building, and Code Enforcement. I want to thank you for this opportunity. Thank you, Councilmember Kalra, for bringing this issue forward. The development of the work plan that you have in front of you was actually developed by Code Enforcement in consultation with the City Attorney's Office. And there are just a few points I want to emphasize as you review the workload assessment. One is the -- the first issue is the impact on other city priorities. And I would direct the committee to page 4 of the workload assessment. There's a number of ordinances that the city has already in the queue that we're working on, including medical marijuana, the San Pedro Square kiosk, tobacco permitting, public entertainment, and the

list goes on where we have at least 20 other ordinances that we, the city, are working on developing, enhancing, or amending, that will have the impact -- will be impacted if we move forward with a smoking -- extending the amendment for smoking outdoors. In addition we need to look at the legal analysis that will need to be done if we move forward with such an ordinance and I would refer the committee to page 2 where we talk about you know right now smoking outdoors is certainly something that is permitted in the City of San José. And in some cases we've developed policy and/or permits to factor in smoking in the outdoor venues, for example in restaurants. So we'll need to certainly look at the legal analysis as they relate to those activities. Third, the outreach to our stakeholders. Any time we put a law on the books it is something that our residents expect will be enforced. And there's a lot of stakeholders that we would need to reach out to, to make certain that they are aware of what the rules and regulations are, should code enforcement be in the position to proceed with any level of enforcement. And on page 3 we list the many stakeholders that we would need to reach out to before implementing such an ordinance. And then finally on page 4 the staffing. You know code enforcement was one of the organizations that saw significant cuts in our staffing over this last year. And of course any time we draft a new ordinance that is going to be regulatory in nature I'm concerned about the staffing and how we're going to enforce some of these provisions. I do want to mention to the committee that that would be of concern to code enforcement. We would like to emphasize that we have put I think forward several good recommendations for the mayor and the council to consider on this item. And I think what we'd like to emphasize is it really should fall upon the county of Santa Clara as the public health agency for the region really to take a leadership role in this area. Certainly, anything we can do to assist the county if they move forward in developing regulations that would impact the entire county, we'd certainly be willing to sit down and engage with them and work with them on this legislation. But we've put some good recommendations forward and we would ask this committee accept the report and ask staff to move forward with recommendation number C. And I'm certainly here to and any questions you may have.

>> Mayor Reed: Right. Any questions from the committee? Councilmember Constant.

>> Councilmember Constant: I just have a question as far as it relates to community stakeholders and outreach. First a comment. I think we need to make sure if this goes forward, the California restaurants association is cloud specifically in the outreach. But one of the worries I have is, looking at a policy that's going to

affect the entire city and having one community engage image meet, in a city of a million people that are going to be -- where there's a significant number of businesses and individuals, big businesses, small businesses, just a lot of impacts. And I know when we've had other citywide policies we've had much more extensive outreach. And I'm just concerned that that would be -- it would be short changing the community if we only had one community meeting in a city as large as we are. And then a comment on the section 3, the impact and other priority. When you look at the list of pending ordinances that we have, it would be very difficult for me to push this one on top of or in front of any of these other ordinances. I think that we -- some of these have been hanging for quite a long time. Some of them, specifically, the medical marijuana ordinance, has caused quite a bit of community concern all over the place on all sides of the issue. And I think there is a lot of other priorities that we can't just simply push off. So those are my comments, and I look forward to hearing others.

>> Mayor Reed: I had a question about the possibility of a grant from the Santa Clara County Department of Health. We might be eligible for 90 to \$160,000 of grant funds. Might be? Could we refine that down to yeah, we can get the money because that would have a big impact on my willingness to move ahead with this relative to the other work. If we could get outside funding to help pay for the staffing, then we don't have to make the choice between this ordinance and you know dozens of other things that we've already asked the staff to do. So that would really be an important factor. It looks like, in a description in there, this would fit into are the the area that they are willing to do grants, and that would be very helpful in the decision makin pricess. Of course, that doesn't do anything about enforcement. But up front, the real question is, what kind of resources is it going to take to do this and when can we get to it? So does anybody know anything about this grant process?

