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>> Sean Kaldor: Good morning. We'll call to order the June 7th, 2012 meeting of the San José Police and Fire retirement board. We have present myself, the chair, Richard Santos, the vice chair, David Bacigalupi, Sean Bill, Damon Krytzer, Drew Lanza is absent and will not be attending. We welcome James Mason to the board. We have Vince Sunzeri, Bettina Rounds. We also have our nonvoting member, Pete Constant. And we'll start. As far as orders of the day, a few changes. Item 1.2 will not be heard today. We will combine item 2.7 to immediately follow 3.2, so when Cortex is here, we can address both their deliverable and their contract. Item 3.5 and item 3.6, we'll move to the very end of the calendar to allow us to go into closed session and allow everyone to leave when we do that. As always retirements we'll hear at 10:30 or as close as possible thereafter, whatever agenda item immediately preceding we'll wrap that up and go into the retirements. Also under orders of the day. We received item 1.1 bravo, 1.1 C, the NEPC flash report. We need to waive sunshine.

>> Motion to approve.

>> Second.

>> Sean Kaldor: Hearing a motion and second, all in favor, opposed, we waive sunshine on item 2.7. Also under orders of the day we'll begin I'll turn it into the City Clerk, Dennis Hawkins for the swearing-in of our newly appointed trustee.

>> Vincent Sunzeri: Mr. Chair, if I can ask one of the other items, if we can change this under orders of the day, under 7.6 E, I think it will be worthwhile for us to review this prior to agenda item 4.

>> Sean Kaldor: So you want to pull it from the consent calendar,.

>> Vincent Sunzeri: Correct.

>> Sean Kaldor: We have Item 4, okay, 7.6 E. Any other --

>> Damon Krytzer: Nothing on for today, just duplicates (inaudible) right?

>> Sean Kaldor: We received two items today that I believe were e-mailed out, so we had printed off those copies and added them. (inaudible)

>> Damon Krytzer: Those are the same things that are in the packet, right?

>> Sean Kaldor: Okay. And to be clear, the items you received, under 2.9, that is -- it is confidential right now. So unless we waive confidentiality that is not open to the public. That's our attorney's interpretation to us, we'll talk about whether we want to release that. With that I'll turn it over to Dennis Hawkins.

>> Dennis Hawkins: Thank you, Mr. Chair. Mr. Mason you can stand. Please raise your right hand I state your name. Jms jms jms.

>> Do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of California against all enemies foreign and domestic. And that I will bear true faith and allegiance [Repeating]

>> To the constitution of the United States and the constitution of the State of California. That I take this obligation freely.

>> That I take this obligation freely.

>> Without any mental reservation or purpose of evasion, and that I will well and faithfully.

>> And that I will well and faithfully.

>> Dennis Hawkins: Discharge the duties upon which I'm about to enter. Congratulations.

>> Sean Kaldor: All right. Our next agenda item I'll ask you Russ Richeda to come forward. Please join us yet again. This is in the form of a motion. We've had our general council or our conflihlghts council be Russ Richeda and service to this board and actually the Federated border for 19 years. We've had many different people come through and assist this board for three or four years or five or six years but that's been an exception period of service. You continue to serve this board in the DRO orders. I'd like to make a motion of a recognition for your service. And the motion is as follows: Whereas in appreciation of Russ Richeda's 19 years of service to the board of administration for the Police and Fire retirement plan whereas Mr. Richeda was hired by the board of administration for the Police and Fire plan in 1993 to provide legal services as conflicts council, whereas Mr. Richeda has been instrumental in assisting the board of administration counsel now therefore be it resolved that the city of San José. That the board of administration extends its thanks to Russ Richeda for his years of service and for his adherence to the high standards of quality to this board and for his valued service.

>> Vincent Sunzeri: Second.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion?

>> Richard Santos: Just to concur with what you said Mr. Chair, you were marvelous to come in. The political climate was no different. There were changes that had to be made but it was tough. You always were a gentleman in the 12 years that I was there along with David and he did a great job. Again, never a change. Always a gentleman, always on the job. Too bad during those times, we didn't get enough support, so-called being in charge of this retirement plan because you were always there as a strong person for all of us. The relationship has been great, and thoroughly miss you.

>> David Bacigalupi: I'd like to echo Dick's comments. Having been here with you early on, it's been my pleasure I've relied on you as a board member, as chair both terms, and I think you're one of the most professional individuals in your field that I've ever run into and I just want to give you my personal thanks, as well as the board thanks.

>> Sean Kaldor: Any other comments?

>> Jim Spence, association of police officers and firefighters. Russ we appreciate the effort you've put in all the time you've been here. We appreciate all the energy you put into all the arguments and things that came before this board because I always thought that you gave the retirees the best shake you could, and the best information and let the board decide what had to be done. But we really appreciate all of your energy and efforts and it's sad to see you go, but things will move on so thank you very much for your time and energy. Thank you.

>> Sean Kaldor: Jim Spence, thank you. Any further comments?

>> Richard Santos: Give a round of applause. Congratulations. Air Force, say aye, opposed, seeing none, thank you.

>> Russell Richeda: I just wanted to thank everybody. This has meant a lot to me, it's meant a lot for me to be with this board for the period of time I've been here. A lot of good things happened that I at least had some role in but it's been a real pleasure to be part of this board and part of its life, and help the board members and the retirees to the degree I could. I know you have a ton of challenges ahead of you but I think everybody, the members, the retirees, the citizens are really lucky that they have you guys, and all your team, staff, your new general counsel and all your great and you know, all of you board members to work on their behalf to maintain a system, to continue the greatness of the system that really is great. So thanks a million.

>> Sean Kaldor: Thank you, again. Okay we'll continue with item 1.1, an update in investments from the CIO who is -- not present. So we'll have an update on investments.

>> Good morning.

>> Carmen's traveling this week she asked that I fill in and provide a quick update.

>> Russell Crosby: This is Darren Miller.

>> I'm an investment officer on staff with the city. Three things that we want to highlight that are focused. First is the ongoing hedge fund due diligence, over the past month staff has done onsite due diligence with approximately 25 hedge funds primarily in New York and London. Strategies that are currently a focus. My expectation is that a staff will be ready to come forward with all board and make recommendations beginning in August with additional fund recommendations over the following months. Second item, just to highlight, we're doing work identifying traditional long only equity administration and the global equity and emerging market spaces starting conversations with NEPC regarding equity structures. And lastly, NEPC administers and structure.

>> Sean Kaldor: Any questions? Thank you. We'll move to item A presentation of the March 31st, 2012 quarterly performance report by NEPC.

>> Good morning. I did get a call from a CIO on Friday saying this was a beach towel day and I said what is that? He said if you have a Bloomberg terminal on your desk you put the beach towel over the terminal. Since we issued the report as you know the markets have not behaved kindly. As of yesterday, the market at least as measured by the S&P 500 is down about 8.8% from the level at which it was when this report was generated. So I'm going to be very brief because there's a lot that's happened. We agreed with the investment committee that going forward we will write up a two or three-page summary to highlight key issues rather than walk you through the whole report. But today I'm going to try to hit highlights for you. The markets if you turn to page 2 are pictured there. You've heard the term risk on risk off many, many times. The blue bars are the quarterly returns for the market, for the period ending 3-31. You'll notice they're fairly significant and they all point to the right with the S&P 500 for example up 12.8 -- or 12.8%. So this was a risk-on market. The third quarter of last year, the market was down 13. The fourth quarter the market was up 11. The first quarter it's up 12. And of course as I just said, for this quarter so far, and the quarter's not over, it's down about 8. Small caps did slightly better than large caps. Not-U.S. developed which normally in a risk-on market you'd expect given the additional currency volatility, would have done better but didn't. Due to the overhang in Europe. Emerging markets did quite well. Bonds. I would call

your attention. We are hearing some feedback from board members about the safety of long bonds. And the point is, with the long treasury, the ten-year now at 1.5%, a investment all in long bonds instead of becoming what it used to be as an anchor to the windward, becomes an anchor to your inability to make an assumed rate. There's nothing that can happen with long bonds unless you get long term drops in suvmentd rates and at this rate it's hard to imagine the circumstances. (inaudible).

>> Pardon? Absolutely not. For the year, you saw the results. The only other note I'd make is if you look at the five-year column, no asset class produced more than 7% except high yield emerging market debt and private equity. So this is an environment which we think is an ongoing environment that the ability to achieve assumed rates of return in the 7, 7.5 and 8% rate will be significantly challenged and the old model of the 60-40 equities to bonds is dead. You need to diversify more as you have done. You need to be better in manager selection and strategy utilization. If we skip now just to page 7 for highlights in dollar terms over the past 12 months, the fund had a net investment gain of \$66 million. All of that in effect and more than all of it happened in the first quarter. As you see, 173 million out of the 66. Total assets increased from 2.69 billion a year ago, to 2.75 billion on March 31st, despite the fact that you paid out more in the plan than you gained. So you did have, on a dollar sense at least through the first quarter, a good quarter. As we'll talk about later, looking at what this quarter is likely to do, it's quite unlikely that you'll come anywhere close to your assumed rate for the year. In fact it will be a challenge to make a positive number for the year. For the five years, the return produced 2.3% per annum, trailing the policy benchmark and ranking in the third quartile in terms of active performance. Active management detracted for that period. The three-year period the period where you have more actively reduced the equity exposure, the fund returned 15.3% per annum. It's been a nice three year period well in excess of anybody's assumed rate but still trailing the policy benchmark. And again I know you're aware that the policy benchmark is merely what you would have earned had you operated the plan at your policy targets continuously and had your managers performed at a level equal to their index. The fact that there is a negative, when you subtract the policy index from your actual, is a consequence largely of manager underperformance against the benchmark. You'll see a little later at least in the first quarter there's some evidence that with the movement to passive management you've eliminated the drag of some of your long only active managers and some of your other managers have performed better against the indices at least in the third period. For the one year and one quarter your lower

equity allocation resulted in lower rankings. Because the equity markets did quite well in this one-year period. Obviously, going into the period we're in now, your lower equity will do well for you, at least on a relative basis. Your allocations are all within your benchmark that the board established with the exception of real estate. If you turn to page 9, you'll see --

>> Pete Constant: Can I ask a quick question open the summary?

>> Yes.

>> Pete Constant: Usually in this summary don't we get a fiscal year-to-date?

>> You'll see that in a minute. We're going to talk about that in about one minute. The fund allocations as you can see, the percentage of total assets in each asset category as of 3-31 are that second number column. The policy benchmark is to the right. The differences which are all very small with the exception of an overallocation to equity fall within the ranges with the exception of real estate which we've talked about before. In terms of equity risk, one of the significant factors for most plans that drives plan risk, if you look at page 10, you can see the strategic changes the plan has made over the last six years. So if you look at 2007, 2008 and 2009, you see that your equity allocation was quite high relative to the peer group of funds over \$1 billion. If you look at 2010, 2011 and 2012, you see that you're right about the third quartile in terms of overall equity exposure. Three quarters of plans have higher equity exposure than you do. That's obviously in the period we're going through now helpful, although as we talked about for the year, the relative number was not as strong. If I then flip you to page 13, and here you'll have that fiscal year year-to-date number, that 1% per annum right at the top there and again if you take the second quarter or the third quarter of last year, which is going to drop off, and you add the quarter we're in. So when we're here in the end of June looking at your fiscal year results, you can see, unless this quarter is better than relatively a flat quarter that's dropping off, your year-to-date, your final fiscal year result, is going to be below that 1.8%. It could be as low as being zero. It's highly unlikely that it's going to be much more than 2 unless we get April incredible rally. So just want to make sure a lot of people don't understand that the fiscal year is basically in the can as we are here today. There's only what happens in the remaining month that we don't know. I'm just

going to then go to page 15 to give you a snap shot of the three-year, the turn and volatility. We already mentioned 15.3%, a very nice absolute number and a strong number versus your assumed rate. And roughly, 63rd percent of your peer group. Again your peer group being equally oriented over this period did better. You see the 9.7% versus the median fund 9.9. You're in the lower 40 percentile of this risk. So your risk is to the left of the median fund. Your return distribution is below the median fund. Where you would like to be is a lower-risk fund with higher returns. If you look at your policy benchmark, you'll see for this period, you would have done slightly better with your policy benchmark. The last thing I was going to cover was to take you to page 18. And page 18 simply takes the difference between what you earned, in reality, and the policy benchmark and breaks it into manager impact versus allocation impact. Allocation impact being the fact that at the end of any one month, your plan is not exactly on target. It may be higher or lower. That action can contribute or detract from performance. So if you look at the five-year period, the plan in terms of that allocation impact, a very small positive number. You don't want that number to be too big, because that would indicate that there's a lot of market timing going on. So it's a small number. It happens to be a positive number. The problematic number is the manager contribution. And that number for the five-year period is a negative. That means the weighted average of all your managers underperformed their benchmarks. If you look all the way to the quarter, and nobody should ever conclude anything significant off of a quarterly result, but at least for the quarter the manager contribution was positive. You'd hope to see that happening. To some degree, you did take actions to eliminate underperforming large-cap managers. If all of your managers were indexed, the manager contribution by definition would be zero. So the fact that you've taken actions that you have has eliminated some negative drag. Now we hope that the managers currently in place and the managers you will put in place going forward will do better than their indices and result in better performance. Again, I wasn't going to go through each manager or cover any detail unless there were questions. But that would be the summary, an improving manager situation, a good tactical and strategic positioning versus a volatile market and a very strong absolute result over the three years, the one year, and the five year are challenging periods.

>> Sean Kaldor: Questions or discussion?

>> Richard Santos: Yes just like to note the investment committee confer with this report or agree with it or --

>> Vincent Sunzeri: I'll just make a few comments if you like.

>> Sean Kaldor: Do you want to address that on behalf of the investment committee?

>> Vincent Sunzeri: Sure. Some of the stuff was clearly stated, the board in general made the decision to change the use of active managers that we had. As can you see, although it's short term data it's serving us well. The drag in one, three and five year period of time from the active managers we had was negative and so I would say that's the first step in the right direction so I'm glad to see that we've done that. With the second part of that is going to be as the management team, the investment team is selecting new managers that we really find managers that are in fact adding value over time. The other part of the equation as well will be addressed shortly. We actually have in one week an investment committee meeting to review the asset liability study and begin focusing on the asset allocation. So you see some drags here on at times the policy benchmark or the allocation impact. And those are high priorities for us to resolve that next.

>> Sean Kaldor: Any other discussions?

>> Sean Bill: One thing I was going to ask about was on page 13, the estimated pension benefit obligation. Showing our funded ratio around 69.4. It seems a bit lower than the last one I saw from Cheiron. I thought we were above 80 on that one from Cheiron. Is that a different calculation or is that reflecting the -- not doing so great or --

>> Sure. Part of that is I guess one this number is clearly an estimate. So what we do is we take the most recent valuation report and then kind of project going forward using the Citigroup pension discount rate. And so I'm not sure that this has the June 2011 update but -- from Cheiron as the report was final. So it might true that number up a little bit closer. I'd have to check on that for you, Sean but you're right. The numbers I've seen as well have been in the kind of 80 to 83% range from Cheiron. So you're right, there's probably a number that needs to be adjusted. Although I would say that I think this number will still be lower than that 80% because again we're

projecting out so we only have the most recent valuation report as a starting point. So we'll have June 2011 as a starting point and the rest will be an estimate going forward. We'll true it up when we get the June 30, 2012 report.

>> It's worth noting most plans don't look at what there is in liabilities so this whole line is an attempt to at least make you aware that if you have a good performance period but interest rates are dropping and therefore the discounting of your liabilities may be increasing, this was sort of to sensitize you to look at both but it's a real crude level of stijts.

>> Sean Kaldor: Okay, seeing no other questions. Move on to 1.1B, the NEPC presentation of the flash report.

>> Sure. Mr. Chair we don't have a paper version of the flash report, and the reason for that is, we are currently in the midst of a transition from our prior performance measurement vendor to a new vendor. In the past we've used state street as our third party data aggregator we are in the process of moving from state street to the new investor force platform. March 30, 2012 was the last used to calculate the investment system. Everything is in transit. We don't have a report to provide you but I can give you the updated numbers through April verbally.

>> Sean Kaldor: Please.

>> The month of April is going to be flat plus or minus 10 basis points but it looks like it's going to be a relatively flat month. Which brings the fiscal year to date on a net of fee basis of 1.3%, so not a huge jump from what you see in the report there. And that makes the one year through April down about 10 basis points. So as Allen alluded to not going to be likely a strong fiscal year. And depending on what happens in June here looks to be -- it will be a struggle to get more than probably 2% depending on what happens in the month of June.

>> Sean Kaldor: Any questions? Good. In terms of the agenda, and all the legal issues that will be filling up the agenda going forward, I'm -- I'd like to make a suggestion if the board is okay with it, that we continue to include the flash report, maybe in our communication, and not require you to come out and present on it and talk on it all

the time, but definitely set more time to go into the quarterly reports and go into those in more detail if everyone's good with that. That way, we still get the information, but we get more detail on the quarterly basis and let you do kind of a more formal presentation there. Anyone have any issues with that?

>> Damon Krytzer: We're doing it monthly anyway. The investment committee.

>> Sean Kaldor: I think it's seen by the -- thank you. Item 1.1 C update on asset allocation.

>> Yeah, I think Mr. Sunzeri alluded to it so I don't have much more to say other than the report, the asset liability study we received late yesterday evening so that will be sent around this afternoon for discussion at the next investment committee meeting which is scheduled for next Wednesday.

>> Sean Kaldor: Okay. Any questions?

>> I think Vince would have said this but we have had several meetings with staff and board to identify or board members to identify asset mixes of particular interest. And then to take those mixes and then run them through a full actuarial simulation so we can look at the consequences of adopting particular asset classes.

>> Sean Kaldor: Okay. Great, thank you very much. We had removed item 1.2 from the agenda, so item 1.3, discussion and action regarding Makai MacKay shields broadening of policy limits.

>> Within the plan's investment lineup is a buy and hold investment strategy. So they're not actively April of 2009, that is the same portfolio that exists now. With the exception of bonds that have matured between when it was initially funded and today. So they're not reinvesting proceeds. The portfolio acts as a liquidity source for the plan. So as securities are maturing, MacKay shields is distributing assets back to the plan 50 million investment today around 42 million has been returned and the value of the portfolio is still around \$25 million. So what MacKay is asking for now is due to the nature of the portfolio being buy-and-hold they are running up against some of their investment guidelines, which are not merely a function of the portfolio's weights changing as

securities have matured. So essentially there is a limit on the amount of securities that are rated, for example, double B minus that can be in the portfolio. And they haven't actively added double B minus rated names to the portfolio but because other names have rolled off that exposure has increased and so they're now exceeding limits. So unless we change the mandate, limits as more securities mature. So this is really just allowing the portfolio to kind of remain as it is, but they want to be able to check the box that they're guideline-compliant.

>> Sean Kaldor: Okay.

>> Damon Krytzer: So I'll make a motion to move to expand the limits based on MacKay and agreeing.

>> Mayor Reed: Mr. Leiderman.

>> Harvey Leiderman: Is there a reason why the industry concentration needs to change?

>> Yes, I think the reason is just again for the same reason as the ratings. If they hold X number of issues that are from one industry and others are rolling off, that industry exposure could increase as a result. So it may be 5% now. But as other issues are rolling off maybe the industry exposure comes up to 8 or 10% so as a result they would want that to be changed as well.

>> Harvey Leiderman: Do we really want to relax that allocation?

>> I think if -- unless we're going to change the mandate to be an actively managed mandate which we don't have any plans to recommend at this time, then I don't have any problem with it. But I think to change that would be to change the mandate's function I guess because then we would have to allow them to actively rebalance the portfolio. And I don't -- I mean we could certainly have that discussion but that's not something we were planning to do.

>> You don't have to approve this. But the consequence of not approving it will force them to sell securities that they don't want to sell arbitrarily and it is a clearing portfolio.

>> Harvey Leiderman: Thank you.

>> Vincent Sunzeri: And also to add to this, we did discuss this at the investment committee meeting and more specifically drafted our investment policy statement and how it impacts that and our CIO is comfortable with this change and didn't feel like it would violate that and the fact that it's 1% of the entire portfolio we're very comfortable with this change.

>> Sean Kaldor: Any further discussion, seeing no further discussion there's a motion on the table. All those in favor, any opposed? Seeing none opposed the motion passes unanimously. In the spirit of my earlier comment. When we discussed the charter for the investment committee, I think, I'm thinking this is the kind of thing that I would feel comfortable with if they were handling and moving forward with. But just throwing ideas out there to kind of streamline things. All right. Moving on, new business, item 2.1 presentation of Cheiron's report on 41 (h) limits.

>> Harvey Leiderman: Bill, are you there?

>> Bill Hallmark: Yes I'm here. Can you hear me?

>> Harvey Leiderman: Yes.

>> Bill Hallmark: So this is a required test to ensure that the 401 (h) account we're told the assets for the medical and dental benefits, comprised with the subordination limits from the internal revenue service. Segal company provided the test to prove that you satisfied the limits in 2008 so we're updating that. The essential requirement in the treasury regulations is that the cumulative contributions to the 401 (h) account can't exceed 25% of the aggregate contributions of the normal cost contributions to the pension plus the 401 (h) account correction. And

so that's what we're testing on page 2 of the letter that you have, it showed the toilet contributions for the fiscal years ending 9, 10 and 11. Developing the normal cost amounts, and then shows the cumulative amounts for the subordination limit test. And shows that at the end of 2011 your ratio was 20.8%, compared to the limit of 25%. So you satisfied it. And then we projected forward through 2013, assuming that all contributions continue to go into the 401 (h) account we know that there's discussion of changing to a one to two trust, but just on the conservative side, if all contributions continuing with the 401 (h) we would project the ratio to increase to 21.8%. So that the trend is for the ratio to increase and approach the 25% limit. But right now, we would project at the end of 2013, we'd be at 21.8%. So with that, I'll take any questions you have about the analysis.

>> Sean Kaldor: So to summarize, this means that we're not going to run into any legal issues to continue for another year, to fund the original account? Is that correct?