>> Laurel Prevetti: Yes, thank you, Mr. Mayor. We started to have conversations with county public health prior to preparing this workload assessment, because we understood there were some resources that could come forward. We were cautionary in our language deliberately because they are still putting together their grant parameters. So we do not yet know if we would in fact qualify. We believe we would, but until a grant is actually applied for and received, we didn't want to over-commit. And I think really that speaks to some of the other comments by the committee, that we were trying to be conservative in terms of resource outlay, so that way this could be done expeditiously if this is the will of the council and of the committee. But certainly, if there is

additional tasks that the committee would like us to pursue, or the full council for that matter, we just wanted to be cautious and conservative and not make this a longer and more involved process than might be required.

>> Mayor Reed: Vice mayor.

>> Councilmember Chirco: Yes, has there been any conversation at the county level expressing interest in this kind -- because they have got the grant money. Because any time San José kind of singles themselves out, whether it's retail or building codes, I hate to do anything that's not a larger area than just San José. Because I look at our businesses and I'd like to have a level playing field. So do you have any sense of where the county's at on this issue? Since they do have an almost \$7 million grant funds available.

>> Ed Shikada: Perhaps -- why don't I lead off, and I believe we have got a representative from the county who could speak to that as well. It is our understanding in conversations with the county that they are looking at it from a countywide perspective, as well. And I believe board president Yeager has been particularly active in pushing forward initiatives in this area.

>> Mayor Reed: Okay, why don't we hear from the county representative.

>> Janie Burkhardt with the public health department. Yes, we are looking at this from a countywide perspective. We are very, very interested in partnering with the city on this, but we want to make clear that we want to partner, we don't want to lead on this. We are not the -- we don't have the authority, obviously, to set ordinance within any city. We're doing what we have authority to do within the county. As Ed Shikada said, we are pursuing county-level ordinance with the unincorporated area, but we do have funding dollars available right now as are laid out in your memorandum there that we would -- you are -- the city is indeed eligible, and actually should have something out by tomorrow to the cities association and letters to all City Managers about this funding opportunity.

>> Councilmember Chirco: I think that would really be the collaborative way to go. So is the letter to invite the various cities to participate?

>> It is. The base award is \$15,000 to all cities and a further amount based on population.

>> Councilmember Chirco: And would you go through the cities association?

>> The tentative plan, we have been working for feedback from cities on how best to do this. It is a new process for us but we would go through the cities association originally, speak at that association meeting, hopefully on the 7th, Dr. Fenstersheib will be there, I believe, and then a letter to all city managers. And then, if need be, have additional meetings, funding opportunity meetings to answer questions about this. It is basically -- it's not an RFP process, it's not competitive. The funds are being offered to all cities.

>> Councilmember Chirco: Well, I think the concern here is personnel, money. We just, as a city, don't have the resources.

>> We have a great deal to offer in -- other than resources. We have this grant opportunity which is one-time, two-year grant. Very limited amount of time to get the funds out. We really hope that you can take advantage of this opportunity now. In addition we have ongoing services through our proposition 99 funding tobacco education staff that we can provide a lot of other resources to you including community outreach. We as part of this current grant that is through ARRA grant funding we also have a contract with the local Public Health Law and Policy, a group that has some deep expertise in this area. We also have a contract with them to be available to cities, to city attorneys about these specific issues.

>> Councilmember Chirco: So this sounds like it might be just a little premature, if you're going to be contacting the City Managers, and the city --

>> I'm hoping these could be parallel processes, where --

>> Councilmember Chirco: We don't have the resources.

>> City Manager Figone: If I could just maybe direct a question to the staff. Resources are terrific if you ask actually buy additional help and not just use it to supplant and save General Fund money. Because your issue is capacity. How do you envision if we are successful in getting the resources, using them, is the first question. And the other I think we just need to understand eyes wide open. When he got into the medical marijuana issue, we didn't know what we didn't know. My question to staff would be as we progress what would be those check points for checking back, and really helping the council to understand if this has gotten bigger than we all anticipated for all of our good intentions? So first of all how would you use the money to buy capacity not you know just supplant General Fund or other existing city resources and then the concern about once you jump into this sort of effort, how do we know that it's, you know, gotten larger than what we expected?

>> Sure, and we would not -- we would certainly not want to venture into an area where we're trying to supplant current city service and we're trying to provide code enforcement right now. We've defined our services in terms of emergency priority on routines. We've heard loud and clear from our residents that we're not even providing adequate services when it comes to the quality of life and the neighborhood issues to which they have been asking for increased services. So we certainly would not be looking to supplant any of those existing services. Code enforcement has --

>> City Manager Figone: If I could just stop you, Mike. The money as I understand it is for policy development. So at this front end before we even get to policy implementation, how would this policy development unfold with this funding? You know what I'm asking, Laurel?

>> Laurel Prevetti: Yes, yes. We would be working very closely with the city attorney's office. So I think our biggest resource constraint actually is the legal. So similar with the sign code update, we were able to identify additional resources and then we are in the process of hiring additional legal assistance, so we can finish the sign code update. Again, we don't know all of the dollars that are available but typically, fees can be quite high. So I

think we would need to get into the specifics of how much money is actually eligible for San José. So that way we would know, does that then pay for a portion of an attorney who could actually help us write the ordinance. It's wonderful to know, that we've got the technical assistance, so we don't have to do all of the research anew, and that will definitely help us. So we do very much appreciate that. In terms of the lay staff who would be helping with the process, I don't see how we could buy a portion of a division manager or a portion of an assistant director. It's going to be how we stretch the nonlegal staff to be able to get this work done. And that's really our challenge. Right now, because it's hard to add increments of the nonlegal staff to our organization.

>> City Attorney Doyle: And if I can just sort of piggyback on that, Laurel's correct. Sign ordinance is an example. Just as an example, all the owners that are listed here as an example, this is not exhaustive. This is one attorney's assignment. She has these ordinances that she has to work with. So adding one more adds to her workload. So to the extent that we can contract out or get assistance to help us move this along in the policy development phase, that is a tremendous assistance. But then the long-term issue are the enforcement issues, which obviously has an impact on your staff and my staff, too, in terms of bringing enforcements. But I think at this point we're talking policy development, and it's to the extent we have grant funding, that would help move this quicker.

>> Could I add that these funds could be used for enforcement as well. It is one-time funding as well but they could be used as startup funds for enforcement. And just want to echo again that we have tremendous resources available other than these funds that can help offset staff time, staff resources, we'd like to work with you on this very closely. Are there any other questions for me?

>> Mayor Reed: Nope, thank you very much. Appreciate. One of the concerns I have is about the regional competition. And I do not want to put the businesses of San José in a position where restaurants for example, people can just go to Campbell.

>> We are asking all cities in this.

>> Mayor Reed: I know you are asking all cities. But I'm just saying if this doesn't move as a county wide ordinance I am not going to be supporting it, I don't care what it is. Because we already have trouble enough with our businesses and I don't want to put them at a competitive disadvantage in that area. Some things just need to be done on a regional basis or they're not going to happen. I'm less concerned about the prohibition of smoking on unenclosed areas of the public and common areas of multifamily residential areas. I just don't think that's much of a competitive thing. But that's really important, I know it's going to be hugely important to some of the stakeholders in this group. Because we already got people who want to go Campbell just to live, let alone to a eat. People who do go out to dinner vote with their feet, very easily, and so that's an issue, about the regional piece of it. Pete.