>> Bill Hallmark: Right. You wouldn't run into the subordination limit through 2013, and beyond away. You'd have a few years beyond that, depending on what happens with contributions to the medical and dental account compared to the pension.

>> Sean Kaldor: Do you have a rough estimate, another year or two or another five years?

>> Bill Hallmark: We didn't project that. But the -- it really depends on what happens with the agreements on the funding of the medical and dental plans. Which are on a five-year phase-in schedule and with caps at 11%. But we understand that those are being negotiated.

>> Sean Kaldor: Okay. Are there any other questions? Seeing no questions this is a note and file, thank you very much for doing the analysis on the report.

>> Bill Hallmark: Thank you.

>> Sean Kaldor: Item 2.2, discussion and action on ordinance to implement new IRC section 115 health care trust for Police and Fire. Including item A, discussion and action on request for legal opinion of tax counsel. Harvey, is this to you?

>> Harvey Leiderman: Sure. Good morning. We have on behalf of the board asked your tax counsel to advise on four questions relating to the city council's resolution to transfer employee money into the employer section 115 trust. The questions we've asked fundamentally are, number 1, may the employee contributions go into 115 trust, the second is, if so, can employee contributions go into the 115 trust on a pretax basis? The third is, will a terminating employee be able to withdraw their contributions to the 115 trust if they wish and second and finally who bears the risk if the IRS disallows all of the above. We've had a good conversation with Ice Miller and the city attorney's office. The city attorney's office has advised United States that the city council, and Mr. Constant can affirm this, no. is up time as we all hear back from tax counsel on their analysis of those issues which I think is a good thing to do and a prudent thing to do, so between the city attorney's office and ourselves we've engaged in a conversation with Ice Miller on this. They know what the assignment is, and I'm expecting any day now to get some preliminary indications from them on their work product. So we'll report back to the board as soon as we have that. I think this is a critical issue for the members of the system. Also, for you as trustees and as a matter of the municipal code you are all trustees of the health care trust and we want to make sure that as trustees, you're properly taking money into that section 115 trust. As far as I know, the city council is holding off on any of these transfers until we get direction on that matter. So if there are any other questions I'm happy to address them.

>> Sean Kaldor: Questions?

>> Excuse the possible ignorance since I'm new but in the ordinance it appears that the original ordinance on page 4, it's changed to letter H but it reads that the -- in any forfeiture should be if any, towards the medical benefits account. My question would be, that forfeiture, is that going towards the City's current contributions, or is that something having to do with the total fund? Is it -- is the forfeiture, I guess the question is, is the forfeiture, is the city taking that as replacing their contribution?

>> Harvey Leiderman: My understanding, and again I think we need to have tax counsel advice since I am not tax counsel, but my understanding is, is that when the -- you know, if and when any employee money is forfeited as the IRS seems to require in these situations upon termination, that that money goes back into the assets of the trust, of the health care trust. And then the actuary then calculates the necessary contributions based upon the assets from time to time in that trust. So it wouldn't be a dollar-for-dollar credit against the City's contributions but it would affect over a period of time the amount of contributions the city has to put in. Does that answer your question?

>> James Mason: Still seems a little bit confusing. Because if it's going towards the total plan that would affect the employee contribution also would it not?

>> Harvey Leiderman: That depends upon the negotiations between the employer and employees as to who's paying what into the plan. It could affect the employee plan, the employee contribution as well, but that's subject to collective bargaining.

>> James Mason: Thank you.

>> Vincent Sunzeri: So my experience with benefit plans is it depends on how the plan is developed initially or forfeitures. And most plans are structured so you have a choice when it's established to either go against future contributions on behalf of the sponsor or to be allocated amongst the remaining participants. I would imagine we would want to revisit that Secretary of State of it to see how it was originally drafted.

>> Harvey Leiderman: Okay.

>> Sean Kaldor: Bettina. Bends Harvey, you said as far as you know the city council is holding off that's the case or because I think that this is pretty dicey for all of us. And that we want to be certain that we're advised properly.

>> Pete Constant: So I took the message from the board to the council when the council heard this item and it was made very clear at the council session that the contributions will be not put into this trust until further information.

>> Bettina Rounds: Thank you.

>> Pete Constant: We had the discussion very openly about it. Everybody agreed that's the prudent thing to do.

>> Sean Kaldor: Thank you. So on that, I guess my question relates to item A, I feel if we're trustees of this, we need to be sure we have a clean, legal letter from a tax attorney, saying yes, you're good to do this, it's all on the up and up, no issues, whatever that is, and that's what we're waiting from Ice Miller. So it's from them as our legal counsel to the retirement board, a letter verifying the tax status and clarifying the issues you mentioned. Okay.

>> Harvey Leiderman: Correct.

>> Sean Kaldor: Any other discussion or questions? Excellent. Thank you. 2.3, discussion and action regarding relationship with tax counsel. Item A, update on status of contract renewal with tax counsel. So I'll turn to maybe Harvey again, and -- no, Donna, no?

>> Pete Constant: I could jump in briefly because I had a discussion with our City Attorney on this, and with Rick Doyle. He stated that they clearly see the problem. They would be working to rectify the contract language, so that the board could engage directly.

>> Sean Kaldor: Okay.

>> Pete Constant: Explained it to all of the council that it was because of the timing of things that the contract was, with tax council was enacted prior to the new outside counsel. So all that will be getting worked on. And they understand not only the need but the urgency of the need.

>> Sean Kaldor: Thank you. Veronica.

>> I would only add that our current with Ice Miller expires on June 30th so expediting the agreement would be clearly in the best interest of the plan.

>> Sean Kaldor: So wondering what the issue is, we have an existing contract with Ice Miller as tax counsel kind of through the city and when we've needed to engage them for clarification on individual benefits or issues like this account we have been told we need to go to the city attorney's office and they will relay the question and they will relay the answer back to us. In this position we want a direct relationship with our com. We've agreed to have Ice Miller be our tax counsel but we need to receive a opinion back to us without us being the client. So with this expiring on June 30th that is a good trigger that the new contract can be phrased exactly that way. Some things have been delayed over the last couple of months as we are realizing that process.

>> Richard Santos: The agenda is for us to extend?

>> Sean Kaldor: We've already ice Miller and Russ Richeda. But the exact dollar amount, I don't know if that comes to us with a contract to approve and --

>> I believe it was already approved.

>> Sean Kaldor: Yes, we approved it.

>> Sean Kaldor: As the city we pay for our own tax advice the city pays for their own fax advice.

>> (inaudible) with each of the tax counsel completely separate.

>> Damon Krytzer: If it's a separate agreement I don't understand why there's so much complexity in signing it.

>> It has to do with who can engage legal counsel within the city structure and since we're a department within retirement services I understand that it is the city attorney's office that needs to enter into agreement with tax counsel with the clients being the retirement plan. Harvey, correct me if I'm wrong.

>> Harvey Leiderman: That's the way it's been structured under the municipal code. So what's happened in the past is that every -- is my understanding, before I joined you, that every time this board wanted to get advice from tax counsel it had to ask the city attorney's office to approve doing that. Going forward, the relationship will be that now that City Attorney has approved the contract, and the contract will be inked, that when this board wants advice from tax counsel, it can just go to tax counsel. And when staff needs the other -- the other issue would be when the department needs tax counsel, on issues that it believes needs a staff level that it can also go directly to ask Ice Miller for, or whoever tax counsel is for their work on that.

>> Damon Krytzer: Yes I guess I'm just curious --

>> Harvey Leiderman: It doesn't need to be approved as it has been in the past. As a part of this whole transition that brought us in as opposed to the City Attorney as your general counsel. So we're in transition period and I think most important thing and maybe what we can do is just do an extension for now of the contract that's expiring on June 30th so that we don't have a gap period in their services and they have the assurances that they're going to get paid for whatever happens. But we do have a contract that's approved and we should just move forward with it.

>> Damon Krytzer: That was the question --

>> Have you reviewed the contract?

>> Harvey Leiderman: No I haven't seen the contract.

>> Damon Krytzer: The process wasn't different than your was it?

>> Harvey Leiderman: No. The engagement process wasn't different but even with us, we had to be approved by the city attorney's office before you have been allowed to engage us.

>> Damon Krytzer: You have been here for about three months now and we approved you guys at the same time.

>> Harvey Leiderman: Exactly.

>> Damon Krytzer: Okay.

>> Sean Kaldor: Any other discussion? So Harvey, I guess I would ask you to review that contract with Ice Miller. And make sure and advise us if you see any issues with it. Not that we have a direct confidential relationship with our tax counsel the same way we do with you and how the money moves through the city attorney's office, that's fine.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Please.

>> David Bacigalupi: Do we need a motion to extend their contract? The world doesn't stop after June 30th and if they are working on things --

>> Richard Santos: That was my point that we bring it back on the agenda. We put it on the agenda for next month.

>> Sean Kaldor: It would be August.

>> Richard Santos: I understand.

>> Harvey Leiderman: We'll have it inked by then. I think it's within the board's prior authorization to enter into the continuing agreement that to the extent we need a mezzanine agreement we can do that for short period of time. I mean, this board has already authorized the engagement of Ice Miller from the period starting July 1, 2012 through June 30, 2015 I believe. How we document that I don't think needs to come back to the board for action.

>> Sean Kaldor: Okay, good. Veronica do you wish to add to that? Okay. Thought you were reaching for the mic, sorry. Any further discussion? Okay, seeing none, we'll move on to item 2.4, discussion and action on possible follow-up audit of city contribution transmittals.

>> So I understand it is the Police and Fire board would like to revisit the audit or enter into a second audit to audit the City's payroll transmittal. This is something that was done for the first time in 2009. I will only add that it took I'd say about two years to complete the process. And it is very labor-intensive in nature, just because of the level of detail that needs to go into it and the level of manual staff that needs to go into it on the city side as well as on retirement services side. Unfortunately, most of the information is over on the City's side and we don't have control over that portion of it. And with their budget constraints that they've had in the prior years, having the staff that is knowledgeable and can dedicate time to complete the audit, is sometimes an obstacle. So that's the only piece that I would add. In addition, the original agreed upon procedures was not an audit per se, it was an agreed-upon procedures and it did include I believe four or five different section of which, when we finally completed the report, only three could be completed just because of the amount of time. And the relevant information, if we'd held the report open to complete all five, the pieces that were done ahead of time would no longer be relevant or yux per se. So my recommendation would be that we silo pieces off, if it is going to be a large engagement really take into consideration how soon, you know be realistic about when we can get this report back and really communicate with the city the level of staff thyme it will take to comply with the audit.

>> Sean Kaldor: So maybe a month? (laughing) newly established an audit committee. I'd recommend to that audit committee to maybe come back on a quarterly basis with just hitting the key points. Sean says, I see how this is going, okay. Any concerns, questions?

>> Richard Santos: No.

>> Sean Kaldor: Okay, so it's been referred to the audit committee. Item 2.5 discussion and action regarding the San José retirement services audit plan for 2012.

>> So in your board packet you have Macias, Gini & O'Connell audit plan for the current fiscal year. The audit work plan has an executive summary. It just shows over an introduction of Macias, Gini & O'Connell and who the client is, what services will be provided. There are some required communications about new pronouncements that are coming forward. I think the page that is most likely one to focus on would be page number 5, which has the audit time line. This gives the board an indication of where when they can expect to view the financial statements coming back to the board remembering that your financial statements are critical because your valuations cannot begin until you have audited financial statements. Again, Sean, this may be something that you want to defer over to the audit committee.

>> Sean Kaldor: That is my thinking as well. This is exactly what the audit committee was established for and to follow up maybe come back and give us regular updates on status. Does anyone have any discussion or further comments on that? Okay. Thank you for the update. Thank you for taking that on, too.

>> Sean Bill: I'll coordinate with you Veronica about getting an initial, maybe you and I can get together to go over the big picture of this audit.

>> Can I actually have the board accept the report on this one?

>> Sean Kaldor: I'm take a motion.

>> Move to approve.

>> Sean Kaldor: Motion and second. Any discussion? Seeing no discussion, all in favor --

>> Richard Santos: Will they have a chance to go through --

>> Sean Kaldor: It will go to the audit committee now that we've accepted an overarching plan.

>> Richard Santos: We should move to accept it.

>> Sean Kaldor: I think for this time let's approve it at the board level and next year when it would come it would be the audit committee can make a recommendation to the board.

>> Richard Santos: Make sure we do it the other way around.

>> Sean Bill: Russell anything --

>> Richard Santos: (inaudible) services maybe eliminated.

>> Sean Kaldor: Sorry --

>> Sean Bill: I was just asking Russell --

>> Russell Crosby: Start NGO document.

>> Sean Kaldor: Okay, any further discussion? Seeing none all those in favor? Aye, any opposed, none opposed passes unanimously. Item 2.6, discussion and action on plan expenses for April 2012.

>> Again in your board packet you have the new format for the plan expenses. It's a it's got a memorandum on the cover followed by the plan expenses, as per the board request, I have attached professional services contracts over \$10,000. I'll take any questions you have.

>> Russell Crosby: If anyone's curious the larger report from Cheiron that's been redacted is individual participant names where we're having them do the classes, did retirement calculations so we've redacted the participant names out of this report. But that's all that's been taken out.

>> Sean Kaldor: Thank you, question, Vince. Was it one or two? I'm sorry.

>> Vincent Sunzeri: On page 2 of the itemized list for Cheiron, towards the bottom, I notice there's a charge there for Cheiron responding to questions from a reporter. I mean, some of these charges to me seem a little odd, that they would be responding to questions and the plan would be charged for that work. Is that standard?

>> Sean Kaldor: I think we have something going on with that as well, the state audit where they're asking questions and Cheiron saying, these are billable hours and the question is, who pays for that?

>> Vincent Sunzeri: Right, so do we want to agree to pay for that? And there's also questions from Tom lowman, I'm sorry, I don't know who Tom lowman is, maybe that's legitimate --

>> Russell Crosby: He's an actuary for level 230.

>> Vincent Sunzeri: Okay.

>> Russell Crosby: And I think that part is pretty standard. When the actuary is responding to either the plan sponsor or to one of the major unions on specific questions about the valuations, I've seen them bill for that.

>> Vincent Sunzeri: Right. I mean that seems totally acceptable to me but the other part of it --

>> Damon Krytzer: What about that, in relation to how do we distinguish that from a request to do work on a unilateral basis then? Responding to questions?

>> Sean Kaldor: That's a fair point.

>> Richard Santos: There should be a category of certain amount of things can be asked, and we pay a contingency.

>> Sean Kaldor: I can think what was the logic behind this, I don't know if we're being nicked and dined as it were but I think those can be productive questions being charged to have them respond to a reporter, I'm okay with saying we don't pay our consultants to respond to reporters.

>> Richard Santos: Can the director take a look at that when they ask those questions?

>> Russell Crosby: Just so you'll know we've been back and forth with Cheiron on this particular invoice several times more than once or twice or three times.

>> Richard Santos: Well maybe when we're here we can make it clear to them about how we feel about what we want to do.

>> Russell Crosby: I'll refer them to this video just for starters.

>> Richard Santos: That's a start, yes.

>> Sean Kaldor: Please Bettina.

>> Bettina Rounds: On some of these attachments it may be just again because I'm not familiar with all of these names. Are all of these Cheiron?

>> Yes, the attachment is for the Cheiron people.

>> Bettina Rounds: This is all Cheiron?

>> Russell Crosby: That's a copy of their invoice just for backup.

>> Bettina Rounds: I didn't know whether they included anybody else for professional fees. It is just Cheiron we're seeing for professional fees?

>> Russell Crosby: Just Cheiron and you see whatever the date of the conversation action work they did the individual who did the work and then a brief description of what the work was.

>> Bettina Rounds: Right. And I guess --

>> Russell Crosby: And then the number of hours the billable rate and then the extension from that.

>> Bettina Rounds: And do we get this for everybody all of our consultants or --

>> Russell Crosby: At the last meeting the board requested at the expense report when the invoice is more than \$10,000 to have that attached.

>> Bettina Rounds: More than 10,000?

>> Russell Crosby: In this particular month, crelgt.

>> Damon Krytzer: I guess to that point, then, maybe I just assumed that maybe the investment committee prep was part of the retainer also. I mean now that I'm -- no? The investment committee prep is not part of the retainer?

>> Russell Crosby: The retainer was really around doing the valuation.

>> Damon Krytzer: Okay.

>> Russell Crosby: And that is what you bought for a fixed rate. Everything else seems to fall outside that.

>> Sean Kaldor: That's why it's good for you to be seeing exactly what we're being build for on some of these things.

>> Bettina Rounds: Can I just ask another question?

>> Sean Kaldor: Please.

>> Bettina Rounds: I know we took on Cheiron and got rid of I think it was Segal?

>> Russell Crosby: Correct.

>> Bettina Rounds: Is this on line with what Segal charged us or does this sound a little exorbitant?

>> With all the plan changes and everything that have been occurring there's a lot more back-and-forth on additional services.

>> Russell Crosby: Where Segal might come in and do one presentation for the valuation, boom you're done, you had Cheiron come back, I don't know, four or five times during that process. Each month. Bsdz right, yep.

>> Russell Crosby: So the expenses simply build up faster and you're doing additional travel, additional work that was never contemplated simply in preparing an evaluation and presenting it. You're asking a lot more question.

>> Bettina Rounds: So it may be better to have Bill on the phone sometimes as opposed to in the flesh.

>> Russell Crosby: That's what we tried to do is restrict it and have them as much as possible on the phone. But some of it you have to be here and have that face-to-face.

>> Bettina Rounds: So you and your staff are comfortable with the kind of expense that's being charged?

>> Russell Crosby: Correct, yes. Yeah. I think it's just -- it's the nature of expensive actuary.

>> Bettina Rounds: Right.

>> Russell Crosby: And Segal bills were in the same kind of ballpark. And Cheiron was if I recall from the RFP process somewhat less expensive than Segal. In that regard you're getting a lower billing rate than a --

>> Bettina Rounds: I just was asking for the comparison.

>> Russell Crosby: And a lower evaluation rate, the retainer rate is cheaper.

>> Keep in mind Cheiron is taking over from Segal. Some of it is transition work, they have to come in and look over to continue on with actuarial services.

>> Russell Crosby: And the invoices when you see more of them you'll see where they are talking with Segal and billing for that time and those questions.

>> Damon Krytzer: I guess I agree, if they are referring to the tape, I just have problems with charging for time to respond to reporters.

>> Russell Crosby: This was from some time ago.

>> Sean Kaldor: There was a question, when the reporters are here, should I talk to them? If you say sure, you get a bill for it.

>> Richard Santos: But Harvey's bill is already figured in, so he doesn't charge us separately. [Laughter]

>> Russell Crosby: No, exactly.

>> Harvey Leiderman: You've engaged me specifically to be the spokesperson for this board as did Federated. So to the extent I have to make some statement to the press on your behalf, then it's part of my legal services. It hasn't happened. As I told you, when you did that, I consider one of the exercises of discretion in this instance as a spokesperson not to speak. So I frequently don't speak. But yesterday, for example, I generated a press statement and you know on behalf of the board, so that was part of what you want me to do as spokesperson. So I think I charged 3/10 of an hour or something. But the reason why you haven't seen my bills here yet is I haven't been paid yet. [Laughter]

>> Richard Santos: Understand we have the get-together, this is a good discussion to have to make sure they know where we're coming from.

>> Russell Crosby: Well, they'll watch this video. They may be watching now.

>> Richard Santos: If you're out there, hi, and keep the bill on.

>> David Bacigalupi: I'd like to comment, I don't know whose suggestion it was, we ask for detailed billings over \$10,000. I want to commend, whoever it was, I think it was you.

>> Sean Kaldor: I think we voted on it.

>> David Bacigalupi: Maybe some of these things that were slipping by, I appreciate it.

>> Sean Kaldor: I think Harvey was the impetus saying, we needed more daylight on the expenses rather than a notice takings on the board packet.

>> David Bacigalupi: Thank you whoever it was, I want to acknowledge.

>> Vincent Sunzeri: What might come out of this is we may want to establish a policy with Cheiron and their interaction with the media and their capabilities to do that and charge the plan in that event.

>> Sean Kaldor: And in that sense I'll make a motion to approve and accept the expenses and to direct our consultants, other than our general counsel who is our spokesperson, that the plan is not to be charged for work done for reporters, without specific approval from the board.

>> Richard Santos: Second.

>> Sean Kaldor: Motion and second. Any discussion on the motion? Seeing no discussion, all those in favor? Any opposed? Good. Item 2.8, we will hear later concurrent with item 3.2 as I mentioned under orders of the day. Item 2.8, discussion and action to authorize the secretary to negotiate and execute the First Amendment to the agreement with L.R. Wexler for consulting services for A extend the term of agreement for phase rm 1 through IV through December 31, 2012 and no additional cost and B, add phase rm 5, that cost is split 5050 between the Police and Fire department retirement plan and the Federated city employees retirement system.

>> Phase I through four, that's to put out an RFP they've done a lot of work on that so staff is recommending, to extend that to December 31st, we're a little bit behind schedule, not due to L.R. Wechler, and delays staff you review. As far as phase V I know that's a big amount, that might choke you but we really need consultant help to get us through this process. They did a lot of work on the RFP, they gathered a lot of business processes and documented and cleaned up things and then the implementation is just going to be a three-year engagement that we're going to just need the consultant's help to get us through that, with the vendor that we select. I don't know if you have any questions in addition to what was in the report.

>> Sean Kaldor: Are there any questions?

>> Richard Santos: The only question I have Mr. Chair is it seemed like when we bring consultants in different thing everybody last a certain expertise. Why don't we get a consultant that has multitalented experiences and we pay a little less? It seems everything we address it's one word one issue we got to pay a million bucks to have somebody tell us something, when I imagine some of these companies have multitalented experiences or whatever it may be to give us not just a cull cut rate but the same advice, it seems everything damn thing we do is one item and it's a million bucks to have someone do it for one year.

>> It's the same phase V as I through had vimplet. Select a vendor and then get them through the implementation process and they're specifically selected because they have a really good reputation, they have a good process, they keep us on schedule and the vendor on schedule. That's one of the issues we've heard about other vendors not being able to be kept open schedule. It --

>> Russell Crosby: We did a very large RFP. And really combed the waterfront and talked to a lot of other plans particularly in California during -- what was their experience during their implementations as well. Most other public plans are going through this process as well to update their software and there are really two firms that have rounded up the business in California. L mentR. wem leer is one and the other one --

>> Donna Busse: Linea.

>> Russell Crosby: Linea. Wexler is one keeping the vendor on track, where the other one is relationship oriented and sometimes schedules conflict in various ways and this is a very specialized field. You're going to replace a very, very big operating software package with a new one or update the old one. But that's part of what this whole decision process is about. And when Donna says they helped United States write an RFP, well, the RFP is really a detailed specification of how the system works. So that a software bidder can look at that and say I see they need to do A B C D E and F and G in the following ways. Then they can bid very specifically and you spend admonish money on the consultant to control the cost of the software. And that's why we're spending some with these guys, is to make sure that what the software ends up being is exactly going to carry this organization for another ten to 15 years. And you're not going to waste many times what the consultant will charge you. You could easily have a \$3 million overage in the software by having a consultant not knowing what he's doing here. That is a narrow field.

>> Richard Santos: I appreciate the explanation and would I support it.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: I have a question, two questions actually. In corporations you often have your own procurement department and I take it the city doesn't have such a thing.

>> Russell Crosby: Right.

>> Bettina Rounds: And this 1.1 whatever, 1.5 million is through the project, it's not annual?

>> Donna Busse: That's for the -- through the implementation and it's probably a three-year process.

>> Russell Crosby: Through final delivery.

>> Bettina Rounds: Right.

>> Sean Kaldor: This is where my humble feeling is, if we be cheap here we'll be paying it for decades. The administration process is currently killing us.

>> Bettina Rounds: I agree.

>> Sean Kaldor: Baci.

>> David Bacigalupi: I move to approve the staff recommendation under item 2.8 in the attached memo.

>> Sean Kaldor: We have a motion and second. Any further discussion? Seeing no further discussion all those in favor say aye, aye, any opposed seeing none opposed the motion passes unanimously. Item 2.9. Discussion and action regarding the waiver of confidentiality of on reciprocal members' rights. Harvey I turn that over to you.

>> Harvey Leiderman: You have confidential communication with us on a very technical issue but one that affects members from time to time and we were asked to advise on this and we prepared this analysis. Essentially, what this basically concludes is that members who leave the City of San José and become members of another system that we have reciprocity with, we recognize that. That fundamentally, it's as if you never left the system you ought to not be penalized for having done that. So we've gone through a very granular analysis of some of the provisions of the Municipal Code to come to the concluding that members who qualify for reciprocity should not be penalized and are entitled to be treated as if their entire career had been with the City of San José. This is concurrent with the city attorney's office interpretation of the municipal code, we discussed this with them as well after we did our independent work. And so this comes up now on your agenda I believe because the chair believes that it would be of value to the members to pull the confidentiality label off of this and let them see the reasoning and the thinking behind those that are affected by this particular course of events when they moved from City of San José to another pension system, in the state.

>> Sean Kaldor: Right, you raised the specific issue. Harvey gave the department an opinion and my feeling is a lot of other people have the exact same question, I won't tell you the answer, and you know, how do we -- we not allow staff to tell them whether they have the benefit or don't have the benefit? So this is just to kind of get it out there.

>> Sean Bill: So is this like in relation to in terms of the new measure B passing, nothing to do with that?

>> Harvey Leiderman: Not a thing, no.

>> Sean Bill: So from an actuary standpoint how would that work? Let's say somebody leaves next year, or let's say they left June 4th I guess and let's say they left June 7th, those two scenarios, how does that effect how we calculate out from an actuary standpoint how much we need to be reserving from that retirement?

>> Harvey Leiderman: This is entirely unaffected by whenever measure B becomes affected. Measure B did not do away with reciprocity between systems. So however things are calculated, eventually under that will be the same for these people as well. So this really is neutral as far as that is concerned.

>> Sean Kaldor: Any other discussion? Any questions? Okay so I'll make a motion to remove the attorney-client privilege from the May 17th memo under item 2.9.

>> Second.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion? Seeing no discussion all those in favor, aye, any opposed,ing see none the motion passes unanimously. Thank you. I think it just -- it's just a point to clarify how we're going to treat members and we do this all the time. This just happened to be confidential and so it's a little unique. Okay moving on to old business. Item 3.1. Update on payroll audit, FLSA and overtime payment issues. To receive and file including item A discussion and action on City's correction process. B

discussion and action regarding interest payments on correction amounts and item C discussion and action regarding assignment to audit committee. And I just wanted to ask a quick question up front. Is this overtime payment or higher class? It's FLSA and higher class?

>> It's hire class.

>> So what you're seeing in your board packet is a communication from the City's finance department to retirement services regarding FLSA payroll adjustments. This is the city advising that they will be making the FLSA correction for active members. This is the portion of FLSA which retirement services we call correction number 1 because there are two of them. This is the one where there is pensionable earnings that were sent over to retirement services that subsequently were determined to not be pensionable so now the city is returning to active members the contribution portion they had withheld from their previous paychecks and sending over the adjustments to retirement services. So at this point, the city has only offset for active members, and only against their accounts have the offsets been taken. Retirement services is in the process of receiving the file and will go ahead and upload the file. We're also receiving the information for retirees but there's a lot of questions still around how this process will continue. And that's the other items you see on your agenda. In addition the city also sent over communication about other corrections they're doing to pensionable earnings one of which is the higher-cost pay portion that was identified in the internal start's audit of pensionable earnings where again there were pensionable earnings that were transferred to retirement services that were subsequent determined to be not pensionable. Again you are seeing the same type of correction to the active members to their individual accounts. There is no interest adjustment on these pieces and retirement services has not completed their process of the actually accounts, it's a process that we're working on.

>> Sean Kaldor: So that's the status. And then under 3.1 B Harvey you had some -- is this related to the interest?

>> Harvey Leiderman: If I may, Mr. Chairman, I'd like to go back to 3.1A.

>> Sean Kaldor: Please.

>> Harvey Leiderman: There's an issue here in the memorandum from-d that's attached in the memorandum from Julia Cooper. Besides dealing with the adjustment for overpaid employee contributions there's also a statement in the second paragraph that the adjustment to the city contributions totaling approximately \$487,000 will be deducted from the next retirement prefund payment submitted to retirement services. Currently estimated to occur on July 2nd, 2012. This raises an issue because in the ordinary course, the city makes contributions into the plan, generally prefunds the year. But it's based upon the actuary's analysis of income and expenses during the year, gains and losses in the investment program, and in other adjustments. And then at the end of the year, they take all the pluses and minuses and work that into the next contribution rates. Based on amortization schedules and smoothing and all the things the actuaries do. So from time to time because the contribution rates are set for example on projected payroll for the upcoming year, by the time you get to the end of the year it is possible that the city may have paid in more or less than actually was necessary based on the actual payroll for the year. And so those adjustments happen in the ordinary course and that's read into the actuary's contribution rate setting for the subsequent year. Well here we have a situation where the city for whatever reason, overpaid by apparently \$487,000. As I read this memorandum the city is making the decision to recoup all of that, meld, and essentially short-pay the required contributions for the next fiscal year. That decision is a decision the board should make, not the city. The plan sponsor should not be making the decision about how much money it's going to send to the retirement system after you've told them what their actuarially required contribution is for the next fiscal year. So respectfully I submit that this board needs to make the decision, as to whether or not the city can offset its actuarially required contributions for the next fiscal year. I would say the actuary takes overpayments, underpayments and gains and losses into account in setting the future contributions. This happened to be an overpayment. There may be underpayments but that's a decision you should make based on the advice of your actuary, not a decision that the plan sponsor gets to make on their own behalf.

>> Damon Krytzer: It is unreasonable, is it an unreasonable solution?

>> Harvey Leiderman: I'm not aware of any methodology that this board has approved that would allow the recoupment of an overpayment in a single year. Those are as I understand the actuarial methodologies that you've approved that those are to be amortized over a period, I can't remember, it's 15 years or longer. So right now this board has a policy of amortizing those gains and losses. This would be, I believe this would be contrary to that policy, to the extent it seeks to realize it all in one year. Furthermore it is -- it raises an issue from an actuarial standpoint, and possibly from your auditor's standpoint, because the city will not be paying according to this, its actuarially required contribution for the year. That may be something that has to be footnoted in both the City's financial statements as well as your financial statements.

>> Damon Krytzer: So could you remind me why it was overpaid?

>> There were contributions for earnings that at one point the city transmitted over to the retirement plan with the understanding they were pensionable. Subsequently it was determined that there were certain portions of the earnings that were not pensionable so they shouldn't have been transmitted over to retirement services and the employee and the employer shouldn't have had contributions for retirement withheld.

>> Damon Krytzer: So it was the City's calculation and they -- they selected the amount in the first place?

>> Yes.

>> Damon Krytzer: Okay.

>> Vincent Sunzeri: Isn't this then simply a one time fix for that particular error or is this something we anticipate is going to be ongoing the entire year?

>> At this point we have four pensionable issues that are going on and a lot of this is coming from the audits that were performed by the internal City Auditor and the plan's external accountant, Macias, Gini & O'Connell as well as other pieces that came in from third parties about pensionable earnings errors. So as you shed a light in an

area that hasn't been visited in some time you're going to see these types of issues come up. So I'm hesitant to say that it's a one-time. Because as of now it is not extraordinary. There are at least four of these types of issues that we're working through.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: Well it seems to me that we've just been advised by our counsel to go to our actuaries. And so I would suggest that we take our counsel's, since we pay him, advice --

>> Harvey Leiderman: Hopefully.

>> Bettina Rounds: And go to the actuaries to get their reading on this, before we agree that the city should be reimbursed I guess is what they're suggesting from the pension plan, \$483,000. A chunk of money.

>> Sean Kaldor: That's my inclination as well. I guess I'm thinking, when did we realize the higher class inn FLSA was not pensionable?

>> The higher class pay was identified in the City Auditor's report. And I believe that was the 2010, the report was actually issued, not positive on that. And the first portion of the FLSA correction was the one that the prior Police and Fire chair had identified, and forwarded on to the plan, subsequently from that the city researched it and did determine that there was an error. So --

>> Sean Kaldor: So all of those, the reduced liability, we used to think higher class pay and FLSA was all pensionable, we realized it wasn't, the new corrected payroll tapes went in and now our liability for the plan has been corrected. Right?

>> This is one where actuarial come in, it may affect some people it may not. It depends how it affects our final average salary.

>> Sean Kaldor: When we give one week of the stools Cheiron, they do all that that correction is shown up somewhere it might just be a \$10 decrease.

>> Yes.

>> Sean Kaldor: The liability and the unfunded liability have already gone down, the contributions to the plan have been set by \$50,000 a year when you spread out over contribution period.

>> The contribution hasn't that piece hasn't happened so that portion is not included in the -- in the evaluations. But as Harvey is indicating there is some concern about whether or not that offset can occur and will flow through our financial statements.

>> Sean Kaldor: I guess we've gone out of my expertise. I would say the same thing, Cheiron needs to chime in and say hey, this is the right way to do it or it's now in the numbers. I look at it as our funding status and not one of the --

>> Bettina Rounds: I think we need to go to the actuaries. If this thing was first recognized in 2010 and now they want a lump sum in 2012 for things that happened, and I'm not a numbers person, but normally you would be amortizing things over time right? You wouldn't suddenly pay \$500,000 for something that had gone on over a period of years. So it seems like a prudent thing for us to do, is to talk to our actuaries.

>> Sean Kaldor: Dick.

>> Richard Santos: I think Bettina is headed in the right direction. Have you had conversation with your actuaries over this issue?

>> Harvey Leiderman: No I have just seen this.

>> Richard Santos: Maybe it would be best to have some dialogue and then come back and support what Bettina's saying. I want to get an answer. They may say I agree with you or no I don't and we got to find out what we are going to do.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: It is also pointed out here that there's \$252,000 of employee contributions that need to be returned to those participants and that has not been resolved yet.

>> That has. For the city Haase exactly what they are communicating to the board that they are actually refunding the overages for the employee contribution. The city has done that and I believe it is on the June 1st payday. So they have done that portion of it for the active members not the retired members they're separated. And again that's on the amount they contributed just to add, it has no interest or any other adjustments on that.

>> Bettina Rounds: And the city contributed that out of the city's coffers or --

>> That was our portion.

>> If city reimbursed that.

>> Russell Crosby: Not ours, they don't have access.

>> Bettina Rounds: That was my question.

>> They reduced it -- they initially funded it and reduced it from the current pay period's contributions. So ultimately it came back to the plan.

>> Sean Kaldor: I think we'll be setting a precedent here. The other things you mentioned, there are a few other things like this. If we let them reduce their discount, is that the best way to do that? I'd be inclined to get professional recommendation. Harvey.

>> Harvey Leiderman: In response to Vince's question, the difference between this being a correction of the members and an adjustment that's part of the actuarial study for the employer is that the members are paying just the normal cost portion of the contributions. The employer has an unfunded liability. If the system were 100% funded, then we might look at it as a correction. But with an unfunded actuarial liability in the system, that is the employers to amortize over a period of time, these amounts simply become an overpayment or underpayment towards that unfunded liability of the employer. That's only if employer's to bear. And as a consequence it should fall into the normal actuarial approach that this board has already approved. I should point out just for the record that besides the FLSA payment of \$487,000, the second page, the second memorandum talks about the higher class pay adjustment of \$1 million. So it's \$1.5 million essentially that according to this memorandum if we were not to take a look at this, would just be automatically deducted from their required contribution for the next year. And that's something that I think is contrary to the board's policy that it's approved that Cheiron is implementing.

>> Sean Kaldor: All right. It's my day for motions then. I'll make the motion that number 1, we ask our counsel to reach out to the city and understand if that was their firm position or if that had been thought-through as far as the deduction. Number 2 that we ask Cheiron to give us the best recommended actuarial approach to handling this. And number 3 that assuming that won't be resolved by our next meeting that the city continue to pay the established amount. And whatever plan we decide to take will be implemented after that.

>> Richard Santos: So moved.

>> Sean Kaldor: Motion and second. Any discussion on the motion? Seeing no discussion all those in favor? Any opposed? Seeing none opposed motion passes unanimously. That is item 3.1A. 3.1B.

>> On 3.1B I believe counsel has raised some issues regarding if there should be an interest portion related to these adjustments.

>> Harvey Leiderman: If I may Mr. Chairman. Ordinarily, when contributions are made because of an overpayment or underpayment we believe the law and the internal revenue service require an interest to be paid on the principal on the date it was collected. My understanding on the FLSA payments for example, that over a period of time members overpaid towards what was assumed to be a higher retirement benefit than they should have paid. So therefore that principal amount that was paid over a number of pay periods going back upwards of nine years or so is now being refunded to them. The IRS rules require that when a correction is made in that nature, that interest is paid at an appropriate rate. We can talk about what's an appropriate rate. But that interest is paid because of the, essentially the time value of money, that the members did without that money for a period of time. And that should also be part of the adjustment. I've spoken with the city attorney's office about this. They said they will look into it. But I thought it was just something that we need as trustees of the plan to bring up and discuss publicly, so that city and the stakeholders, the members of the system, are aware of this issue and that interest should be credited to these people for the amounts that they're now being refunded.

>> Sean Kaldor: So your recommendation is, you've already contacted the city and they're looking into it?

>> Harvey Leiderman: That's correct.

>> Sean Kaldor: Is there action that we should take by the board that you're recommending?

>> Richard Santos: Wait and see.

>> Harvey Leiderman: I suppose you could endorse that approach. I would like to see that as a matter of record especially if the IRS comes back and questions why interest wasn't paid. We're on record saying that we believe that as trustees of the plan to make this correction and to make the members whole that they should be paid interest on the principal amounts that are being paid to them.

>> Sean Kaldor: Is that normally something we get into as far as the relationship between the city and the employees or that due to the fact that the pension deduction was stain?

>> Harvey Leiderman: What you said.

>> Sean Kaldor: Baci.

>> David Bacigalupi: I would make amotion what appears to be a mandate from the IRS regarding this interest payment.

>> Sean Kaldor: We have a motion, do we have a second?

>> Richard Santos: Second.

>> Sean Kaldor: Any further discussion? In the interest of full disclosure, I might be getting some benefit on this, it might pay for the gas I had to drive from across town, just throwing it out here. Any further discussion on the motion?

>> Sean Bill: Wouldn't the discussion go the other way when it's undercharged, required by the IRS to go the other way as well?

>> Harvey Leiderman: Yes, it is, I would recommend for further discussion, we actually adopt an overpayment-underpayment policy so there's no question about these things. But yes, in the ordinary course if there's an underpayment you would collect interest as well.

>> Sean Bill: As an employer you would be collecting the greft interest from the employee if the plan was underpaying the principal?

>> Harvey Leiderman: Plus the principal.

>> Sean Bill: I'm wondering if there's an employer error here. Seems to me there may be some indemnification. We're talking probably 25 basis points anyway in terms of the interest rate.

>> Harvey Leiderman: Well, the interest that the assumed rates for example over a period of nine years, can add up so it's a significant amount of money to the members.

>> Sean Bill: How many employees are we going to go running these calculations on and how much time does -
-

>> Sean Kaldor: The city is doing all that.

>> Sean Bill: The city is doing that okay.

>> Sean Kaldor: Correct me if I'm wrong we are making the observation that it would be correct to the law that interest be paid.

>> It is my understanding it is a process that would be completed by the city.

>> Sean Kaldor: Vince then Bettina.

>> Vincent Sunzeri: What's appropriate interest? You're using reference to the discount rate, and we're not making our discount rates. You get to get into very crazy thoughts with respect to this.

>> Harvey Leiderman: Most of them in my experience and with most of my clients who have correction policies we're using the assumed rate of return. That's the rate you're assuming that you are going to get paid open the

money that you pay into the system. Others use a legal rate of 7%. I don't know of anyone who is using the member rate because that's essentially a penalty rate for withdrawal. So that is usually not the rate. But generally it is a rate of 7% or the assumed rate in the system.

>> Sean Kaldor: Bettina and Dana.

>> Bettina Rounds: My question would be much as Vince's. We would say up the policy and say what we were going to do in terms of interest rates.

>> Damon Krytzer: That's my comment anyway. My question is the IRS uses rates, we're talking about a risk free rate not an assumed rate. Just as a policy, we're talking about a time value of money issue, not how should we allocate this overpayment or underpayment. Reference it, and done.

>> Sean Kaldor: Do we need to specify or say interest to go --

>> Harvey Leiderman: Not now but we should take that up when we talk about a policy.

>> Sean Kaldor: Because the cleanest thing to me would be, what did that plan actually do? It accrued our earnings on it and it offset an unfunded liability but I'm not --

>> Damon Krytzer: That's a conscious decision and that's not what we are talking about, time value and expense for that I think.

>> Sean Kaldor: I believe it's between the city and the employees and we should just say you owe them some interest for that. Like I said we don't need to address it now. Yes, James.

>> James Mason: Is there potential legal challenge for those employees who through no fault of their own, underpaid.

>> Harvey Leiderman: They overpaid.

>> James Mason: If you are saying there's other FLSA issues on payments, if some of those issues relate, relate to employees who have potentially underpaid you are saying the IRS would require them when they pay back that they would also pay an interest on that money even though the mistake was at no fault of their own, would there be any potential legal challenge from those employees?

>> Harvey Leiderman: Yes.

>> Sean Kaldor: Any further discussion on the motion? Can you re-summarize the motion just so we're clear?

>> Russell Crosby: Motion was to endorse the attorney's actions to resolve with the city and reflect the mandate from the IRS regarding interest payments, seconded by Santos.

>> Sean Kaldor: Okay, so then the motion ors, say aye, all those posted, seeing none motion passes unanimously. Item 3.1C, discussion and action regarding assignment to audit committee. If we could take this as sort of the last big thing, supervised by the audit committee and report back however general board action is needed. I'd ask staff to kind of work with audit committee, what are these components, threfs a city and retiree organization where we are paying out too many audit committee's roles are really to make sure those steps are happening.

>> Richard Santos: Sean, probably should take time to talk with Mr. Mesa and there are committees he might want to take a look at.

>> Sean Kaldor: That finishes item 3.1. We'll do item 3.2. Hopefully before the 10:30 break. Do we have Tom on the phone?

>> Harvey Leiderman: Tom, are you there?

>> Yes, Mr. Chairman.

>> Sean Kaldor: 3.2, discussion and action of governance policies developed by Cortex. I'll let you go through each one. Starts with A, investment committee charter.

>> That's correct, good morning, members of the board, Mr. Chairman. Tom Ianucci, from Cortex. I'll begin with the investment committee charter. The board reviewed this charter in the past but there have been a number of changes or developments that require some potential deeds to in policy. Mainly stemming from the statement of investment policy, and some of the other policies that were recently adopted. Just draw your attention to some of the key changes we've suggested. Beginning on page 1, paragraph 5, a heading of investment policy and risk management. We would find (inaudible) this provision requires if committee develop and recommend to the board various investment policies. We thought we would add the investment structure. This is a policy we noted in your investment policy, and it is distinct from the statement of investment policy and it provides we understand more detail, a more granular description of the structure of the portfolio and we thought it was important enough to specifically mention it in the committee's charter. Turning the page paragraph 8 --

>> Sean Bill: Tom.

>> Yes.

>> Sean Bill: Sorry, this is Sean Bill. I didn't get the document and maybe could I have five minutes and we could come back in, I haven't had the chance to review it.

>> Sean Kaldor: I'm just realizing, how many board members have not reviewed it? Let's do this, Tom, I apologize. Can you be with us a little bit later today?

>> Oh, certainly.

>> Sean Kaldor: Okay, let's go ahead and we'll get the extra copies for the two board members. We'll handle item 2.7 right now and then we'll take a ten-minute break and hear the disabilities. When we come back from the disabilities we'll start right back up with this item 3.2.