>> Councilmember Constant: Since we spent so much time talking about the dollars and cents of this, I think it's also important to point out that when we took the similar action with the no smoking in the parks, we found out that we ended up spending well over \$150,000 in public outreach campaign afterwards, which was a very significant amount of money. And that was something that would have to be done, as well. We -- I know these aren't public areas, but we had a lot of costs in putting signs up in all the locations, which are costs that are going to have to be borne by somebody, maybe not necessarily us. I think that's some of the things that we have to take into consideration. And that's another reason, if this goes forward, that we need more stakeholder input on a broader basis so we can identify all those impacts.

>> Mayor Reed: We have some people that want to speak on this. Why don't we take those before we finish our conversation. Roger Kennedy followed by Dennis Acha.

>> Mayor Reed and councilmembers thank you. I'm Dr. Roger Kennedy the chair of the tobaccos free coalition of Santa Clara County. I would urge you to move forward with these policy changes. Our coalition has had for many, many years the protection of people from secondhand smoke as one of our important, important policies. I would urge you however to drop the 9:00 p.m. cutoff time, since secondhand smoke does not magically dissipate at 9:00. And we do want to protect both staff and patrons from the ill effects of secondary smoke. Janie already mentioned that the resources we have available through the committees putting prevention to work, which

includes the legal consulting team, which are very experienced nationwide in dealing with all these kinds of issues, I think that we may overestimate the issues, considering that we had a much more major change when all the bars and restaurants in the state of California went smoke-free with relatively little difficulty. So I think that it is not going to be such an overwhelmingly traumatic event for most businesses. So I would really hope we could pursue there because I think it's really important for all of Santa Clara County. And I agree with you Mayor Reed, that it should be county wide effort and we are working very hard. We are a countywide coalition, and we will bring everything we can bear to help with the promotion of this throughout the county. Thank you very much.

>> Mayor Reed: Dennis Acha and then Josh Howard.

>> Hello to all of you. I just wanted to mention that we did surveys and we've communicated with several restaurants in the past two years, dozens, hundreds actually, and we found that 83% of all of them stated that they would not oppose restriction in outdoor eating areas. I also wanted to mention that based on research I've read, now I'm going to have to look it up and I could possibly send it to you, that business improves when there are smoking restrictions as imposed to being hampered. So I'd like you to keep that in mind. Also, smoking in the multiunit housing complexes is a dear issue to me. I have a property under my name in San José, an apartment complex and I actually experienced secondhand smoke in my apartment. Unlike many others though, you know I was able to write a letter and stop it. Many medium don't have this option. We get dozens of calls from residents who complain about secondhand smoke from their neighbor. When you share space -- when you share walls you know there's a lot to be said about that and these people simply have no protection. They have no recourse, they can't do anything. Think of your neighbor watering their lawn excessively, and it's getting into your house, flooding your house. It's the same concept. The neighbor's smoke is getting inside the building, and I've experienced this firsthand. So I think this is a very important issue that affects many people in San José. So please, consider protecting these people. They have nothing to do. Thank you.

>> Mayor Reed: Josh Howard. Followed by Sarah Miller.

>> Good afternoon, Joshua Howard William California apartment association. Wanted just to mention with respect to the issue on the prohibition of smoking, the proposed one for common areas and multiunit residential housing we've polled on this issue and discussed it at great length with rental property owners, not just in San José but across the state, and it is an issue that many rental property owners are already on a voluntary basis implementing in areas around the pool, around the walkways. What I would suggest is perhaps there might be a way bifurcate this issue to deal with the businesses and the restaurants as one process and the multiunit residential as a separate process. I think there is a very workable solution. I've discussed some of the elements of this with Councilmember Kalra, where we can balance Public Health priorities, operational needs of rental property owners, and not put an undue burden on city resources both to develop the ordinance or amendments to the current municipal code as well as for enforcement. So I'd like to offer the resources of the apartment association to continue to work with staff and the councilmember on that piece of the proposal. Thank you.