>> Okay.

>> Sean Kaldor: Okay, sorry, little performance error there. Is it just the two of you that don't have it? Anybody else? Okay. So let's do item 2.5. Discussion and action on renewal of the Cortex contract.

>> The current Cortex contract that we have the board has right now expires on June 30th. The recommendation from staff considering all of the ongoing projects that Cortex is assisting the board with and the at hock governance subcommittee, the recommendation is to amend the agreement to increase the not-to-exceed amount and extend out to December 31st, 2013 as indicated in the memo.

>> Sean Kaldor: Any questions?

>> David Bacigalupi: Move to approve the staff recommendation to increase the -- to amend the contract with Cortex.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion? All those in favor? Aye, any opposed, seeing none opposed, the motion passes unanimously. Okay. We will now take a ten-minute break. Oh, Vince.

>> Vincent Sunzeri: I think before we were going to have the disabilities we were going to have the agenda 7.6 E. I'm not sure what we will do when we come back.

>> Sean Kaldor: We'll start with that. To be clear, we'll start with retirements, 7.6 E and go through all the retirement pieces. We'll reconvene at 10:30. Thank you. [Recess]

>> Sean Kaldor: Thank you for the patients for the break. We'll make sure we have everybody in the room. Okay. We ridiculous reconvene then beginning with our time-certain retirement section and adding item 7.6 just preceding that. So let's start with 7.6 E pulled from the consent calendar. And this is called item E NBC Bay Area story regarding San José disability retirement investigation dated May 21st, 2012. And I believe Vince you wanted to address this.

>> Vincent Sunzeri: Well, I think that this investigative report brought up some very interesting points and if anything it displayed some of the flaws that we have in our process. Either from potential individuals coming in front of us, that are acting with the behavior that doesn't necessarily display a disability, or following an approval of a disability, displays that they don't necessarily have that disability by some other actions. And these are not things that we at the board have explored investigated to try to respond, so I'm terribly concerned as a trustee responding to these cases, and how we should handle it. That's the first thing. And you know, it brings up bigger questions, in my mind, with respect to how we should be responding, particularly today in light of cases that are coming in front of us. I also think we need to factor in that the City Auditor's done a report, that highlighted some of the things that were brought out in this investigation. An at the same time, we established a disability, ad hoc disability committee that has since been disbanded and it never completed any work because of the pending elections coming up. And the changing in the disability process. So I feel like we're sitting here still with a flawed process and we're ready to just keep moving forward and I'm disturbed about that and very uncomfortable making decisions today because of it. And one suggestion may be that we consider deferring cases until this board can get more serious about resolving this gap in between, open how we should in fact deal with disabilities. I was on the disability ad hoc committee, and the only change that we made was how the information is presented to us as board members. Nothing else changed.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: Well, I shared some of the same concerns that Vince has just in terms of and one of the things I'd like is a reminder of -- you know the same thing that you do with a jury before a jury has to make decisions, is a reminder of what disability is before we -- and maybe at each meeting. So that we understand exactly what we're required to do. Because I've got been, you know, I got the Cal APRS training but I think it's worth reminding us what we're being asked to decide. Each time, there are serious decisions for the people asking for disability. They're huge consequences. And I agree with Vince, that I'm not terribly prepared, in many ways, you can read the material but you're still not a medical expert. So I think it behooves us to be reminded what exactly constitutes disability under the law.

>> Sean Kaldor: Any other discussion? Baci. Beeps number one we know the process is going to change if the ballot is certified and proved to be legal, we do have a system in place and I would just caution all of us this board has recognized that the system is flawed it's put this board and previous board in a very difficult decision making decisions on medical information when we're not medical experts. But we do hire a medical expert and we rely on him and sometimes ask you know a great deal of him to help us think about, you know, within the parameters of what this code says, as far as granting or denying a disability retirement. We'll go to our own medical director and get more information if we need it or we'll send the applicant away saying there isn't enough presented to this board. And this is where we see a weakness and where we think that there's a problem. So I just -- I think we need to continue working with the system we have until it gets changed. And at the same time, again, just reiterate, I think everybody saw the video clip right or wrong, without making any judgment, I just don't think we should overreact to one individual case.

>> Sean Kaldor: Bettina and -- Dick then Bettina.

>> Richard Santos: I agree with Bettina, it is serious, we take this responsibility serious. We've been doing it oaf a long period of time whether it's today or past. Case by case, whether it's an expert our doctor who works with the City of San José to defer our questions. I'm not an investment officer either and you're expecting me to do the same job that y'all do and I do. I take it, I learn it I train educate do everything you have to do. I think that we need to hear these cases, and I think when the issue you're talking about this article, I didn't see anything on TV so I

don't know anything about that. I just read this thing here. You know that's when we got to bring in the workers comp office and find out where their responsibility is because I don't look at it as my responsibility. When you have a disability that's based on the medical evidence, not the politics, not what you read in the paper, and nothing else, it's based on the medical evidence. And like all much us, you're not trained but you do the best you can to read and refer to the expert. Same thing with me when I look at investment, I'll look for Harvey or Russell or whatever. The committee wasn't abandoned. I think that's the best to do is wait until after the elections and address the issues there. The committee can easily get back together. I've talked to Dr. Das on many occasions. A lot of the board members are interested in doing that but we thought we'd hold off until everything is settle and we'll go from there. There's many ways to make improvements. We have 28 to 30 people coming and there's no question, we have to take a look at this and we have responsibilities here and people's lives are at stake and it's a very serious injuries. Many men and women have given their life or hurt in the line of duty. Not any good to deferring, I'm not saying you did it or said it, we're appointed to do this. And that's what we should do.

>> Bettina Rounds: I'd like to clarify, I was not referring to an article. I take this very seriously and I think we need to be reminded what the code is in the same way as a judge would remind the jury what their responsibility and duty is to help clarify what they're doing, not to defer it, not to -- I think that in fact I don't think we should defer doing these things. I think that by the time it works through courts and whatever else, it could be a very long time. We have no idea what the consequences are going to be. We have an obligation but I want to do it properly. And Dr. Das I for one need a great deal of help in walking through these things from a medical point of view. In the same way that I rely on Cheiron or our investment advisors to -- and the investment committee to give us that advice. So I'm in no way, Dick, saying that I think that whatever you know the NBC does or anything else is irrelevant to me but what's not irrelevant is I think we really need to have some real clarity about what we're deciding. And what the code is. And since I've been on the board, we've not even been really reminded very clearly of what the code says we're deciding is a legitimate disability.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: So a couple of questions. One has to do with the ad hoc disability committee. When do we have our last meeting? And why did we stop having meetings? We had a mandate as a board, we had an objective to try to solve this flawed structure and I don't think we accomplished our mission. And the second question is really more of a tax question, and that is, do we put this plan at risk by continuing to grant a high percentage of disabilities? Do we subject this plan to an audit and risk the tax consequences of this plan status because of that? And I'm not sure if anyone in this room is prepared to answer that question.

>> Sean Kaldor: I think I should address the first one at least as far as the disability committee. We established the ad hoc disability committee with a purpose or with the understanding that there was research going on in the city to look at a new way to hear disabilities. And we wanted to take a role in that and provide a recommendation as to what a better process might be. We sat down and met on several times and explored a number of different options, including panels that might be a subset of the board rather than the entire board to heard disabilities. We talked about a subsaid of attorneys or doctors, we saw that the committee came up with a proposal with an option they were going to pursue and decided we were either too lately in coming up with something or they were too late, and there wasn't recommending an alternative to what they chose to do. Ultimately it's they that decide the policy? We implement the policy. We did find one benefit of the committee was that we have a lot of information to go through so summary forms might help. We also realized, a lot of this should be a legal decision. Do you meet these legal requirements and so we authorized Russ Richeda who was here this morning to review each case and without sharing with us come up with his recommendation and the plan was after six months of that to come back to see what a strictly legal interpretation have met with what we were deciding as a board and could that be a simple alternative to have one or two or three or howeverful attorneys give us a recommendation that we could then adopt as a board. That was the history of the ad hoc disability committee and the two outcomes that came out of that we ultimately did not look at Russ Richeda's work because the first eight or nine disabilities were all the police officer special situation and we didn't have any disabilities for the last several months but now we have a large newspaper we are going through. As far as the tax I'm not qualified to speak on that but the city has set up the definition foster what a disability is and there's a process for it. And to say we're not going to approve someone's disability, even though they completely meet all the definitions and requirements and follow the process. But we don't want to do it because there might be tax implications. I wouldn't understand that logic. It's

baked into the plan. We might have faulty tax advice for the plan in general, that's definitely a question we should ask. The other issues that were raised with the article. There were two issues raised in the article, follow up and double dipping. Double dipping is a rule, we don't write the rules, no follow-up is a fair point. When there are situations where there's a reason to believe that someone had a claim of a disability and now is exhibiting the capacity to do something they said they were not capable of doing. It's contingent upon us the board to go after and say that is not -- you are no longer disabled. Maybe you were at that point but you've recovered and we have both the right and the obligation to call those people back. And anybody at any point of retirement you can do that. I think at any point of retirement and mandate them to go back to work and they can then decide they don't want to do that and they're not disabled. There's age or some kind of limit to it I think so anyway. We have -- we have an ability to go and do follow-up but that's our decision there's no one telling us not to do that. And that has nothing to do with hearing cases every month and making determinations right now. It has to do with what we do with those ones that are out there or how we follow up with people. Maybe establishing with each one a five year follow-up to see if things have changed. So farce the article to Bettina's point I completely agree. We have an obligation to do this, this is part of our job, we signed up to do this. I'm not an expert in pension administration systems but I've taken some time to learn bit. I'm not an expert in investments but I've taken time, I'm not an expert in disabilities. I'm not saying I'm an expert at it I'm completely open and eager to have more education. I think that is a list of things we could do, of other cases in this area. Have our counsel highlight these are bright line things you got to see, work related, disability from doing the job and maximum medical improvement and no modified duty available. Crystal clear items would definitely help in this process. Dick.

>> Richard Santos: I think that would be good to invite next meeting workers comp personnel here just to ask them questions about some of the concerns Bettina have and we all have. That would be one. And two is, we're going to go back when Dave and I was here 100 years ago, we talked about wellness programs there and how the city would do better for the employees and nothing's ever happened. I had a chance to sit down with Dr. Das we had a great conversation over these things. He's for it other members here that have risked there fm where ourfully lies I don't know, but it's up to the union and the cities to address that and give us a hand on these issues. There is workers come, we want to find out why it takes 100 years to have surgery or medical care or rehabilitation or what have you. The medical doctor can say yes or no to our questions or whatever we want to

do. I think we're all in the right direction where we're going. It's not easy. After these elections there's so many new challenges going on we have to address them.

>> Sean Kaldor: Baci.

>> David Bacigalupi: I don't want to sound like I'm dragging things out of the attic, but previous issues about the high degree of disability retirements that this system shows, and just some history that I remember, Dick probably remembers as well, is that there was some discussion, in fact, we had some members that actually back in the '90s when inflation was high, their retirement really put them back. And they actually came back and God medically approved to come back to work. But the city does not have to offer them a job, once they're retired. The city can decline to re-hire them and based on some studies I think with the Highway Patrol, they had a bunch of individuals that got cleared by their doctors to come back to work. And within six months to a year or whatever that study, and I'm paraphrasing because it's been a long time. But they reinjured the same injury and went back out at the newer rate. So the city looked at that, and had a real concern about hiring Joe Smith back, and you know, putting him back on the job and then having him go back injured again, as well. So the City's going to have some part in that no matter what this board does.

>> Sean Kaldor: Damon.

>> Damon Krytzer: This isn't really our discussion. But you know most disability insurance operates under income replacement versus own occupation if you can go back to work in a similar capacity. So if the city doesn't hire you back, that in itself is a little immaterial for here. But it's interesting that's not part of our criteria, it just seems like it's antiquated back here. We also, not we as a board but I remember the city came out and decided that this could by the numbers be the most dangerous place for a policeman or fireman to work. That's one of the first things I heard when I started on the board and I haven't heard about that again. I was hoping that would come out of the ad hoc disability committee as well. I know that sort of had an untimely demise.

>> Vincent Sunzeri: On my first question, I'm not sure I asked you, I don't know if I got an answer. I was on that committee and my question was, when was our last meeting and why did we stop having meetings?

>> Sean Kaldor: So the answer was that the city had chosen a new process of hearing disabilities. And had come up with that through the city council and was moving forward with that and it was our process of coming up with an alternative was kind of a moot point. So why we're we needing to think through other ways of doing it? They had constructed recommended ballot language. They were moving forward to the voters so for us to say no no don't do it that way instead go to a subcommittee of board members and a doctor and two attorneys or whatever, they had chosen alternative.

>> Vincent Sunzeri: So my sense is we've agreed at the ad hoc committee that this is a flawed process. We chose not to keep moving forward in solving the process because the city was coming up with a new process. But yet, in this gap, we as trustees are going to continue to evaluate and make recommendations are whether we have a disability for an individual or not. As a fiduciary it's a little uncomfortable being in that position.

>> Sean Kaldor: So my thought is do you believe our actuarial process is a perfect process? Do you believe our investment process, where we're in the 99th percentile is a perfect process? Do you believe our relationship with our tax counsel is a perfect process? We're ripe for opportunities to improve things and that's what we thought with the subcommittee is to look at ways we could do it better. But we have a way that's worked for many years and follows the rules and implements the rules, I think, effectively. The rules are what are fundamentally changing now. The definition of disability, none of these cases could be heard under the new rules and when the rules change we follow the new rules. And I think even then sit really their committee of doctors that's going to change it or is it just the new rules being applied? We can't change the rules so we can sit as a committee and talk about a better way to hear them but a fundamental I change of the resumes is really what's going to change this process.

>> Vincent Sunzeri: What I would say on the investment side being chair of that we are taking action to fix and improve the plan. On the disability side we are not.

>> Sean Kaldor: But do we stop making investment decisions, just like here, do why we have blood measure we have improvements. Do we stop -- sorry.

>> Bettina Rounds: I just recommend that one, I think that we all signed up that this is what -- it's part of our responsibility. And doing it better I think all of us agree that we could do it better, if we got more training, or heard workmen's comp or you know, got more information on how to do it better. I suggest we get more training have workmen's comp come and speak with us. And I would still like a reminder if not every meeting, now and then, about what the code is in terms of what we're really deciding. And I think those are at least moving forward to do it better. But I don't think we have the choice of not doing it. I mean this is what we signed on for.

>> Sean Kaldor: Dick.

>> Richard Santos: You know, I don't -- I didn't hear from Vince saying he didn't want to do it. I have said it numerous times about that committee, I don't know why we're going over this again. I do agree with him. Let's do this, let's put the committee back together so we can get information, meet with workers comp meet with the city doctor, do best we can, nothing here is perfect like Sean said. Let's put it back together and when I call you up, just make sure you respond and not make it another four or five months, let's respond immediately and put something together and we'll go to work. Get things done. We have a new person here, that person may fit in on some of these issues, let's use his expertise or experience or whatever it may be. With your permission Sean we'll do that, I'll give everybody a call and start this thing up and I think we'll make some improvements.

>> Sean Kaldor: Discussion on that? I think we'll do that as a motion. But is there discussion on that?

>> Sean Bill: The only thing I would say is maybe the committee could look at ideas on follow-up. I think that's what generating a lot of this discussion here is you know when you have situations like this report and the media it makes us look like we're not paying attention. And maybe we could explore the follow-up. You know if it's a five-year or something like that.

>> Damon Krytzer: I don't know if wellness falls under that committee but that's at issue.

>> Richard Santos: I agree with you.

>> Sean Kaldor: We had called it a disability determination subcommittee. Maybe we should just call it a disability commission.

>> Richard Santos: Whatever the words we'll get it going.

>> Sean Kaldor: All right so we can reconvene that same committee --

>> Richard Santos: We're all eager to go. Let's get things going. Bsdz yep.

>> Sean Kaldor: Do we need a motion?

>> Russell Crosby: Might as well.

>> Richard Santos: Lets get the committee back together and let's go to work.

>> Harvey Leiderman: You can't make a motion but the chair can appoint an ad hoc committee.

>> Sean Kaldor: Sure, I'll do it that way. I'll foy an ad hoc committee for review of the disability process. Including issues such as workers compensation and the input they have to it. Better education for board members as appropriate, and review of the follow-up options constitution of the board or that ad hoc committee to be the old disability ad hoc determination committee with trustee Santos as the chair.

>> Richard Santos: Will do, that's the motion.

>> Sean Kaldor: That's the direction. Unless someone has real input or concern --

>> Damon Krytzer: You're king right now, man, work it out.

>> Richard Santos: Thanks.

>> Sean Kaldor: Okay. Any further discussion on 7.6 E seeing no further discussion we'll continue with item 4, retirements, 4.1 service retirements we'll hear these two together. A, William R. Enos, police officer, police department, effective July 21st, 2012 with 20.03 years of service and item B Kimberly L. Hudson, police sergeant, police department, effective August 2, 2012, 27.14 years of service. Motion on those two?

>> David Bacigalupi: Move to approve.

>> Sean Kaldor: Discussion? Seeing no discussion all those in favor, opposed, none opposed, motion passes unanimously.

>> David Bacigalupi: For the record Mr. Chair, I don't believe either of the candidates are in the audience. I had the opportunity to work with one of them, Bill Enos who was a very aggressive, very fine officer. Put a lot of effort into doing his job, and kept a sense of humor about him and that was one of the best things, goes a long way when you're dealing in negative context with people, if you can throw a smile in there you can get away with a lot more, and get your job done and everybody is happy so congratulations, to both of those candidates on their retirement.

>> Sean Kaldor: Thank you. Item 4.2, change of status to service connected disability. Item A Peter C. Araujo, fire engineer with the fire department request for change of status from a service retirement to a service connected disability retirement effective January 23rd, 2010 after 29.41 years of service. Donna.

>> Donna Busse: Fire engineer Peterrajo, 59 years old with 29.41 years of service his current work status is he's service retired as of 1-23-10. At the time of separation at the time of application he was on duty. Shoulder he should avoid sustained wearing of his helmet, he should avoid sustained repetitive heavy lifting, there's no permanent modified duty available.

>> Sean Kaldor: Dr. Das do you have anything to add? That's a no. Mr. Swift.

>> As indicated, Mr. Arajo has 29.41 years of service. He was on disability at the time he service retired in January of 2010. His history is set forth in the packet on pages 78 through 88. He injured his low back in 2003 while entering into a rescue operation in a creek bed. He injured his low back again in June of 2006 when he was on a ladder which was falling and he had to jump off and therefore injured his back. In November of 2006, he injured his left shoulder while operating a rescue saw. In July of 2007 he reinjured his low back bouncing in a vehicle. Some of these vehicles are older and have no cushion whatsoever so when you're going fast down the freeway you're hitting your head on the ceiling frequently. In December of 2008, he injured his back again, moving equipment. And the is last straw was in December of 2009 which is on page 38. He was lowering a ladder from the second story, and the ladder struck his neck. The treating physicians for each of those body parts have completed the forms requested by Dr. Das and provided work restrictions with regard to his shoulder his neck and his low back. Dr. Das also provided work restrictions for his shoulder, his low back and his neck. In addition, fretting physician for his neck on page 17 of your packet, Dr. McReish, on page 17 it lists the restrictions for his neck. The treating doctor on page 66 Dr. Sabat also provided work restrictions for his shoulder saying he could not lift because of the problem with his shoulder. So there's no contrary medical evidence indicating that he does not have restrictions. The department does not have permanent modified duty and on that basis I would ask that his application be accepted.

>> Sean Kaldor: Discussion, Damon.

>> Damon Krytzer: These are all prophylactic restrictions right?

>> Dr. Das: According to the forms by his treating physician he did not describe any specific anatomic or physiologic restrictions, he basically said it was to prevent furnished injury or to prevent pain.

>> Sean Kaldor: Any further discussion?

>> David Bacigalupi: Mr. Chairman, based on the testimony and the paperwork, I would move to approve the disability.

>> Richard Santos: Second for discussion.

>> Sean Kaldor: Discussion.

>> Richard Santos: Other board members don't know fire engineer petroArajo. Fortunately I do. I had the chance to work with him and later on I was his supervisor. Reading this report doesn't do justice to what this individual has done in his close to 30 years on the fire department. Working with me was one of the most aggressive firefighters we had. I could go on and on with something we faced together. He never let me down in the fire department because he was so aggressive physically that he paid the price. But he also later on when I was gone went to work as a fire inspector. He tried to be an administrator, but it didn't work out. When you have a degenerated disk and bulging disk, do you get better? Obviously as Dr. Das says you don't. And there's no occupation him inform there because they can't meet these restrictions so that's 80 seconded it and again, I have to say, I was in mostly your positions reading this documentation that the city put down here in this report it doesn't do justice. I would also caution that when firefighters amount police officers come here they need to do what I call whether it be a representation or whatever do a better job. Because when you put down not in this case, examples moving an extinguisher or whatever, it doesn't make sense to you all. When peterrette and I were on vehicles, he and I were the last to leave and the guy never left my side. If I'm biased it's only because I worked with him. He looks the same as he did when he came on. Before if you didn't know him he was a champion wrestler. In the Olympics. I could go on and on. He was there for the employees as well as the citizens of this

great city and he never let anybody down so that's why I seconded it so I hope y'all will join me in granting this change to a service connected disability.

>> Sean Kaldor: I do have a question on page 7 item 4. You mentioned Mr. McReish's report, page 17 talks about the patient cannot return to his occupation and that provides restrictions precluding him from heavy pushing and pulling. Dr. Das your restrictions are not as significant as that. What was your restriction, what was your rationale?

>> Dr. Das: Dr. McReish's opinions were based on the medical evidence. Mine are my opinion based on the mechanism of his injury and the imaging studies. What I look for in terms of his -- his pathology that precludes someone from doing something. So I didn't -- Dr. McReish didn't identify any specific pathology on the forms that would say that he cannot do X, Y and Z. So therefore based on my assessment of what I reviewed I provided less restrictive restrictions basically prophylactic restrictions and so mine were a little bit less severe.

>> Sean Kaldor: One more question on that and a question for both yourself and the applicant. But Falen's sign?

>> Dr. Das: It's the test for carpal tunnel. It's an element. What do you do is let the person bend their wrist and you wait to see if they become symptomatic. Typically it would cause numbness or tingling or the hands have a sense of falling asleep and that reflects compression of the median nerve so that's one of the tests that's used for carpal tunnel syndrome.

>> Sean Kaldor: C 6 C 7 cervical spine, and the Falen's sign those are different.

>> Dr. Das: The C-6 nerve root also innervates the thumb. So you can have overlapping syndromes between carpal tunnel and C-6 nerve root. So it doesn't exclude one or the other. You can have both happen but typically if you have a Falen's sign it causes symptoms in more than just C-6 nerve root, the whole hand as a whole and the median nerve is innervated -- innervation for the median nerve provides all along.

>> Sean Kaldor: Somewhere on the chain?

>> Dr. Das: They're not mutually exclusive.

>> Sean Kaldor: For Mr. Swift or the applicant, restrictions said precluding from heavy pushing and pulling, limiting heavy pushing and pulling that would tell me you're not able to do it.

>> Yes.

>> Sean Kaldor: So Mr. Swift I guess I'd ask, can't push and pull or --

>> Well, I mean, he could push the microphone, I mean, it's a matter of degree. In his job, given the forces that he has to deal with, he's not able to push and pull in that context. Does list C-5 6 level, 3 be 3 millimeter herniation. So there is a herniated disk in his cervical spine.

>> Sean Kaldor: Damon and Vince.

>> Damon Krytzer: Dr. Das, in that same description, where Dr. McReish says, precluding him from heavy lifting but then calls it prophylactic later on, is precluding him the same as free conclusionary in this case and is everyone dealing with the same definition of prophylactic and preclusionary?

>> Dr. Das: That is the definition standard template under the workers compensation system. The form is separate and so I relied primarily on the form in terms of determining what the pathology ask in terms because I -- typically the physician will provide an explanation as to why it precludes the individual as opposed to just stating that they're precluded, and so that's -- that's -- that's part of the issue. So it becomes a little more difficult to assess what's in the physician's mind when he says that he's precluded at that point but then doesn't repeat the same --

>> Damon Krytzer: But he's the one that says but it's a prophylactic restriction. The way I read it when I read it the first time was more of an adjective than --

>> Dr. Das: I mean to be fair the prophylactic is my word that I use, that that's the interpretation of what the check off boxes on the form say basically, that those -- that definition is typically what you rely on for prophylactic restrictions but the word prophylactic in the report is mine, not Dr. McReish's.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: So I'm just trying to follow through on the hicht of the injuries from what I see, on the left shoulder, on 2004-2006 dates of injuries on the left shoulder. For the lower back, 2007, 2008, and 2009, and then, for the neck was in late 2009. So with the exclusion of the neck, the other injuries really for the most part were prior to 2009. And on page 52, of the one of the reports that we have, which is a fairly lengthy report, it says that the patient is able to continue his job as a firefighter and does not qualify for vocational rehabilitate. Then I take a look at what Dr. Das has submitted to us on pages 8 and 9 and for the left shoulder, it states that in 2009, Dr. Salinas opined that he did not need restrictions for his left shoulder. For the neck, on page 9, further injections may help reduce his pain. Which tells me the recovery process has not been completed and then on the lower back injections may help reduce his pain level. Anything further Dr. Das that you would want to add beyond your comments?

>> Dr. Das: As far as treatment issues, well, I mean, there's -- there is a number of treatments that can be offered to individuals. And it's -- it's difficult to say. There is response to the individual that may help the individual, may not help. I present options that may reduce the level of pain and allow him to participate or engage a little bit more. There is no guarantee that the treatment will significantly reduce the symptoms so he could participate as a full duty fifther but definitely an option to consider is the way I would put it.

>> Vincent Sunzeri: In a disability case would you suspect that an individual would pursue all options before we should be making a decision to completely decide that they are disabled?

>> Dr. Das: It depends on degree. So there's some treatment options that are more palatable than others. If it's a surgery that may or may not help I would strongly disagree. Fitts an injection depending on what the injection is and where it is, I think it, you know it's something to consider, that if we're looking at someone who's a quadriplegic and cannot move their arm, there's absolutely no question that there's no -- there maybe treatments out there that may kind of assist them but there's nothing that we can do that will make a significant change. However, if there's pathology identified, that is responsible for symptoms and there are some treatment option there that may help reduce those symptoms they may not change the pathology but they may reduce the symptoms. Function may improve with the reduced symptoms. So in reference to disability the function you know if we're looking at absolute function perhaps treatment can make a difference.

>> Can I comment on that?

>> Sean Kaldor: Please.

>> I would note that Dr. Salinas was not evaluating the neck. So -- and I believe Dr. Das would agree that a herniated disc in the neck is not going to change on the basis of an injection.

>> Dr. Das: Yes, that's exactly to my point. Injection will reduce symptoms but it will not reduce the underlying pathology.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: That's what I was going to ask Dr. Das. If somebody needs are you suggesting that the applicant would need injections regularly? For this kind of --

>> Dr. Das: You know it's very difficult when you're looking at something like a herniated disc in the lower back or the neck because a number of people can be asymptomatic.

>> Bettina Rounds: I guess my question really is that to me, it seems the disability is a disability, and that's what we're being asked to evaluate. If you need the treatment, which is either surgery, or regular injections, you've already acknowledged that there's a disability. I guess to some extent, if you told me that I needed injections, for a herniated disc in my neck I would think that I had a disability.

>> Dr. Das: I guess it all depends --

>> Bettina Rounds: Unless I could recover.

>> Dr. Das: I guess it depends the definition of disability.

>> Bettina Rounds: That's one of my questions. What is the definition of disability then?

>> Dr. Das: You know when I typically look at a disability, you know it's a very stringent approach. I rely on the definition provided by the code in terms of an incapacity. It's an incapacity to perform these kinds of activities. And I typically look at that time pathology identified in terms of is there loss of is there compression to the nerve, damage to the spinal cord that stops people from doing something, is there instability present, is there a tear? So is there some type of physiologic or structural problem that absolutely stops you from doing something? Then we have the degrees of -- we could argue the degrees of injury in terms of is it reasonable for someone to have a significant amount of pain with these kinds of findings? If I have severe degenerative arthritis of the knee, bone on bone, can they walk, yes, does it hurt, yes, is it reasonable for them to walk? Yes. Is there palliative courses? Yes. Total knee replacement, are you expecting someone to get a total knee replacement in order to say you're not disabled, in my opinion, no because there is absolutely no guarantee that it would work. Now when we're talking about something in the neck with a herniated disc there is a different pathology. A lot of people can have these kinds of findings and not necessarily be functionally restricted. What comes down to the restricted

activity or the restriction in function. And a lot of times, it's pain. Now what causes the pain is that the disk could be or the -- are there muscles and ligaments that can also be responsible for the pain? Yes. So then the issue is, whether treatment can address some of those. So I mean, I understand what -- you're trying to ask me a black and white question but it's -- it's very gray. So does that help? No.

>> Bettina Rounds: No but --

>> Dr. Das: Sorry. [Laughter]

>> Bettina Rounds: Thank you for trying.

>> Sean Kaldor: Did you want Harvey to answer your question on the legal standpoint?

>> Bettina Rounds: No, I wanted the disability and I think Dr. Das addressed that.

>> Sean Kaldor: Okay, Sean.

>> Sean Bill: All right, so I mean these are very tricky cases. For us lay people here. I think you can hear from the questions that what constitutes a disability, and what doesn't. We have a box we're operating in, prophylactic versus preclusionary, et cetera. For me one of the things that would be interesting, upon the initial retirement, was the retirement made for disability or for a service-connected?

>> Yes, both applications were filed at the same time when he was on modified duty.

>> Sean Bill: Okay. And then since leaving, or since retiring has the applicant worked or had employment?

>> No.

>> Sean Bill: Okay, so those are two things I'd like to know. So thank you.

>> Vincent Sunzeri: Fortunately I had the opportunity to see a lot of wrest Ling tournaments. That's unfortunate because it would be painful sitting through hours and hours of that but sometimes you do for family and watching that it was pretty interesting the positions you get put into as a wrestler. And the comment that you were a wrestler in your youth, and probably successful wrestler at that, certainly could cause strain to the next. And so my question for Dr. Das is, is it possible that an injury could have happened in your youth that you don't realize until some particular event later on causes you then to examine and evaluate that particular body part?

>> Dr. Das: I, in my opinion, and this is subject to debate and I think people can disagree with it. I would really disagree with that. I think that you know, the -- if you're going to have a significant injury it will be a significant injury at the time. And if he was participated in wrestling and he herniated his disk at that time he would have known about it and it would have been an impairment and it would have been something that would have been a long standing issue. So I -- you know and that's if the disk was responsible for his symptoms and I haven't necessarily said that I believe that the disk is responsible for his symptoms. But the -- but I don't -- I wouldn't relate any of his current symptomatology to wrestling in his youth unless there was a knee problem or he tore his ACL and it was repaired and you continue to have some issues. But particularly with the neck they haven't really shown a strong relationship with that in terms of an initial kind of something maybe loading it and then later on, 20 years later, that's the, you know that's the -- that's what caused it, that goes against most of the ep deem logic literature that I reviewed.

>> Vincent Sunzeri: This incident in 1989, where the ladder fell, is that what we're attributing the herniated disk to?

>> Dr. Das: Not necessarily. The disc herniations happen as farce as life activities et cetera. If you are going to herniate a disc, probably have something heavy fall on top of your head, is what happened in this case. How do I put it significant trauma because there's also something between the discs and the form provided more head

injury, more maybe a vertebral fracture or some like that. But it's not impossible. Not -- it's not implausible to me that a heavy object falling on somebody's head could call a cervical disk herniation.

>> Sean Kaldor: Any other questions?

>> Richard Santos: Just comment. When I brought up the wrestling issue was pretty simple. As you know in football and so on, the preventive paralyzing comes with a strong Nick and wrestlers have that. He wasn't a librarian, when I was a supervisor he never once put in for any medical issue. One, he knew that we were a team and he worked and he never complained. So he was physically fit, unfortunately herniated disc couldn't be prevented because of the risk he came upon in the job. Again I call for the question. I verify what this gentleman went through.

>> Sean Kaldor: Any further discussion? Seeing no further discussion we have a motion and second to approve. All those in favor, say aye, all those opposed say nay, seeing none the motion passes unanimously.

>> Richard Santos: Fire engineer Araujo, good seeing you again, hope you stay as healthy as you can be. Come back and see us once in a while.

>> Thank you.

>> Richard Santos: You're welcome.

>> Sean Kaldor: Item 4.2 B, Patrick Boyd, Mrs. Sergeant, police department, request for a change in status from a service retirement to a service connected disability retirement effective January 24th, 2009, 28.33 years of service. Mr. Jeffers.

>> Good morning.

>> Sean Kaldor: Donna.

>> Donna Busse: Police sergeant Patrick Boyd is requesting a service retirement prostate cancer. He's currently 62 years old with 28.33 years of service. He's currently service-retired effective 1-24-09. At the time of separation at the time of application he was on full duty. His work restrictions from his medical director is he cannot be involved in chase and apprehend suspects. .

>> Sean Kaldor: Is there anything further?

>> Force the last 28 years was here in San José he was a tough hardworking police officer, he was a solid backup. He gave his heart and soul to this department. People would describe him as a hard worker. Someone who was a workaholic. He was recognized state wide as an expert in certain types of investigations. And by any measure, by any measure he had a rough and tumble career. The disability restrictions imposed by Dr. Das involving his left shoulder which prevents him from engaging in altercations, his left knee prevents him from chasing and apprehending criminals. These restrictions by themselves are sufficient to bar him from working as a police officer. He cannot engage in combat. The department reports that they're unable to accommodate a sergeant with these types of restrictions. On account of his orthopedic disabilities described by Dr. Das and as described by Dr. Summer in pages 19 to 31 in your report, this man is able to work as a police officer. On account of his orthopedic disabilities. He also has prostate cancer, which has been alleged as being work-related. And I understand this would be a controversial issue as far as causation because no one really knows what causes cancer. Mr. Boyd has contended that an exposure to diesel fuel and hydrocarbons has increased the likelihood of his developing prostate cancer. His prostate cancer has some restrictions, he's been treated, he's had surgery. He's had radiation. But because of the prostate problem, he's unable to work in an area that's not -- does not have immediate access to a restroom. I think that that restriction itself would be enough to bar a person from working as a police officer. But regardless of your opinion on -- the medical opinion on causation as to the prostate cancer, the orthopedic disabilities by themselves should be sufficient to warrant granting his disability retirement. Now, question you may have is, how come pat Boyd was working full duty at the time he applied for his application for disability retirement and why was he working full duty up until his last day? Now, he comes

before you and is claiming an entitlement to a disability retirement. I would turn if microphone over to him at this point.

>> I think even with my comments with the doctor where in the office he even admitted that there was a physical test that an officer would day while they are working every year that I would have been taken off the street long before I left the street. I came to work I told him I wasn't hurt never said I was hurting. Any time I received an injury I went to work immediately. I was the first one in the state of California when I lost a finger to return. They wanted to retire me way back in '72. I came back to work and came back with an injury that most people would have retired from. When injured every time at the police department, I came back to work. Even when my daughter was kidnapped, abducted and murdered, I came back to work, another sergeant would have had to fill in. During her trial I even changed my days off to be able to work the entire weekend to be at court Monday through Thursday when court was on. I had injuries that I couldn't even lift my arms and take my knee would swell up on me in the meantime. A lot of times my wife would kick me out of bed because I would come to bed with ice on my shoulders and knees, she literally forced me if you keep doing this you got to sleep in another room. It got so ridiculous at home. It was a joke me getting out of a car because it would take me a few minutes to get out of a car. I'd have to get my ankles ready my knee ready my shoulders ready, and it came at the end, I'd still be out there I would never want to be off the street or being a detective if I could. I knew it was coming to an end when I had a conversation with a friend who was healthy, went to work in San Francisco PD after his time in Oakland and the Department of Justice. Somebody else being killed. He said Pat you captain be protect yourself anymore. You're bringing a gun to a gun fight and you're giving it to somebody else and somebody else may die because you can't protect your own gun and you're putting your own officers in the way. You can't help them. If you are on the other side of the fence could you climb over? Somebody being injured on the other side whether it be a citizen or a cop can't come and save them. I just can't do it anymore. My arms don't live that high. I don't have the ability to pull myself up anymore. And I realized then I was just putting myself more people in danger than just myself and I have to then come to the realization that I have to leave the department. Could I have taken a year on disability? For lack of a better word milk the system hurt the city have my team go without a supervisor because I was on disability I could have done that but I choose it was more important that they get another supervisor by retiring right away they would replace me and they would have somebody out there helping them

out and working with them. I chose to work to the last day px truly I didn't want to leave. If I had the choice I wouldn't be in front of you right now, I would still be on the street working.

>> Thank you Mr. Boyd.

>> Richard Santos: Not to take Mr. Bacigalupi's thunder away but I make motion to grant Mr. Boyd's service connected disability.

>> David Bacigalupi: With comment.

>> Richard Santos: I had the privilege of knowing sergeant Boyd 30 of his 40 years and I know not to be sensitive in this issue but it is. When had his daughter passed away, he kept busy regardless of his restrictions he just worked. We had the chance in the community we lived to many times have conversations he was always upbeat and continued going. I have to say when I was reading this information about the carcinogens and hydrocarbons and everything else, they don't understand that, presumptive law is none of our concern. But it bothers me because as a firefighter on many, many occasions when we had big occasions, we had officers sitting there with no mask, dealing with traffic, dealing with people wandering in what have you, they were there nobody had masks but it's irregardless, those things apply to this gentleman, as others from that age and that era who went through a lot without safety issues and didn't complain because back in those days if you complained you were kind of taken out, or left or whatever have you. So many of us come from that old school for whatever reason. We love the job and we continue no matter what the problems were. Because dealing with your supervisor you didn't have the opportunity to make out these forms and stuff and get a chance to go home or whatever have you. So I had a privilege to know him, my heart goes out to him and his family but what he consequent through to protect the citizens of San José I know that and appreciate and yield to Dave.

>> Sean Kaldor: Baci.

>> David Bacigalupi: I'll speak to a point of reference working with Pat over 25 years. He and I have disagreed many times. We don't get along many times. We've had some heated discussions with each other. So I would say that Pat and I will never be good friends. But I got to tell you if I was going to describe him in one word it would be a workaholic. The guy is dedicated, you'd see him late at night. He's a detective working 8:00 to 5:00 doing search warrants going after bad guys, he loved the job and you know, I don't mean any disrespect to anybody else's career choice and stuff. But this is -- and I think we're getting less of this in the current group of kids that you know look for this kind of a career. But there's an older group that, this is their life blood. And I could say that Pat's a good example of that. Lived, eat, breathe probably most of his friends are police. I mean it's just -- if he couldn't work anymore, it really means he couldn't work anymore. And it just -- it was just too important to him. And that's the kind of person he is. And you know, I'm not gaining anything by saying it but that's the fact. I give him credit. I always said that if my family as his was, was the victim of a crime, a violent ugly crime, I would want Pat on the case. I want somebody to clean up the mess behind him but I'd want him on the case.

>> Sean Kaldor: Please.

>> Just to reiterate what Dave said, I was lucky enough to work with Mr. Boyd. Same thing, he is probably one of those guys that law enforcement is missing in the younger generation which is the old school attitude of they're going to have to carry him out of here, he's not going to leave on his own and he was certainly there on numerous occasions when I needed him and when people that I knew needed him. And he certainly risked his life, and beat up his body, doing the job that he's done. And I appreciate that about him.

>> Sean Kaldor: Any further discussion or questions?

>> Richard Santos: Call for the motion.

>> Vincent Sunzeri: I didn't really see, I didn't see any reference really of reports of any of the injuries, medical reports, and maybe I've missed it in the packet, is that just simply, I had an injury and I just didn't go have it

checked out and just went back out in the field again and this happened over the course of your career or is there something I'm missing in the packet?

>> I'm not sure --

>> Sean Kaldor: Could you speak into the microphone?

>> Dr. Summer's report had prior injuries, that weren't available to you but were available to Dr. Summer in his report.

>> Dr. Das: I would have included those reports if I had them.

>> Vincent Sunzeri: I guess I would say that's the one thing that is kind of missing is having that documentation to support a particular injury that happened over the course of your career.

>> Dr. Das: Sometimes workers compensation I don't always get the reports. And I ask and there's a delay and there's a balance between moving forward on the case with the information that you have versus trying to wait and get it. And sometimes the reports just aren't there, for workers comp anymore, I'm not sure. But in his particular case I did ask. But the report by Dr. Summer did contain enough references to the prior injuries that I was satisfied. And the pathology and the restrictions were all consistent with the mechanism of injury. I didn't find it very controversial, based on the current condition. I didn't find it a controversial case.

>> If I can help, there were a tremendous amount of injuries, probably more so that we didn't come into the theory of ever writing a report up unless you needed stitches or if it was a broken bone. If it was just a rip or tear or something swelled you just ate it up, went back to work, throw ice on it go back to work. As Dick said, we didn't write we were exposed at anything. We used to laugh at us and call us the blue canary. And throw them in and that's how we did it and how we were trained. You might come to work with a black eye, punched in the face, you

didn't write that you got punched in the face. The injury spoke for itself, nobody cared. If it's broke or a stitch you write that up, because you have to get treated.

>> Richard Santos: When you had the DCW 1 form, what the civilians are used to seeing, I can understand why they would bring this up. There is all different doctors reports and observations, but supervisory report that would trigger a response and I understand it.

>> Sean Kaldor: Damon and then Sean.

>> Damon Krytzer: First scars and surgery if you don't do an equal disability. There is something on page 8 No. 7 no where there was preclusionary restrictions because of the arthritis in his knee. I guess I sort of know your answer to this already. But can you kind of talk through the arthritis?

>> Dr. Das: Well I mean from my perspective it's -- when you're looking at pathology, and then you're looking at people's symptoms, sometimes the symptoms are not consistent with the pathology. And so I do not provide restrictions to the degree that's stoims reported. However, you know as you may be well familiar imaging findings do not necessarily correspond to pathology that causes pain or symptoms. But it's very hard to make that distinction. So when it comes to certain conditions like arthritis of the knee, and there is significant arthritis present, and people report symptoms associated with it. I -- that's the objective information that I have. And if it's consistent, I continue it. And I do, you know if a doctor would say that it's both prophylactic and preclusionary restrictions I would reduce the severity of my restrictions to account for the prophylactic component. But I do believe if there's -- you know that doesn't mean that people can work beyond the pathology and as he stated you can continue in certain manners but I try to rely heavily on the pathology that's identified in the mechanism of injury. So if the mechanism of injury is consistent, the pathology is consistent, I would agree with the work restrictions. And therefore that's why I provided preclusionary restrictions as well.

>> Sean Kaldor: Sean.

>> Sean Bill: So I was just going to say I think this is an interesting example of you know as a layperson you read this report and like, you know not don't really see it. I listen to Mr. Boyd and Baci and I'm pretty sure if this guy can work he would be there. So you know, I think it's just illustrates how the difficulty of our position in terms of you know when I read this medical evidence, I'm not sure about that. You know. But when I hear the front-line experience and you know the description of the fence and these things it does make sense to me that you know Mr. Boyd if he could would be working.

>> Sean Kaldor: Dick.

>> Richard Santos: And I think that's a good point and Bettina brought out and Vince brought out when we had this committee about being consistent on the forms in pertinent information that may be added or whatever have you when we don't have testimony of someone's actual work experience or whatever have you. So it's time have that committee and make sure we have consistencies in the forms and so on so that was good advice.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: So the only suggestion I make or amendment I might make for the maker of the motion who is approving the disability is do we want to be more specific? This is on three different areas. And if in fact we're granting it based on the left shoulder and left knee that's one thing. If we are including prostate cancer we may open up the door to a whole new avenue of disabilities coming in front of us.