>> Mayor Reed: Sarah Muller and then Carol baker.

>> Good afternoon. My name is Sarah Muller, I'm the director of health policy and community development at working partnerships. Very rarely does an opportunity come along where we have the chance to develop good public policy and also leverage funding to develop that policy as well as to implement it and we really have that opportunity today. Councilmember Constant's proposal to strengthen our secondhand smoke ordinance is here locally will help reduce the harmful impacts and exposure to tobacco and create a healthier environment to our local residents. I would also argue it could make us more competitive in restaurants because the vast majority of our community members do not smoke and can enjoy a better environment when they go out to eat. The proposal presents an opportunity to also leverage a portion of the \$6.9 million in funding from the county Public Health department's grant. However, in order to take full advantage and leverage these funds to the maximum potential, we have to be able to move quickly so that we can take advantage not only of policy development opportunities but also of implementation of outreach since we know there is going to be an expense on the implementation side. These precious funds while they will come and some portion of the standard based on population will also come on a first come first serve basis. So cities will have to demonstrate an eagerness to want to move forward with policies like the ones presented before you today. The funding runs out in 18 months so if a city wishes to

pursue funding to offset the cost of the first year of implementation we need to be proactive and be able to move forward over the next few months. To help meet this time line the county Public Health department can pay a critical role in partnering with city staff on policy development, technical assistance, legal expertise, modeling other programs, and policies that have been implemented in other regions and helping with outreach efforts to both mitigate negative impacts to constituents as well as staff resources. Given that this is within the City's jurisdiction staff will need to however maintain its role as the lead agency. I urge the council to proactivity move forward with the development of this policy and bring something back hopefully in the next few months so that we can take full advantage of the resources that are available to us. Thank you.

>> Mayor Reed: Carol Baker.

>> Mr. Mayor, members of the committee, good afternoon. I'd like to read to you something from the most recent "Time" Magazine, September 5th -- pardon me -- September 6th, 2010. Smokers know that lighting up can put them at greater risk for cancer and other lung diseases. But the latest research shows that they may be also be putting those who inhale their secondhand smoke at a greater risk of the same ills than we ever knew. Researchers at Cornell medical college and Cornell university in New York City have documented the first evidence of genetic changes in the airway cells of nonsmokers exposed to secondhand cigarette smoke. It goes on to tell about the genetic changes. Later on they say when you look at the biologist there is no safe level of exposure to tobacco smoke. And the final words say, this study should bolster effects to ban smoking in public spaces. I heard you asking for guarantees about funding. I can't guarantee funding but I can guarantee that if you don't pass this, that there will be more and more citizens condemned to the dying of the horrible agonizing effects of cancer and emphysema. Thank you.

>> Mayor Reed: I think that concludes public testimony on this item. Councilmember Kalra is here I assume he wants to speak to his memo.

>> Thank you mayor and I just want to thank all the different speakers that came out from different organizations. I certainly want to thank Josh Howard who took the time to meet with me and I know very simply