>> Sean Kaldor: As kind of just a point of procedure, we have absolutely done that in the past where it's approved on X but not on Y and that would be consistent if we did that. And I share similar concerns about the prostate cancer. I absolutely believe that it is a restriction in terms of you being able to be released to full duty. But the tie-in to say this is absolute 100% to the job would be a much bigger discussion and so I feel comfortable in other areas and that would be a bigger topic for me but yes we can absolutely parse that out. If the maker of the motion wants to amend that to exclude the prostate cancer.

>> Richard Santos: I think we should recommend what to put down leer. I'm not saying it's all cancer or anything else, I'm just saying he has a disability. From the job. That's it.

>> Vincent Sunzeri: So Dick you have my support if you're going on the knee and the shoulder. If you are going to include prostate you have a nay.

>> Richard Santos: I'm going to go on what the person asked for and I believe they're all related.

>> Vincent Sunzeri: Okay.

>> Dr. Das: Can I ask is it based on my restrictions? Because I didn't provide any restrictions for the prostate cancer. So is that germane?

>> Sean Kaldor: Not sure the epidemiology of making it a work injury. That's my restriction on making it the prostate. Vince were you thinking of something different?

>> Oto avoid making this difficult decision any more difficult for his purposes today we'll delete the prostate cancer as part of his disability.

>> Richard Santos: You're a low talker I can't hear you.

>> We'll delete the allegation of prostate cancer as a body part or disability for purposes of our meeting today.

>> Richard Santos: No problem.

>> Sean Kaldor: Okay so we have an amended application. Trustee Santos do you --

>> Richard Santos: I agree.

>> Sean Kaldor: And the seconder?

>> Vincent Sunzeri: Secunder agrees.

>> Sean Kaldor: We have a motion and second to prove an amendment application including neck and shoulder body parts for Mr. Boyd? Is there any further discussion? Seeing none we'll take a vote. All those in favor say aye, all those opposed, seeing none opposed the motion passes unanimously.

>> Richard Santos: Sergeant Bacigalupi I'm going to hold off a minute and say sergeant Boyd thank you for all the service to our community the City of San José it's been a privilege thank you.

>> The only thing I would like to address is one injury I didn't write up, I was kicked in the stomach very hard by a firefighter during a softball game. Dick I do remember, okay? [Laughter]

>> Sean Kaldor: You know, with respect to everyone, let's take a nice ten minute break and we'll come in fresh a little bit for the next three cases. Thank you. [Recess]

>> Sean Kaldor: All right, we'll start. Going to do one mile-per-hour change of order here. Just due to schedules a very brief item we'll hear first is item 4.4, deferred vested, item A, Scott M. savage, police captain police department, effective July 15th, 2012, 25.71 years for service request for deferred vested. We have a motion and second. Any discussion? All those in favor? Any opposed? None, motion passes unanimously.

>> David Bacigalupi: Scott still in the audience? Scott congratulations on your retirement. You and I didn't work closely together but I worked around you. A lot of people respected your work. I think the only conflict I ever had with you is when you found out I had a City Hall parking pass that one of the councilmen gave me. I don't hold it against you but have a good retirement.

>> Sean Kaldor: And then continuing where we left off, item 4.2 C, Mario, busalacchi, fire captain, fire department, request for a change of status from a service retirement to a service connected disability retirement, effective June 26th, 2010 with 30.22 years of service. Donna.

>> Donna Busse: Fire captain Mayor Mar yo busalacchi is requesting a service connected disability retirement, 60 years old with 30.22 years of service. His current work status is that he's service retired effective 6-26-10. At the time of separation he was on disability, at the time of application he was retired. He should avoid repetitive lifting bending or carrying, over the shoulder activities with his right shoulder there was no permanent modified duty available.

>> Sean Kaldor: Dr. Das do you have anything to add?

>> Dr. Das: I have nothing to add.

>> Sean Kaldor: Mr. Swift.

>> Thank you. As indicated, Mr. Busalacchi has 30 years of service. I was on disability leave at the time he service retired in June of 2010 which was approximately two months after his lower back surgery. And it became apparent to him that he was not going to recover sufficiently to return to duty. The most recent injury history, is found on pages 110 through 118 of your packet. In 03 he injured his low back lifting a patient onto a back board. Inin October of '06 he injured his right shoulder while loading and rolling hose. In 2009, he injured his right shoulder while weight lifting and doing bench presses which is part of the normal fitness requirement for the firefighters. And in -- or March 24th, '09, the final straw was, injuring his low back while lifting a large wooden garage door at a fire site. Those are all accepted admit industrial injuries. His primary treating physician provided work restrictions for his back and his shoulder as well as for his right ankle and his left elbow. Dr. Das focused on the low back and the right shoulder, precluded him from heavy lifting and a repetitive heavy lifting bending and carrying. The operative report by the way is on page 36 of your packet low back and with regard to the right shoulder Dr. Das precluded him from sustained or repetitive over-shoulder activities. On page 12 of the packet is

the memo from the department saying there's no modified duty of him given those restrictions so on that basis I would ask the motion being approved.

>> Richard Santos: Mr. Chair, based on that evidence, my motion would be to grant service connected disability to fire captain Mario busalacchi.

>> Second.

>> Sean Kaldor: Day Mo.

>> Damon Krytzer: I don't remember reading anything about a preclusion for any of the four body part parts. They were all prophylactic per your --

>> Dr. Das: Yes, they weren't preclusionary restrictions.

>> Sean Kaldor: Other discussion?

>> Richard Santos: Beth nah paid a comment earlier, it's nice you and Dave are here giving information about working with people and so on, that is always helpful. That's not the main reason she makes her decisions but it's been helpful, fortunately today or unfortunately today, one of those days where as we're getting older don't like that part of it but all these folks I had a chance to work with, there will come a sometime when I don't and I'm sure our jobs won't be easier. But captain busalacchi, crossing each other for years, he wasn't. He was a firefighter and a fire engineer and a good one. So I can only say that this report here talking about surgeries, I can go on and on, it gives enough information, obviously he can't do a job today or he would still be there. He was a real family person and loved doing his job and again paid the ultimate price, that's what I base it open, base it on the medical evidence in front of us.

>> Sean Kaldor: Other discussion or questions? Dr. Das I would ask if you could just elaborate on the back injury. I think that was the last thing he went in on for surgery and then after that he wasn't able to do the job. In seems to be a mechanism, there seems to be a genuine injury, surgery, your restrictions are prophylactic which means it's going to prevent pain or -- dtd you know with the definition of preclusionary, what I look for number 1 is the pathology and theoretically surgery has removed or corrected the pathology. So then the remaining issue is instability, in the back or residual loss of nerve function. Those theoretically the surgery has taken care of. There is no documentation of any significant weakness there. So then, we get to -- then we get to in terms of what I perceive to be reasonable. And so he did have an acute injury. There was documentation of a disk herniation subsequent to that. He did have surgical correction. So it was a significant injury. So therefore, based upon that, I believe that it is reasonable to have and experience pain that interferes with activity based on the mechanism of injury and the pathology that we've identified. However, you know, the surgery theoretically did take away or fix or correct the pathology. And so that's why I did not provide any preclusionary restrictions per se because once again, it's -- individuals can return to very active lifestyles after similar procedures. So it's not an absolute to say that when someone has lower back surgery or neck surgery that you cannot go back and play football, you can't become a firefighter. There are number of examples of firefighters returning to full duty after surgery. That's why I didn't place a preclusion based on surgery.

>> Sean Kaldor: I'd ask if you could provide us -- Mr. Swift if you could provide us with what am I missing?

>> Well, I guess I would ask Dr. Das. So every person who has back surgery is fine to go back and be a firefighter?

>> Dr. Das: I don't know that I said that. No. I just said I wouldn't give an absolute preclusion based open the presence of surgery alone but I do believe that it's reasonable to have symptoms or pain after that mechanism of injury and the subsequent procedure. And that is why I provided restrictions.

>> Right. I mean you do believe that he should not go back to firefighting given his condition?

>> Dr. Das: Given -- yeah.

>> Mario maybe you could talk a little bit about your back pain after the surgery and how that played off in terms of your activities.

>> Yes, I had coached football at different levels for the last -- for 16 years. Last time I coached was here in San José, I was the head coach at Del Mar high school for two years. I was -- I haven't coached since my surgery. I haven't worked since my surgery. I could no longer stand on a playing field for any length of time to where I have to sit down and have some sort of comfort for my lower back.

>> How about wear wearing your turnouts and 70 pounds of equipment carrying a chain saw?

>> I don't think there's any way that I could ever do that again. Carrying my -- I've got a one-year-old grandson. And any time I'd carry him for more than a few minutes, I have to put him down, because of the pain in my lower back. So these are -- I don't know if this is answering your question. But this is what I'm experiencing. I do take pain medication for my lower back when I need it. And I jig of just feel this is going to continue to take place for the rest of my life. I've accepted that. I have no regrets being a firefighter for the City of San José. I loved it. If I could go back I'd go back today. But Dr. Lipschitz when I saw him last, who was my surgeon, the last thing he told me was I had the back of an 80-year-old and he recommended that I no longer fight fires for City of San José. And I took his recommendation.

>> Sean Kaldor: Thank you, that clarification helps and Dr. Das you made a comment there about you shouldn't go back to firefighting. Is that the nature of the restriction you're thinking or --

>> Dr. Das: Yeah, I mean, based on what's happened to him, and what he reports, and level of his pain, it's not unreasonable, yeah, I 19 I don't believe anybody should go back to fight fires if they don't feel able to do it.

>> Sean Kaldor: Dick.

>> Richard Santos: Well just a comment. You know with today's times you know, you wonder, like Mario just said, if I could do it again I'd continue working. It's funny we all don't understand because here's a person with 30 years but when they had 26 and 27 they could have went then too, if they wanted to on a disability but chose not to because like you said, like a lot of us, still like the job. I can go to an incident and we'd be here all day. I haven't seen him for a while. Just looking at him. 14th floor in American title building when the helicopter went down and a young person was killed and we were first on the scene. And we didn't have time to grab whatever, we said get on the rig let's go, we were changing histories shifts. Whether he had disability or not, I was in charge, get up and get moving. I could go on I can just verify I know what kind of firefighter he was. He didn't tell me what his disabilities were or his problem. He wasn't working for me that direct time. I would have never left the 33 years, I love to still be there I miss it but that's, I hope that it will help you to understand a little bit about firefighters and police officers. It's not a choice, it's just time to go.

>> Sean Kaldor: Any other questions or discussion? Seeing none, we have a motion on the table. All those in favor of approval, signify aye. Aye. Any opposed?

>> Vincent Sunzeri: Nay.

>> Sean Kaldor: We have one opposed, Vincent Sunzeri. Motion passes.

>> Richard Santos: God bless you.

>> I want to thank the board for taking the time to do this.

>> Thank you.

>> Sean Kaldor: Item 4.2 D, James Hirano, arson investigator, fire department, request for a change of status from a service retirement to a service connected disability retirement, effective January 24th, 2009, with 26.5 years of service. He's represented by counsel Mr. Jeffers. Donna.

>> Donna Busse: Arson investigator James Hirano is requesting a change in status to a service connected disability based on neck back and shoulder. current status is he's service retired the effective 1-2004-09. At the time of separation at the time of application he was on disability leave. Work restrictions from the board medical director is he should avoid heavy lifting he should avoid repetitive bending. There's no permanent modified duty available.

>> Sean Kaldor: Dr. Das do you have anything to add?

>> Dr. Das: No I don't.

>> Sean Kaldor: Mr. Jeffers.

>> Thank you. James Hirano worked as a firefighter in various capacities the last 26 years with San José. His last job was as an arson investigator. And as an arson investigator he's expected to perform the duties of a firefighter, as well as those of a police officer. And the training required for an arson investigator reflects that. His primary disability is to his neck, back and right shoulder. His back condition is of long standing. Shortly after he was hired, a ceiling collapsed on Mr. Hirano injuring his back. There was some question at the time whether he could work as a firefighter. He was placed in a reassigned position in an office. He worked there for eight months. Eventually was allowed to return to work as a firefighter. He worked for the next 20 years. He's, James Hirano is a credit to himself that he was able to last as long as he did. He worked until his condition would not allow him to work any further. The -- in your package there's a report from Dr. Fujimoto. Dr. Fujimoto served as an agreed medical examiner, neutral not partial to the city side or to Mr. Hirano's side. He was there to report as an active, conduct a thorough evaluation and issue a report on disability. Dr. Fujimoto in your package on page 41 concludes that he's unable to work as a firefighter. All his disabilities to the neck, back and right shoulder are attributable to work. The

department indicates it's unable to accommodate him. The -- he was off work on account of disability when he left, when he put in for disability retirement. I've asked Mr. Hirano to speak to you today briefly about why he cannot work as a firefighter anymore. James.

>> Thank you, board, for hearing my case today. I worked for the San José fire department for 26 years. I look upon those years as some of the most rewarding experience and lifestyle I have. The process of -- this process has been very painful and has been a struggle for me, because I think a lot of firemen and police officers are intimately linked with their careers in the fire department and the police department. And give up their careers very reluctantly. And I think that along with hearing police officer Boyd's struggle with his situation, it's similar in that a lot of us who have grown up with the ideals of gutting it out and not complaining and ignoring injuries, fall into a category that's difficult for the board to sort of quantify. And I think that it's been difficult for me personally to come to the understanding that I am disabled and that I am really hurt and to actually acknowledge it because of my lifestyle and the way I've been brought up is to ignore these things and try and move on and get the job done. Pivotal moments in deciding when I could not perform my duties I think are also sort of a mix of both firefighter and police responsibilities. Because as an investigator, it's kind of a strange job, in that it's a mix of both disciplines, where we're expected to do digging, and exploring the fire scene, so there's the physical aspect of a firefighter. Along with the potential of having to arrest and be involved with investigations, and perform the duties of a police officer. And as such, we were required to carry weapons. And as I'm sure a lot of the police officers on this board understand, the most dangerous thing in the city is probably a fireman with a gun. The training that we received and the challenges that were sort of confronted me towards the end of my investigator's career, really brought home the fact that to really be effective and to be an asset to the department, you have to be in absolute tiptop physical condition. If you are not, you become a liability, and as a liability, you become dangerous. And if you're dangerous then you put the people that you care about at risk. And I think that has been sort of a painful realization but at the same time the most sensible examination of what our responsibilities as emergency services people are, is that ultimately we have a responsibility to our co-workers, and others, regardless of what our own desires are. And so when I felt that I was incapable of performing my duties, with confidence, and effectively, and with equal -- at equal levels as my co-workers, I felt that I was becoming a danger, and unsafe, and at that point I came to the decision to retire. I'm currently managing my pain with quite a bit of pain meds which allows me to

function fairly comfortably. But the the struggle I have now are the pain meds are becoming an issue also for me. The side effects are serious and so at this point, my struggle is to try and manage a normal life given some of the tools that I have.

>> Sean Kaldor: Thank you.

>> Richard Santos: So the based on the medical evidence I have here, knowing the individual, my motion is to grant arson investigator James Hirano from service retirement to service connected disability.

>> Second.

>> Sean Kaldor: We have a motion and second. Discussion on the motion? Damon.

>> Damon Krytzer: Another question for Dr. Das. So there was a prophylactic and preclusionary restriction for his neck. I guess the question I have or the really conservative treatment options because most of the injuries when I read your reports, it seemed like there were treatment options.

>> Dr. Das: Once again, it comes down to what's precluding the person from doing things. And it's reasonable to experience pain with the pathology. And with some of the treatment options it may improve his work tolerance. And so that's where the options are for the interventions and once again they treat symptoms. They don't necessarily treat pathology.

>> Damon Krytzer: But so in 2011, there was -- I was reading about weakness because of his neck. Is that -- can you address that? I don't remember away page that was.

>> Dr. Das: Reviewing the imaging finding from August 2011 shows there is bony conspiring at the neural Foramen al levels.

>> Damon Krytzer: Do we vote on probability or possibility? Are you throwing that back to me?

>> Dr. Das: I would throw that back to the attorney. What I would say is it is easier when things are black and white. And so when we're addressing treatment there is no frank masks of obvious weakness on the exam but there's definitely the possibility that there is -- that these findings could be responsible for it. But I'm not -- but the - - when it talks about weakness I think it also could be due to pain. And so when you experience pain, you can't do as much either. So it's up, it's one of those conundrums where you try to eliminate pain and then you can see what the level of -- what the strength is. And if the strength doesn't return in the absence of pain then likely it's due to some type of tear or nerve injury or something like that. Whereas when you have both present it becomes difficult to distinguish between them. So it is possible and it may not be unreasonable either.

>> Sean Kaldor: Clear as mud?

>> Richard Santos: Comments.

>> Sean Kaldor: Dick.

>> Richard Santos: Couple of comments. Prior to coming on the fire department, Jimmy was a smoke jumper. He has also worked with me. There's nothing this guy can do. No doubt about it, this guy had a young family, this guy didn't want to leave. I didn't know he went to arson. He tried to change just to keep on going but very talented individual and real physically fit and during our time I'd say hey why don't you go take care of yourself? I don't get the time, don't want to do it, keep working. Coming from that old school even though he was younger he had that same type of mentality. When you had to call upon him, he just did the job and it's good to see him. But you know y'all don't understand something when I came on you had to be a certain size and later on it changed because many of us were coming back from the war. In body bags that couldn't get a job in the fire department. He was smaller but they were the first guys go into the scuttle with me and others. Coy go on and on, it took a lot more risk but I tell you one thing, this guy was dependable or never let me down or the department or anybody. So this is just true facts and so it's just part of it.

>> Sean Kaldor: Bettina.

>> Bettina Rounds: Dr. Das, I know there are all these prophylactic treatments. Like injections and drugs and whatnot. But it would strike me that according to the applicant's own testimony, that that -- that the treatment sometimes can also cause problems that make them not capable of being -- performing their duties.

>> Dr. Das: You hit the nail on the head with the medications issue. It's something that we face all the time, with active duty personnel. It is a struggle to address that because as he was talking about performance issues in terms of being able to -- in the current system relies that the individual to recognize that he's going to be a danger to himself and others. And medication can impair a person's performance cognition and all sorts of things, we are have a number of individuals that are prescribed medications that place them and other people at risk so yes.

>> Bettina Rounds: Therefore that would be a disability also.

>> Dr. Das: All we --

>> Bettina Rounds: I know it's not your workmen's comp script but it strikes me that if the applicant needs treatments that are that limiting, that there must, some doctor must think that there's a disability.

>> Dr. Das: You know, the -- with disability in terms of the AMA guides they have definition of impairment and definitions of disability. So I struggle with the definition that you're providing but I can certainly see that when someone's given medication for a problem to help control let's say someone with multiple sclerosis they're given medications that help modify the disease process and improve their function. That definitely plays a role. These are pain medications are there to improve function. So theoretically if someone's pain level is reduced theatd they'd be able to do more. And so when an individual is unable to do more, it while taking the pain medications you have to look and see whether those pain medications are helpful, and beneficial, because as Mr. Hirano says,

he's experiencing physical and physiologic problems with those medications and they still haven't been able to help him restore function. So yes, I agree.

>> Bettina Rounds: I have one follow-up question on that if I might. The other question I have is, if you give medications and injections, doesn't that sometimes create problems? I mean if you have a pain, a neck injury, and you're medicated or given injections and you go out and perform, does that sometimes exacerbate the injury?

>> Dr. Das: It depends on the pathology. So if you had, let's say he had spinal instability present and I provided him an injection so he didn't experience any pain and he went back and did the job that he -- you know did the job he could end up being paralyzed, absolutely. However, if there's not -- let's say it's a tendonitis and there's no tear, there's no rupture and we give someone a palliative injection to improve their symptoms, that may not result in any long term harm. It may not be a long term treatment for the it all depends on what's wrong.

>> Bettina Rounds: Thank you.

>> Sean Kaldor: Question if I could. On page 24 of the packet, there's preclusionary and prophylactic work restrictions from Dr. QUO, who reference necessary a closed report of May 25th '09 and June 15th, '09 those are not in the packet from what I can find. What were the restrictions from that doctor originally if you can recall or Dr. Das maybe you know.

>> Dr. Das: If I had them I would have included them.

>> Sean Kaldor: So your restrictions weren't based off of, you always gave it a fresh look so whatever that doctor said, you came one an opinion open your own?

>> Dr. Das: Hopefully -- yes, yes. You have to remember when those prophylactic and preclusionary restrictions both provided I'm trying to be more on the preclusionary side as opposed to the prophylactic side so yes.

>> Sean Kaldor: It would have just been helpful how much those correlations what you would have said.

>> Dr. Das: Absolutely.

>> Damon Krytzer: Can you repeat the part just before that? When you were talking about when the prophylactic -- dtd oh, when a physician says that there's preclusionary and prophylactic restrictions and I agree with the pathology that's present I try to change the work restrictions that you know, basically to reflect more preclusionary restrictions rather than the prophylactic, closer to preclusionary, because his physicians provided restrictions that he thinks are overlapping and so my restrictions typically will be a little bit more strict. However, if there was absolute pathology which corresponded to the restrictions then there would be complete agreement. Because then there wouldn't be prophylactic -- there would be no prophylactic component.

>> Damon Krytzer: So but after reading your assessment all I did was write a question mark down for my notes. I didn't know what to really pull from it.

>> Dr. Das: The -- one of the problems that I saw is that in terms of you look at the -- as has been mentioned many times is that the individual has these pathology identified, has significant symptomatology but continues on. And it's not that I disagree that this person doesn't have a problem. But the inherent conflict I have is, if you didn't have -- if you were able to tolerate it and do it back then, it's hard for me to say, no, you can't do it now. Even though, and that's as my role as a consultant to the board providing you that. Now if he came to me as a patient, and I was treating him, that's a different perspective. And sometimes that doesn't always come across. But I tend to be very careful, and I try to be objective, and a little bit more removed from it in terms of making sure that the stated function is -- that things are consistent. So if you have the same level of pathology ten years ago and you can do something, but now you can't, I -- I can't just presume to say okay it's reasonable. Even though I may have felt that they couldn't have done this ten years ago. And that -- and that's particularly -- and that happens fairly often. But as I've said they tough it out.

>> Damon Krytzer: Sure, thanks.

>> Sean Kaldor: Vince and then Baci.

>> Vincent Sunzeri: Just a simple question, Mr. Hirano, have you been working since retirement at all?

>> No.

>> Sean Kaldor: Baci.

>> David Bacigalupi: One of the things towards your last comments, you are saying it's hard for you if he has the same problems he had ten years ago, he's able to work through it, I hope I don't get sued for this but doesn't age have something to do with it? Maybe a younger person is able to sustain more pain and do the movements where somebody as they age arthritis may be setting in, it's harder for them to do.

>> Dr. Das: I agree. I just don't -- I don't incorporate the age component into the medical disability. And I -- you know so I -- you know, personally and professionally, I notice the difference. So I agree. But I just don't know in this particular form in my role that I can make that assumption.

>> David Bacigalupi: Understand.

>> Damon Krytzer: Dave, I've kind of baked that on my thoughts on 50-year-old retirement age, too. I mean, this is a strenuous job so the way I think about it at least for me, maybe you disagree, but that's -- I mean that sort of thought-through in --

>> David Bacigalupi: Trust me, I can't do the same job I did many years ago.

>> Sean Kaldor: Any further discussion, seeing no further discussion or questions, we have a motion and second and a second to approve. All those in favor say aye. Aye. All those opposed say nay.

>> Damon Krytzer: Nay.

>> Sean Kaldor: Krytzer, Sunzeri and bill, 3 to six. 3 to 5, the motion passes.

>> Richard Santos: Jimmy, the best to your family. Appreciate the job, bud.

>> Thank you, Dick.

>> Sean Kaldor: Item 4.2 E, Timothy P. Leong, fire captain fire department, request for a change of status from a service retirement to a service connected disability retirement, effective January 8, 2011 with 27.57 years of service. Donna.

>> Donna Busse: Fire captain Timothy Leung is requesting a change in status lower back left ankle and right thumb. He's currently 52 years old with 27.57 years of service. He's currently service retired effective 1-8-11. At the time of separation at the time of application he was on modified duty, work restrictions are that he should avoid sustained crawling running or forceful weight bearing' there is no permanent modified duty available. .

>> Sean Kaldor: Dr. Das do you have anything to add to your existing report?

>> Dr. Das: No I don't.

>> Sean Kaldor: Mr. Swift.

>> Thank you. Mr. Leung has 27.5 years of service. He was on modified duty at the time of his service retirement in January of 2011. The -- his injury history is quite extensive but essentially it started with injuries in 1990, on pages 142 and 144, of your packet. He injured his right knee in May, hauling debris at a fire site and in June, advancing a line at a fire site. That resulted in surgery in July of 1990, with the significant ACL reconstruction and

a meniscus repair. He continued to do his job. And in July of 2000, on pages 118 and 119 of your packet, he injured his left ankle fighting a fire again and had surgery on the left ankle again in 2001. He continued on as best he could. And in 2009, page 106 of your packet, he injured his right knee. And then two months later, page 102 of your packet, 3-21-09 he once again injured his right knee in a vehicle situation. And then on April 26th, 2010 page 100 of your packet he injured his left ankle participating in a hose drill. Dr. Das has given restrictions for both the knee and the ankle. He has also been given restrictions by his treating physician. On page 56 of your packet there's the restrictions provided by Dr. Della Magiore for his right knee, heavy lifting prolonged weight bearing, crawling over uneven ground, crouching crawling pivoting and other physical effort. He checked all boxes on the form including the first box including inability or incapacity to do those activities. Dr. McReish, treating him with Dr. Della Magiore, he did what is known as a PR 4 which is the primary treating physician's report it is a six page report. And on pages 73 and 74 of your packet, he provides the work restrictions for the knee which are significant, listed actually on page 73. And then he was evaluated by Dr. Fujimoto as a panel doctor. The state has a list of three panel doctors to have you evaluated by, you pick one of those doctors and it is an independent evaluation. Dr. Fujimoto wrote a report which is on page 15 of your packet, which I'll find here in a second. No I'm sorry, page 50 of your packet. And in that report, he lumps together the work restrictions for both the right knee and the left ankle. And says no, uneven ground, no squatting no kneeling no ladders no stairs no running. So we have Dr. Della Magiore, Dr. McReish, Dr. Fujimoto, and eventually Dr. Das, agreeing on all work restrictions on the knee and ankle/leg. Based on those work restrictions the department has no permanent modified duty and the applicant ask that his application be granted.

>> Richard Santos: Mr. Chair.

>> Sean Kaldor: Dick.

>> Richard Santos: Yes Mr. Chair, just looking at this report and knowing of Tim's past work in the fire department, when I look at medical evidence like in 1990 are you have an ACL. As you know most ball players never play again but that goes back to 1989 and has the operation, 1990 by that time Dr. Michael Dill op as I recall he was the 49er expert doctor so it looks like Tim continued trying to work which is unbelievable. Here we

are today at 2012. Left ankle, right fusion, all these injuries he continued working for another 12 years. As most ball players never work again. So with that I'll -- based on that medical evidence motion is to grant captain Timothy Leung a change from service to service connected disability.

>> Second.

>> Sean Kaldor: We have a motion and second. Discussion on the motion? Seeing no discussion, we will call the motion. All those in favor say aye. Aye. All those opposed? Nay, just show hands very quickly. Krytzer.

>> Damon Krytzer: Abstaining.

>> Sean Kaldor: Understood and bill. So one two three four five ayes, two nays one abstained. Yes, the motion passes.

>> Richard Santos: Captain Leung, haven't seen you for many, many years but hope you do well.

>> Thank you.

>> Sean Kaldor: So just to be clear, everything's copied down for the secretary. The 4.2 E was passed, on a vote of 5 ayes, three nays which were -- two nays, Krytzer and Bill, and one abstention which was Sunzeri. Move on to item 4.3, status report on pending disability applications with no action to be taken at this meeting. Discussion regarding the following pending disability applications no action to be taken at this meeting. I'll turn it over to our counsel Mr. Leiderman who inserted this.

>> Harvey Leiderman: Thank you, Mr. Chair, Mr. Chairman. The purpose of item 4.3 was to acknowledge that there's a backlog of pending applications, just as a practical matter we took up five of them today and they took us close to two hours or in excess of that. The purpose of putting the list on the agenda was essentially as a courtesy to these members who have pending applications. Just to tell them that we acknowledge that they're in the

process, we're getting to them as quickly as we can. The board has jurisdiction over these applications, and we didn't want all these members showing up. And feeling like they had to come here and make presentations on their applications to get our attention. I understand that staff has also generated, this was not a complete list that appears on the agenda. Sonia has an additional list, and this list probably also is not exhaustive. It's not being put in the record for -- as a representation for necessarily all pending applications but just to give you and the public the opportunity to see how many pending disability applications there are in process. The poses obviously some administrative burden to handle, but we wanted to reassure all the members that their applications do have the attention of the board, they are within the jurisdiction of the board at this time, they will be attended to as quickly as they can in the ordinary course. And probably subject to the ability of Dr. Das to process these from his perspective, as well. But we wanted to make a record of just how many are pending. Obviously under the law, if and when a disability, service connected or nonservice connected disability is granted, it will date from their last time of compensation and service. Which will be in the past, obviously. So they should not be prejudiced in any way by the delay. But there is going to be a delay. In the meantime, there may be changes going forward in the disability law based upon the measure that passed this week. We don't know yet and the city and others are going to be testing the validity of that measure. Whether or not that has any effect on any of these people, we can't say. But the intend of this board I would suggest at this stage is to take these up in the ordinary course and to recognize that they are pending before the board as of the date the applications were filed. So this is more of a receive and file just for information purposes only. Unless the board wants to do something else with them. I do think, finally, there's always an issue that comes up in terms of trying to prioritize, especially when you have this level of applications pending. I assume in the past that by and large the default setting is first in, first out, in the process. But I think it would be prudent to put on the agenda for the newly reconstituted ad hoc disability committee some attention to how these should be handled in the ordinary course, just given the magnitude of the applications that are pending. I don't think that's something that we can resolve today but I think that's something that we need to talk about. Because we've got lord knows maybe 60 applications in process.

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: And discussion phase I guess I have a few thoughts here. Number one is, it would be helpful to have the dates of the application of these individuals. Secondly is the fact that since Dr. Das has to review all of this I imagine we probably need to consider that. This could probably keep him busy for years, I'm not sure we know how long we want this process to continue. Having the dates might give a sense of how long this has been in the pipeline for Dr. Das already. I become extremely concerned this board is becoming a disability board without the ability to govern the plan in the manner that we should. And I'm going to suggest that we seriously consider separate meetings are for hearing disabilities outside of these normal board meetings. And then finally I would like a response from the city, regarding this. Particularly given measure B, having it passed. I just would like to see a response from them, given the volume. I'm looking here, we've got 28 on one page. There's another 70 just counting the front page, I'm not even counting the back page. We could easily be looking at 150 to 170 names. For us to govern this plan, it's going to be quite a challenge for us to do that. I would really like to see those problems addressed.

>> Could I comment?

>> Sean Kaldor: Let me say one thing, little quick background on this and then I don't want to lose those four points because I think those are all valid. You mentioned Dr. Das this list came up because we basically heard from Dr. Das, hey these are ready to go he's done all the stuff. So I sat here as a chair and saying, I can't hear 30 case necessary this meeting so I want to let everyone know we know these are ready, they're all coming saying, I want to be heard, I want to be heard and I want to get it out there that we understand where they are. Those should not be in his workload and there is duplication between this page and the other page. How many are there total Donna?

>> Donna Busse: Like 133 between the two list is.

>> Sean Kaldor: A lot of work, if we do five a meeting it's six months of work. And so the idea of separate meetings to do that allows us to continue our process. And you know, I'm open to any of that stuff. But I just wanted to get that little bit of background. So there was Dick and then Damon.

>> Richard Santos: I was just saying that, when the disability committee gets together, if nothing it precludes us from working in July since the city is -- it would just be us board members so I want to make sure that everybody's there. Dr. Das would you be available in July?

>> Dr. Das: Yes -- depending on what -- yes, I obviously need to be.

>> Richard Santos: Okay we're definitely going to try for June or whatever, but in case we can't, whatever scheduling that needs to take place we'll do it in July and get it done.

>> Sean Kaldor: Okay, Damon then Councilmember Constant.

>> Damon Krytzer: I also just wanted to be clear you know I'm honored to be in this role. But we as independent trustees also are volunteers with full time jobs. We spend probably ten to 20 hours a month on the investment function outside of these like eight-hour meetings. And frankly, it's -- it's becoming too much of a burden. I look at this list, and I'm -- I'm one foot's out the door already. I just don't know what else to say. Like I'm here trying to earn a living as well, right? And I'm taking today, tomorrow is a Cal APRS meeting. Two weeks ago we had a long investment committee meeting which we had to address in between. A week and a half from now we have another six hour investment committee meeting five hour investment committee meeting, come on already, right?

>> Sean Kaldor: Councilmember Constant.

>> Pete Constant: Just want to make a couple of comments because I have to leave for another engagement. First of all, I know that the -- heavy mentioned that the retirements will be dated back, so there won't be any prejudice. But I think there will be some people who fall into a situation where they don't qualify based on their age. So they could go into a period of not being paid, or lost time, or any of those other situations. So there are some people that could be negatively affected. I think this list especially the new one that came out here is very eye-opening. I think it would be in our best interest to see a little more information, such as an indication of

someone mentioned date of application. But also, the actual status. How many of them, are the packets completely complete, how many are waiting for medical, how many are waiting for this or that, you know, some sort of asterisk or comments and then a legend. But with this many people, and given the constraints of bandwidth, especially when we have one medical director who's not even full-time, doing this work, I think the board has to seriously look at the possibility of getting outside medical opinions, so that you can get this through. Otherwise, there's going to be a lot of issues, obviously with transition. As we transition into the new methods and new definitions and things like that. Plus, quite frankly, in pure fairness to not only the applicants but the plan, to make sure that the plan is protected and we're not just rushing applications out the door just to get 100 people through a process, in X number of hours. Bearing in mind the burden as Damon mentioned on each of the individual board members. But there's the dual function of protecting the members, protecting the plan. I think those are just my input and obviously, I'll make sure that the council is aware of the gravity of the situation when I report-out this stuff to the council. And then I will -- since I won't be able to catch the rest of this discussion, I'll make sure to speak with Russell and he can keep me up to date on whatever transpires after I leave here.

>> Sean Kaldor: Thank you. I think especially a point about the status because some of these people submitted applications eight years ago and there's been no follow up, they haven't done a single thing. So there's all different levels. Bettina.

>> Bettina Rounds: I wanted to ask Vince because I agree with you Vince. But what are we asking the city specifically to do?

>> Vincent Sunzeri: Given the fact that measure B has passed are we within our rights as a board from their perspective as a plan sponsor and the employer, to shuttle these through our current disability process, versus letting them flow through the new disability process.

>> Sean Kaldor: Should we ask that of our own attorney as well?

>> Bettina Rounds: Yes I was going to say, I think it was the sedate date of the application that has significant --

>> Vincent Sunzeri: Heavy has already indicated by bringing this forward that you support seeing this at the board level. I don't want to speak for you Harvey.

>> Harvey Leiderman: I don't want to speak for me either on that point.

>> Vincent Sunzeri: At some point you have to speak.

>> Harvey Leiderman: I understand. I'm not prepared to speak to this at this point. Measure B is not the law yet. Measure B hasn't even been certified by the Secretary of State some won't for another probably six weeks. We don't have the luxury at least right now of making that determination. Furthermore, the city, in public filings yesterday, indicated that it has no intention of implementing measure B for many, many months. So we actually don't know when that process will be put in place. Meanwhile we have members who have applied for a disability under the current state of the law. So I think it's incumbent upon this board to proceed. Follow the law that exists today. Do the best we can. But I think it is eye-opening to see what a burden existing under the current circumstances on this board. And we just need to -- we need to follow the process that we can as it exists.

>> Vincent Sunzeri: All right part of my concern would be --

>> Sean Kaldor: Would you yield the floor to Pete?

>> Pete Constant: One other comment. There is the possibility of a hybrid because this board does have the ability to have a hearing panel or quite frankly the board of medical experts handle them, and then the question is, which definition and when does that change. And I think that goes to what Harvey was just saying. So there is that option that the board could explore as well.

>> Sean Bill: Could you expand on that? What do you mean in terms of that hearing panel?

>> Pete Constant: For example this board could elect to have a hearing panel or could ask the city council to expedite the qualifications or the appointment of the expert medical panel and have the disability hearings heard there, under the current definition until the definition changes, whenever that legal enactment date is, and Harvey can explain the mechanics of that. But that is an option that I think you guys could explore as well.

>> Sean Kaldor: Thank you. We have Vince then Damon.

>> Vincent Sunzeri: So these are obviously all good points that are being brought up. That's my concern with us moving full speed ahead if we find out there maybe other processes that we can go through or, in fact, it's -- if measure B is not the law but it becomes effective on X date, is it the daylight it was passed, is it the date the courts approve it? I imagine there's some gray area in there and what if in fact we granted disability and that was done post -- and this is I think we're operating at a large gray area. And I want to be careful about how quickly we proceed into that gray area.

>> Sean Kaldor: Okay. Damon.

>> Damon Krytzer: And I guess that's sort of my understanding is, how we're sort of suggesting it will work is that we're -- I don't know if I should call it the appeal process or if a disability doesn't meet certain definite criteria it comes to the full board, right? Is that everyone's understanding is that how this is supposed to work or no?

>> Sean Kaldor: I think we're supposed to make disability determinations. The rules are laid out for us. The process within our organization I think we have a lot of flexibility with. Fe if we want a subcontractor or contractor do it or some other setup subcommittee. As long as someone handles the full case and there is a recommendation sitting on top of there, if the recommendation comes to the board, we are limited in our process but we can essentially move 90% of the process to someone else to give us a nice two-page summary to say, here is why you should approve it or not approve it.

>> Damon Krytzer: The applicant is only going to care if it's denied right? Realistically if we appoint a board, whether it's a medical board or a subcommittee from here that's given certain criteria, we're comfortable if it's approved, if it's denied we're in appeal process and that should probably cut this load by you know, a 50th. I know Dick gets angry when I kind of go in this direction. I'm not skating my responsibility. I don't see that it's important. There are just a lot of things that are important in this plan. I want to be here in an area I have some value, honestly, I have zero value on disability cases. I have no background information on the people. I don't know what they've been through. You're right. You're absolutely right. I don't know what it means dig a 600 pound body out of a ditch. I add zero to that. Why I'm here is not this. And this takes such a substantial part of the time I think that it hurts my ability to work on the investment piece of the portfolio. So I don't want you to think I'm complaining about the workload itself. I just think there's such a more effective use of my time, at least.

>> Sean Kaldor: So let me try and pull all together going back to kind of the four key points and hearing exactly what you are saying. My recommendation, and this is -- this is not for this whole agenda item is not for action. This is a status report but I think we can give some direction if everyone is in agreement with the direction. That first we'd ask our counsel to coordinate with the city and give us a response of what might be inclusive of what the City's thinking is and his thinking is, what this might apply to, we can't read city council's mind what they might want to put in there, there should be a legal point that it can't go back ten years, but what dates apply, effective to these people here, secondly that we ask the disability subcommittee to work through all these applications, with staff, and identify the key information about the date of the application, and its status, you know is it through -- do they have all their paperwork into us? Has Dr. Das done his completed report, just kind of these key things. That will give us a vision ever how many of these are five year things so there's no motion forward on we don't need to worry about it on our list and then maybe ask that same committee come back to us with a recommendation about a meeting schedule, maybe separate meetings in August, September, October, November doing ten of these a day and just move through them not to interfere with overall board governance? I don't know.

>> Sean Bill: The only thing would I say on that, it could be challenging from employment standpoint getting days off.

>> Sean Kaldor: I hear you.

>> Sean Bill: That is a challenge for an independent, I think.

>> Sean Kaldor: I'd be open to a subcommittee, a subcontractor. We had Russ Richeda doing it at one point. I'd be comfortable having him review and give a recommendation. We could look at his recommendation and then consider it, I'm open. So we could ask the committee to look at whole process, come up with recommended solutions.

>> I think we need to come up with what the options are. I think you all -- Damon was saying it is a little bit of a balancing act. Obviously this is our fiduciary responsibility to get through this process and figure out the right answers. But from an employment standpoint, some of us are already kind of pushing it. In terms of the amount of time that we're out of the office to deal with the business of this board. So I would say if we could explore some different options and maybe the subcommittee could bring back a couple of options, maybe if it's a subcommittee of the board or an independent body, maybe they could go through the process of screening these and giving a recommendation for a vote so we can move the agenda along.

>> Sean Kaldor: I don't see anyone jumping up with other input. So let's do that, then. We'll ask Harvey if you can come back to us and coordinate with the city about the dates and the impact of the current applications in the line.

>> Harvey Leiderman: I'd like to comment on that Mr. Chairman. All three lawsuits that were filed yesterday that we will discuss more in depth in closed session, every single suit that was filed yesterday raises the issue of the applicability among other things of the disability change under measure B, and to whom it applies, whether it applies to any current members in the system at all, let alone those who have filed applications. I can give you certainly my views on what the state of the law is. And I will do that and I will do that in closed session. On the other hand, that's front and center in these lawsuits that have been filed and they're going to be tested in court

and that's going to take some time. So ultimately we're going to have to make a decision about how to handle these before we have the definitive answer from the courts as to whom the changes in measure B are going to apply.

>> Sean. Comment.

>> Sean Kaldor: Yes.

>> This list I think is a little misleading in terms of being ready. Because I think the ones that are ready are the 28 that were originally listed. My sense is that most of these folks are still in the treatment process. And waiting to get their forms completed for Dr. Das to then send into Dr. Das to then get an appointment with Dr. Das. So it would seem 245EU6R7B8G9SDZ immediate problem is the 28. And as to those I would ask that you consider what Councilmember Constant said, which is there are some of these people who are on lost time and they are probably entitled to some priority because they're not -- they're just not getting anything. And so I would ask that those people be kind of put at the top or at least asked that question so you can know how many of them there are.

>> Sean Kaldor: So let me add that to that. So we've talked about for heavier specifically what we had said for that disability subcommittee we're reconstituting to go through, get further details on all of these in terms of the dates and the status and come back with some recommendations or options about how to hear soful cases and as well as a prioritized list so who goes to the top of the list. I hear you. If someone is out unemployed getting no money and waiting for us just to rule on them that is a serious burden on them. I hear other people saying, I wait a year ambassador your case you you bump the police ahead, just to --

>> Richard Santos: Mr. Chair I look for the investment committee to maybe make a recommendation that we don't need three advisors and for the investment committee we'll just hire somebody to take care of all the investments. But I'm a team player. Whatever it takes for y'all to be comfortable in these disabilities we want to work together and do because I do value your time. We may have some philosophical differences but whatever it

takes to get this thing and immediately go to work on it I'm all for it. If I can make you are comfortable or the chair can make you comfortable to get expertise to get this list down, when people are on service retirement they're getting money. Then some young people are not going to get a paycheck and I'm real sensitive to that, so are you. I'm going to call upon me, don't give me a bunch of excuses and if you don't want to do it just let somebody else do it but we'll make some headway make some recommendations and come back ASP and whatever is the best, we'll recommend, we're working not for each other, working to serve the people out there the taxpayers, everyone else so I'm all for it.

>> I would ask some notification be given publicly so the opportunity to attend those subcommittee meetings is available.

>> Richard Santos: Harvey, is that correct? Can we throw public to teamed those meetings?

>> Harvey Leiderman: Can you let the public attend if you wish.

>> Richard Santos: I would like to have the public have their say and bring it back to the board for their recommendations. It's not going to be a committee, we're just going to make recommendations. Of course the board always has a say and of course council.

>> Sean Kaldor: Is that a plan? Okay, thank you for that one. We'll move on to -- so you should be calling him right now. We're ready to do that right now. Hopefully he left and came back.