you could have objected to this as it adds potentially further burdens but the fact that you want to work with us to create something that makes sense is significant to me and a representative from breathe California I know speaking with breathe they've expressed an interest in terms of outreach and policy development, they've done that with a number of jurisdictions throughout this state as we are all familiar with their work. I want to discuss issues regarding first of all the outreach process. I agree with Councilmember Constant that we maybe can have one formal meeting but there needs to have more than that to really adequately inform the public and the businesses of what we have in mind here. That's something that my office personally hopefully more than happy to spearhead further meetings along with the county and these other agencies that have shown an interest in moving this forward in temps of making sure that the apartment owners, making slur the small businesses and the residents are very well aware of what we would have in mind in terms of any ordinance change. In terms of regional competition, there are studies that alluded to and that show that stricter smoking regulations of places of business, particularly eating establishments, actually increase business they don't decrease business. So I would challenge that and we have an opportunity going forward to even get more information on some of those studies. On two different occasions prior to filing this memorandum, I had a chance to talk to the President of the downtown association. He did knot raise an objection to this ordinance going forward. I specifically asked him to talk to businesses that actually have restaurants, there are restaurants that have smoking. He indicated that there was no objection that he was aware of or that he personally had in moving this forward. In terms of the money for policy development I think we have a rare opportunity right now to access money to pay for some of this policy development in particular. The county has indicated it cannot create ordinances for the city and so I would urge, I think the timing is actually perfect that now tomorrow there's going to be an opportunity for the City Manager's office to take a look at what the process is for accessing some of those funds. I admit that we have a perfect opportunity today to move forward, move this potential ordinance forward. The recommendation option C as indicated by the county representative does not -- does not in any way move an ordinance forward for us and the county ordinance just for the unincorporated areas. So certainly they've expressed an interest to cooperate with us and share resources. A number of agencies have come forward. If the committee is uncomfortable right at this moment because they don't know what that number would be, I would certainly suggest, rather than tabling this, that just to come back in a couple weeks after we've had a chance to talk to the county representative and know exactly what that number might be, if that would make the committee feel more comfortable, in knowing that

we have X amount of money now for policy development. That is something I would encourage rather than just tabling this altogether.

>> Mayor Reed: Thank you. A couple of things come to mind. I had a question, I was around but I don't remember. The development of the county wide toxic gas ordinance I think is what it was called, 20 years ago. We implemented it county wide. There was a lot of work to make sure that every city had the same ordinance. Why couldn't we use the same model here, if the county wants to take the lead and develop a uniform ordinance for the county, county pockets and the cities, the county could certainly take the lead on that. And I don't know how that earlier ordinance was done, maybe we've done it some other times in the development of a county wide ordinance because, if we're going to do outreach, they're going to do outreach, 14 cities doing outreach, it doesn't make sense to have everybody doing everything.

>> Councilmember Kalra: I don't necessarily disagree with you, mayor. I think that, however, based on the representation from the county representative, a partnership is what is sought. We're going to have to at some point, even if we do do something that's going to have shared language with the county, we're going to have to craft an ordinance. We're going to have to have our own attorney look at it. There is an opportunity to access funds to partner and move alongside in a parallel track with the county similarly to what we did with the new greenhouse gas emission regulation with BAAQMD. Our staff still had to look at it, our attorneys still had to vet it. And unfortunately we didn't have access to as much funding to do that. Here we have an opportunity to actually get funding to help our staff evaluate it. We can't simply -- even if the county came to us tomorrow with the proposed ordinance, we would still have to have our staff modify our ordinance, and have our City Attorney look at it anyway. So there is opportunity to get funding. So I think that I agree. I also agree that there is no reason why we can't partner with the company on the outreach component. That's a great way we can share resources, as well as partnering with the apartment association, with working partnerships, with breathe California, with the chamber, anyone else that's interested in helping us outreach, we should definitely take advantage of that to reduce the burden on staff, which I'm certainly cognizant of.

>> Mayor Reed: I don't want to set aside the tobacco permitting ordinance to work on this, for one. I don't want to set aside the cost-sharing ordinance, because those are revenues, for one. I don't think we ought to set aside the public entertainment ordinance to work on this or the medical marijuana ordinance. We can't really set that aside. San Pedro square kiosk ordinance, we can't really set that aside. These are things that have to be done, and it really is a question of the scope of the work and who takes the lead and who does the bulk of the work. And whether it's just lawyers reviewing work that other people have done, or managing the process, I think it's a real big difference in the work plan. And even if we have \$160,000 to pay for the lawyer, that still leaves these other folks who are working on other important things. And personally I think the tobacco permitting ordinance is more important than this, which is why I wouldn't want to set it aside to work on this. Pete.

>> Councilmember Constant: After hearing all of the input, I really think that option D is the most appropriate, and that is, to the spring council committee work plans is just around the corner. The funding window is 18 months, the funding that is going to be needed is going to exceed I'm sure the amount of funding that's available. So we could easily use that funding within the time period that is available. But giving it the time to really look at it in priority, and then that broader perspective amongst the competing interest. Because as Rick mentioned it is not just these ordinances we see here. It could be other ordinances because the owners are assigned to other people. I think that would really give us an opportunity and it is almost right around the corner. And so that's what I would suggest, and of course, like to hear from everybody here, as well.

>> Mayor Reed: Vice Mayor.

>> Councilmember Chirco: City Manager, I know the recommendation was C. Why was that the recommendation, do we have the depth to be even able to handle a C?

>> City Manager Figone: I'm going to askto staff to answer this. I think the operative answer in C is that the county would be lead agency. And so take the front-end work on, in my view, and we haven't spent any time, Ed's been working this on my behalf. But you know, on the outreach, pulling together meetings, taking the lead and convening whether it's our staff or the other cities. And so really to provide that overall management leadership

responsibility that then others can tag into because it's just extremely time consuming and any project that we do in San José we do it well. But to even fashion what the outreach should be and organize the meeting so I believe it was them as lead in that regard that you all were thinking of correct?

>> Laurel Prevetti: That's correct. And as you know it takes work to do even a workload assessment. So we didn't fully flesh out all A B C and D. We really rather wanted to present those for your consideration. If you would like us to pursue or consider any of these others we would be happy to but again it does take work to really think through these issues.

>> Councilmember Chirco: And I thought I understood the county representative to say, they were not in the position to be a lead agency.

>> That's correct.

>> Councilmember Chirco: I have to go with what Councilmember Constant said, we just don't have the bandwidth at this time. As good a cause as this is, and as many partners as there are, I just -- it is not an easy vote.

>> Councilmember Constant: Mr. Mayor, I think I'd like to make the motion to move forward with alternative approach D in the staff memorandum.

>> Mayor Reed: Which is -- is there a second?

>> Councilmember Chirco: Nancy wanted to speak.

>> Councilmember Pyle: I wanted to make a comment.

>> Mayor Reed: Okay, before you do that, let me just say what option D is, which is to hold this proposal at this time and reconsider prioritization as part of the spring 2011 council committee work plans for the 2011 proposed budget. Councilmember Pyle --

>> Councilmember Pyle: This is just a crazy question. Is it at all possible for the county to work with breathe California or any of the other organizations that are involved in this, and outsource the lead group, or does it have to be a governmental group?

>> I can think of no reason why it would have to be a governmental group.

>> Lee Price: Do you mind coming to the mic since we're recording and televising, thank you.

>> I can think of no reason it would have to be a governmental group. I just know that the county public health department doesn't have the infrastructure to take this on as a countywide initiative to do all the things that you said, as far as convening everyone, bringing everybody together. We'd be happy to work with the cities association, with the City Managers association, anything we can do in partnership. And we can do a lot in partnership, I believe. I just -- I don't think we can be the lead agency on this.

>> Councilmember Pyle: And the other part of the question is, if we take a look at part D, what would that do to the funding time line?

>> It's tight. We have March of 2012 is when these funds go away.

>> Mayor Reed: There is \$6.95 million for tobacco prevention?

>> Yes.

>> Mayor Reed: Isn't that enough to contract with somebody to do all the work the county might need?

>> I said that -- this is conceivable. I can't stand in front of you, in front of the Rules committee and make that decision to contract with someone. But I think that's conceivable. I said there's no reason it has to be a governmental agency.

>> Mayor Reed: Vice Mayor.

>> Councilmember Chirco: What I would like to do as you progress in your work, if there's additional information to bring it to the City Manager and Councilmember Kalra so that this is an item that I would like to keep the door open on. It's just at this point we can't expose the city in our financial situation. But if there's more, additional information that changes this, would it be possible to bring it back to Rules?

>> City Manager Figone: Sure, I mean just the outreach to the City Manager's association as well as City's association might generate additional are ideas that would, you know, share the burden or, you know, have some other heavy lifting going on that we could then bring back to you. So we might hear some -- something in those forums, that council could be interested in.

>> Councilmember Chirco: So if we could add that to your motion Councilmember Constant I would second that.

>> Councilmember Constant: Done.

>> Mayor Reed: Okay.

>> Councilmember Pyle: Including the possibility of outsourcing?

>> Councilmember Chirco: Yes, anything that the county can bring back through the cities association, or the City Manager's, or --

>> Councilmember Pyle: Second.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I would still urge the committee to do exactly what the Vice Mayor said, except to actually have this come back in two or three weeks, rather than make a decision now to table this, and risk losing a tremendous amount of funding that would pay for the majority of their work, certainly that the City Attorney has to do, which is the bulk of the cost, and allow me to work with Ed Shikada, Laurel Prevetti and the county to find out how much money we can access. I don't think that's an unreasonable request to come back in two or three weeks. This doesn't jump this ahead of any other priorities we're working on or add any burden to staff. I'll find out in working with the county how much we can access.

>> Councilmember Chirco: And I would ask the City Attorney, I don't think our motion precludes that coming back to Rules in two weeks if there's additional information.

>> City Attorney Doyle: No, it sound to me like the issue is funding, and it's getting the funding plan in place, and making sure we can cover it with either contracted resources or make sure that we can do what needs to be done, and that's a partnership with the county and we don't have that information yet.

>> Councilmember Chirco: So be Councilmember Kalra, I would hope that that achieves your goal. It's just at this point, the decision is really challenging, with our -- but to bring it back for -- and that's what I tried to cover in the friendly amendment.

>> Councilmember Kalra: I understand but the county representative is saying tomorrow is when we'll find out. I can always bring back something to Rules but we already know there's more information coming shortly so that can be assumed we're going to have more information. But I'll go through more hoops if that's what's required.

>> Councilmember Chirco: You're extremely capable legislator and I know that you will follow up, and I will be glad to partner with you.

>> Mayor Reed: Okay. On the motion, all in favor? Opposed, none opposed, that's approved. That concludes section H of our agenda. We have nothing under additions to council committee agendas other than what we just talked about. Open forum? We have some requests to speak. David Wall.

>> Councilmember Constant: Burning your time, David.

>> Mayor Reed: Next time you criticize me, I'm going to blame it on the fact you didn't hear me.

>> David Wall: But then again, I've stated for the record you can do nothing wrong. So how you take the criticism is your own issue. I know I have a different way of look at things especially as it comes to disasters. Yesterday I talked about the need for military surplus equipment and I'm not kidding about that in reference to water trucks. But water trucks can be used for another purpose that you may not think about. Should there be the big one, the collapse of the sewer system, the lift stations, and the sewage treatment plant are very foreseeable. The water trucks, surplus military water trucks, could carry a solution of chlorine to sanitize the streets because of the backup of sewage that will invariably occur should the sewer system collapse, with specifically these lift stations. I really impart that to you to consider. The other issue was, in the Mercury News today, in their editorial page, much of which I downtown as banter, but they issued this review panel for the police chief. This should be public. The City Manager is correct in asserting the confidentiality of the candidates, I believe that would be covered under the work product rule of deliberation. But the actual identity and selection of the people on these citizen review panels for the chief of the San José police should be made public, the process made public, and I make no out of experience, and seeing how this task force for the drunk-in-public was carried out, with reference with no backgrounds as to if anyone on that committee had felonies or misdemeanor convictions. And I don't want to have to ask these questions again and find out that they were not. And therefore, I think it's prudent that the identities of these people, how they were -- the process, how the people are picked, and how they were picked, and that will be it, and I don't criticize you. You're great. Thank you.

>> Councilmember Constant: What about the rest of us?

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