>> I'm ton phone.

>> Sean Kaldor: Sorry, we'll do the disabilities because that was time certain. Then we'll come back. Thank you for your patience.

>> That's fine.

>> Sean Kaldor: Agenda wise --

>> Sean Bill: Will we be charged for the time online?

>> Sean Kaldor: There's a reason --

>> If I could,

>> Russell Crosby: Tom's billing practices are a little different than your other consultants. He doesn't bill for every second.

>> I went out to lunch.

>> Sean Kaldor: So we already approved item 2.7 which is the Cortex contract. We move on to item 3.2. Discussion and action on governance policies developed by Cortex. First item is item A investment committee charter and I will turn that over to you Tom.

>> Great, thank you, once again, and again, I had begun discussing the investment committee charter. Very quickly, I mentioned a few changes, issues that came up before the board last reviewed this document the development or modifications to the statement of investment policy, some of the other charters affected this, other decisions and other policies affected this document so we've made a few changes which we've highlighted. Tried to insert notes, as to why the key changes were made. Begin again on page 1 paragraph 5, the committee is expected to develop and recommend investment follows. To that list we've added the investment structure which, based on what we saw of your C IP, the investment policy is a separate document, it provides more detail we understand to the asset allocation policy. It's more granular so with that we thought it was important enough to specifically identify. In paragraph 5, page 2, paragraph 8, this provision appears or something very similar in the Cip statement of policy and we thought it would be useful to include it in the investment committee's

charter. Simply requires the committee to deal with procedures dealing with processes used in conducting manager due diligence. We thought that was important so we added that into the committee's charter. There over the last few months there have been some changes. I think the original language in this document had the investment committee approving manager selection. The committee has since, did board has since decided that the full board would approve that based on a recommendation of the investment committee. So we've made some changes to paragraph 9 to reflect that. The old struck-out paragraphs 8 and 9 have been incorporated up above into new paragraph 9. And a little bit of streamlining with paragraph 11. The new paragraph 11 is just saying exactly the same thing I believe as what's struck out at the bottom of the page, just a little shorter. And turning the page, to paragraph 13 under human resources, the board recently approved I believe last month the director's charter so we thought we should reflect the same language in this document as to the committee's role and the interaction between the director and the investment committee with respect to investment staff. So that addresses the changes in 13. So those are the key changes and updates to the investment committee charter. I think I was clear but I'd be happy to answer any questions.

>> Sean Kaldor: Damon and then Vince.

>> Damon Krytzer: So I have a question between page 2 number 9 on vendor selection and page 5, number 9, vendor selection, number 9A. We didn't, I don't recall us exactly wording it that way, right? Page 2 number 9 seems accurate. The investment committee will review the recommendations of staff and where appropriate vieshzs with respect tot investment managers and investment consultants will provide recommendations to the board for approval. In this CIO section, it says it a little bit differently and I don't think accurately. In A right, where you caingd it not with stage the foregoing, the investment managers and the plan, we understand this change was -- go ahead.

>> Well, yeah. That's correct. That was a recent -- you're right. Paragraph 9 on page 2, let's start with the CIO charter, page 5. 9A this was a very recent change I discussed with Carmen just before these documents went out. It was my understanding and I could be wrong because I didn't hear it firsthand. But I understood that the

board and the investment committee had decided that the CIO would no longer be responsible for due diligence concerning investment managers. So I guess we need to confirm today if that's caret.

>> Damon Krytzer: Maybe Vince can help. It's not that linear because we are still requiring a note from staff, just not -- Vince can you jump in?

>> Vincent Sunzeri: I completely agree. You know by engaging NEPC I don't think that alleviates the responsibility of the CIO.

>> Russell Crosby: That's not what you did in that meeting.

>> Vincent Sunzeri: No no.

>> Sean Kaldor: Do we want to work in the investment committee to kind of refine there? I don't think the board has a big issue --

>> Didn't we work on this already?

>> Vincent Sunzeri: What we're saying is just added by a nonboard member. I think would remove that, board change.

>> Damon Krytzer: And go back to what? I guess to Sean's point we could do that and just not discuss it right here.

>> Sean Kaldor: I just want to be clear about a point of order. We had a meeting. We agreed in that meeting to change this to this. Who moved into the process after that, and gave them additional changes?

>> Vincent Sunzeri: Who specifically requested this change after the board reviewed this?

>> I'm sorry which change are you referring to?

>> Vincent Sunzeri: Page 5, item 9A.

>> 9A on page 5?

>> Vincent Sunzeri: Yes.

>> Well this document had been reviewed some months ago. Before issuing it for this meeting I reviewed it with Carmen and Carmen had informed me that this was a recent decision that had been made, and needed to be reflected in this document.

>> Sean Kaldor: I think we came out of the committee with an agreement of what would be in this. We need to be absolutely clear with everyone that when the committee or this board makes a decision, that that's the decision, if there's a problem in it, attach a note to it say there's an issue, add a memo saying we need to rethink about it. But if you go back to the consultant and say change it this way or that way it's going to throw out the whole process where we're not seeing what they thought we had. We can't work together like that.

>> Russell Crosby: I think this is what Tom has done here. He last a statement for you note we understand this change was recently agreed to meaning look at this board members and question it. Page 5, 9A.

>> That's correct.

>> Russell Crosby: Tom has inserted language that calls out to say flag flag.

>> Sean Kaldor: I was going back to page 2.

>> Russell Crosby: And to answer your question I would go back to the original language which was oversee, conduct or oversee, which is what you guys said, and then include the investment managers, blah blah blah. Go back to the original statement that was there. That to me is what you guys did in that meeting.

>> Bettina Rounds: Okay I'm confused because I wasn't at either meal meeting. So on page 5, Tom, where you have the note, we understand that the change was recently agreed to by EIC and the board. Are you referring to the change in section 9A?

>> Russell Crosby: Correct notwithstanding the foregoing, starting with not with standing the foregoing.

>> Bettina Rounds: And is that what the investment committee --

>> Damon Krytzer: You're saying page 2 or page 5?

>> Bettina Rounds: Page five.

>> Page 5.

>> Bettina Rounds: Is that what you all understood you had agreed to?

>> Russell Crosby: No.

>> Vincent Sunzeri: Let's talk about the subtlety. I think the subtlety comes into play with our consultant. The discussion, Sean and Dave you can help me out here. Sean you were in that meeting is around where the responsibility falls, when we bring our consultant into the picture. In the current arrangement is that the consultant would be bringing forward and doing the due diligence of certain investment managers. Does that mean that the CIO is completely removed from that process?

>> Russell Crosby: That's where you come to the overseas.

>> Damon Krytzer: Russell's right.

>> Russell Crosby: Reviews, was still sufficient.

>> Sean Kaldor: We don't expect to you physically do the process itself.

>> Damon Krytzer: The assumption was that the consultants were going to do the heavy lifting.

>> Vincent Sunzeri: I support that.

>> Damon Krytzer: Just go back to --

>> This is why I wanted a copy to read.

>> I'm happy to change it back. I just would -- would like to draw your attention to the CIO's under the impression that it's a different situation. That she was comfortable with the revision that I had made after discussing it with her.

>> Russell Crosby: I'll communicate and this has been an area of discussion between the CIO and the investment committee through several meetings now.

>> I understand. I give you the opportunity to call this issue.

>> Bettina Rounds: This is a governance document which, regardless of who the incumbent is, covers the CIO so there might be different things going on.

>> Russell Crosby: You're right.

>> Sean Kaldor: Well said.

>> Vincent Sunzeri: This obviously doesn't delineate between a money manager, a hedge fund manager, there's a lot of different types of managers. This really absolves you of any responsibility of any investment manager. I don't think that's what we were agreeing to.

>> Sean Kaldor: So --

>> Bettina Rounds: It is the role of the CIO generically.

>> Sean Kaldor: Any other changes or comments?

>> Vincent Sunzeri: The only comment -- go ahead Tom.

>> Well just to while we're on the same issue just draw your attention to the similar point in on page 5, 9, subC, I would also strike for those same reasons again, discussion with the CIO. And I take it that's --

>> Russell Crosby: It needs to go back to how it was.

>> That would need to be reversed.

>> Russell Crosby: Page 5, 9C. Where the entire bullet has been taken out.

>> Struck 9C.

>> Russell Crosby: That should go back in.

>> Which means it's currently struck out recommending appointment and termination of investment officers for investment committee for approval. I struck that out again on the nature of the discussion with the CIO.

>> Damon Krytzer: That kind of pulls into A doesn't it?

>> Russell Crosby: It should be back there. You should have C in there.

>> Sean Kaldor: A could just be changed with vendors, investment managers,.

>> Russell Crosby: Just go back to the original language. And then pick up the original language there.

>> Some changes, I'll just reverse the edits to paragraph 9.

>> Russell Crosby: That's correct Tom.

>> Okay.

>> Vincent Sunzeri: I think what we're really looking at is what is the prudent governing document over a long period of time.

>> Sean Kaldor: As well as it's a living document, we can bring it back up and say we're not covering this hole between the CI ormt and our consultant. We'll fix it you know.

>> Vincent Sunzeri: The other thing I wanted to go back to is on page 1, 4C and this is just part of our earlier discussion, on what we bring to the board for decision making processes, versus what flows and stays at the investment committee. I just want to make sure when it comes to selection, various investments, that the board's

always engaged in that process. Or a part of the selection process. I don't mean that -- let me restate, finalizing the selection process.

>> Sean Kaldor: I think the selection committee as we have it now, the whole board is informed you know, I think the investment committee puts an hour into a complicated decision and the board hears it for five minutes and says, sounds like you thought it through so we're all informed, our money's in the Cayman islands, what are that level of information, I don't think this would be big items to be heard at the board level, some of them might be in the committee report we're recommending this this and this. I'm fine with that, we can pull it out if it looks controversial.

>> Can I raise an issue I heard in the meeting earlier, in connection with MacKay shields, you brought in the manager's policy limits, I heard a suggestion that perhaps in the future the investment committee could approve things like that.

>> Sean Kaldor: That's my suggestion I threw out there and it's an interid informed suggestion if there's some reason why that would be a dangerous thing to do. I don't know why it would be bad but --

>> Damon Krytzer: I missed that.

>> Sean Kaldor: This is the tweak to MacKay shields. Again its could be something that the board has to approve but it's kind of a --

>> Damon Krytzer: There's got to be some like threshold of impact you know. Like, we'll worry about nickels without bringing it to the board, dollars have to come to the board. There's a line and we got to figure out how to define a line.

>> Vincent Sunzeri: And I think the selection of hiring and terminating comes to the board. Things that might fall below that line, I think what we're trying to do is delegate that to the investment committee.

>> Sean Kaldor: So let's do that, let's assume that line and please inform the board at least of items of those changes. And the board can say whoa whoa whoa, I have a problem with that let's have a full discussion. But everybody is informed, the investment committee is not slowed down, the key decisions we'll come back to the board, I don't want three investment officers coming to the board and each giving us a pitch.

>> Russell Crosby: 4C still says all actions come to the board.

>> Sean Kaldor: Tom, do you have any recommendation on how to draw a line between --

>> Well for now you could say all material actions and allow for that discussion on the committee to determine if it's material and the board can always be informed of it. And if you disagree then --

>> Sean Kaldor: So all material actions? All material actions shall be approved by the board to be affected unless otherwise provided herein and all changes will be notified to the board or something?

>> Over time we can get greater and greater clarity over what material issues might be.

>> Damon Krytzer: We can work that out by kind of taking that assumption given the list of all those decisions to the full board and then over time feeling, understanding where people are comfortable and not at the board level. I mean I'd be fine either way. But --

>> Sean Kaldor: Just seeing the minutes of your meeting might be enough to say -- it's just a disclosure thing.

>> Are you okay with that?

>> By including material allows the committee to make some minor materials, that the committee determines appropriate. Informing the board along the way. Or after the fact.

>> Sean Kaldor: Okay so let's just call it material changes and we'll see how things go.

>> Okay.

>> Sean Kaldor: Any other things on investment committee or the CIO?

>> On the CIO, you all caught the significant changes on the CIO charter. So I wasn't planning on identifying any other issues. The key issues were the paragraph 9 on page 5.

>> Vincent Sunzeri: So the other question I did have actually on page 4 item 6A is that the CIO in this case now is not involved at all it sounds like in the selection of investment personnel.

>> Russell Crosby: Where did that get deleted? Just out of curiosity.

>> 6A?

>> Russell Crosby: 6A and B and the sentence before that.

>> Damon Krytzer: From what I remembered we went sort of opposite where the board doesn't need to see those decisions.

>> Sean Kaldor: I think Harvey or Russell you said, I don't recommend who to hire. Mollie said technically --

>> The city attorney's office planned on a technical level, the CIO certainly doesn't hire people.

>> Vincent Sunzeri: Well, maybe we should --

>> Russell Crosby: They do, wait wait wait just a second. The hiring of an investment officer is handled by me, and the deputy director. It doesn't go above that. For a deputy director or an assistant director, the City Manager is the ultimate determinate. The director or the deputy director makes a recommendation which in the normal course the City Manager approves but below that level staff then is hired by us. Deputy director over there, director here. It doesn't go back through the city and investment officers can be hired directly by us without any review by anybody.

>> Damon Krytzer: I'm going by a spotty memory at best.

>> That would be the preferred approach and I misunderstood what the City Attorney said. I'm happy to reverse the deletion of paragraph 6a.

>> Russell Crosby: A needs to be there.

>> Sean Kaldor: Leave A there and change the rest of 6 that says as reporting to the director as such will, following city policies, and then that's it all the points underneath. The City Attorney address who really technically signs the offer.

>> So I'll need the last phrase and 6 is that it's pretty well covered in paragraph 3 up above which says the CIO at all times will act in accordance with the all legislation where policies procedures et cetera, thought that was repetitive.

>> Sean Kaldor: I'm good with that, too. Leave the roorve section at the end of section 6 and restore item A.

>> Vincent Sunzeri: It should say with the director now instead of the CIO.

>> Russell Crosby: You're calling that a director.

>> Vincent Sunzeri: Did you hear that Tom?

>> No sorry.

>> Vincent Sunzeri: For 6a select all investment personnel in consultation with the director.

>> Okay.

>> Sean Kaldor: Any other comments on the CIO policy, seeing none. Next.

>> Monitoring and reporting policy, very quickly, you've seen this. I think the only new item that has been added, page 10, 14, this may have been new, I didn't underline it but item 14 actual evaluation report, and I believe it's -- we've added and 20 year contribution projection report, so that's a slightly new addition. And the more significant item is on page 12, item 27, I wanted to share this item with you, it was I believe it was identified by the Federated investment committee, as something they wanted to see. So I thought you may appreciate this report as well. So I've included it here for your consideration. This would be a quarterly report to the investment committee, summarizing, if I understand correctly, the derivatives expenditure of the plan including the long positions the short positions and what's happening at Federated would bring that to your attention.

>> Sean Kaldor: Any comments feedback or questions about that? We have none. Tom next one.

>> The next one is strategic planning. No changes to this since the last time the board has reviewed it. I've reviewed the committee with the board a couple of times in the interest of time I'll just open it up to questions but I didn't have any specific issues I wanted to raise with you.

>> Sean Kaldor: I know this is going to be controversial but I'm going to absolutely insist that item 5 be removed.

>> No argument here.

>> Sean Kaldor: Okay. all right, any other?

>> That completes the material.

>> Sean Kaldor: Okay any last comments from those items from anybody?

>> David Bacigalupi: I just question not being involved in the meeting, is the investment committee happy the way these things have been returned and put back?

>> Damon Krytzer: From away we just discussed, yes.

>> David Bacigalupi: Okay, thank you.

>> Sean Kaldor: Tom, how many more outstanding policies do we have to go, three I think?

>> Three to go.

>> Sean Kaldor: We'll address those in August. I think the C IO and other things, the remaining are pretty straightforward.

>> That's right.

>> Sean Kaldor: Thank you for your help Tom. We did item 3. sen they're contract right?

>> I thank the board for their continued support.

>> Sean Kaldor: Thank you, Tom.

>> Have a great balance of the meeting, I hope it goes smoothly.

>> Bye Tom.

>> Damon Krytzer: Bring up there's not one Canadian team in the Stanley cup.

>> WooO evil.

>> Sean Kaldor: Discussion and action on the Department of Retirement services mixing budget proposal for fiscal year 2012-2013 which was continued from the May board meeting.

>> Damon Krytzer: I actually have one question on this if I can.

>> Sean Kaldor: You may interject absolutely.

>> Damon Krytzer: An it's -- I also think I know the answer but it's on page 7 on the left about Alborne. That's the 420 is the total cost right? That's not Police and Fire?

>> No, the 420 was just Police and Fire, total cost we budgeted for last year. It was intended to be Alborne and other analytical software. Since then it as only Alborne.

>> Damon Krytzer: Alborne was 250 right? Russell? Both plans are paying 250 each for the 400 service.

>> For the current agreement with Alborne? That's correct, I don't have all the information from me. What I'm saying is the 420 was an estimate not only for Alborne but for other databases as well. And as such, to date we've

only hired Alborne as a consultant on the other side, I've removed the databases for the other side since they haven't procured.

>> Russell Crosby: She's explaining the difference.

>> Sean Kaldor: Let's go that route, we've all seen it, now you've come back with other detail. There are other questions? Bettina.

>> Bettina Rounds: This is very helpful. But it's still not you know sort of line items underneath it. And I think that there was some discussion last time about a more detailed budget. I know this is more detailed than it was last time. But it's sort of lumped together. I mean, I --

>> If I can I can provide some detail to kind of go further. So if you're looking at the personal services line, the chair had asked for a organizational chart, sorry, on page 6 I went ahead and added in the organizational chart and have identified all the positions that are vacant. When we're budgeting, we're budgeting with all of the positions being budgeted for. This this area, unless the board would like to see individual salaries that go by the contacts, what more information could I provide that would be helpful to the board?

>> Bettina Rounds: I'm just struggling with it because the way I'm used to seeing budgets, you see a department's budget so you know what a department --

>> Let me continue on maybe some of my information will clear up.

>> Bettina Rounds: This is presented in a way than the ones I'm used to.

>> Let me walk through a little bit.

>> Russell Crosby: Fit with the City's budget because we fit into line items in the city budget. So what you're looking at is kind of a piece that then fits into this larger thing called the city budgeting process.

>> So if I can I just kind of want to go through some of the other pieces.

>> Russell Crosby: I don't know if that's helpful, that's the way the line items are called the way they are here is a government city budget is what you're looking at.

>> Damon Krytzer: But then that gets justified with the monthly breakouts that I'm trying to find out, that has got list of line items of expenses, right?

>> Russell Crosby: Correct.

>> Damon Krytzer: I think we get the line items in real time which maybe isn't helping you at all.

>> We have some of the line items, if I can go on, that might be helpful. The next line, line 4 is the nonpersonal and equipment line item. So if you continue on to slide numbersen, I tried to give some detail. So on the right-hand side, is all of the line items that go into nonpersonal and equipment. So this is the detail level that you're looking at. So within the nonpersonal equipment you've got your communications, your dues and subscriptions, postage and printing, your building rent, the fiduciary insurance, our data processing, our pension administration system, our travel and training budget our IC hardware and software and our training budget and I've tried to tie that into the budget basis how the projected budget was developed, if there are agreements an the dollar amount that ties into it, the 772,764. Is what is the projected budget.

>> Is that --

>> One half.

>> Russell Crosby: No actually what you're looking at is just the half of each of our salaries that you pick up and then the other half is in the other board.

>> Damon Krytzer: It's interesting though right? Since we don't have the ability to, especially around staff, set salaries or hire and fire, I almost wonder why it's not reasonable for you to just say you know what, it's going to cost you guys 6 papes a year and we'll just deal with all of this as part of the organization and deal with the city, you know what I mean? We don't know if they have control over any of that anyway and that would be a relatively reasonable way to look at this.

>> Sean Kaldor: You talking on the staffing side as opposed to --

>> Damon Krytzer: I'm talking in general, if we did we're not outsourced, if we did outsource, somebody would tell us this is going to cost you 15, 20, 30 basis points a year, we'll spend it how we think is most appropriate if we can get you guys reasonable returns and want to throw a party with all of it, guess what, you're not going to know anyway. And it's five basis points and four basis points to run an organization that's pretty lean anyway, I have no problem whatsoever going through the line items. It's just an irony that since it's in front of me I want to look at it. But if it weren't in front of me, I wouldn't think that four or five, even six basis points or seven won unreasonable.

>> Sean Kaldor: I'll be honest I'm looking at all of this with two things. One we're missing 40% of our investment staff and 22% of our overall staff. That just screams at me how are we even performing? And two I don't want to be cheap. I look at these things, we're saving 10 grand here and 20 grand there, I'm happy, you need nor databases more systems I'm here. You need a pension based system here's some money. I see us trying to Band-Aid things. All I'm looking for, are you getting everything you need? What else do you want? I don't think you see us trying to get that down by 10,000.

>> Bettina Rounds: I do have a question because 50-50 with Federated, it would be lovely just to see what the budget is period. You know I know these are all mathematicians around me but since we're doing it 50-50, I then have to double it. I'd like to know the budget just sort of at some point, this is your salary line, this is your --

>> Russell Crosby: We could do that for salaries but then beyond salaries you're paying your consultant separately from theirs you pay your consultants differently from theirs. Cheiron works for both plans but they do a lot more work for Police and Fire that happen they do for Federated. You end up spending more with Cheiron than Federated does.

>> Bettina Rounds: Because of the fees.

>> Russell Crosby: Yes.

>> Which actually might be kind of interesting how effective we are using our resources versus Federated plan. What a waste are --

>> Russell Crosby: I don't think that's going to save you anything out of that because again the staff is simply split 50-50. Beyond that that's the piece that actually does anything. Cheiron you know it depends on how many requests you have and you have a lot more requests than Federated does. You got a lot more complex --

>> Bettina Rounds: Does Harvey --

>> Russell Crosby: Harvey bills your plan for the work he does for your plan.

>> Damon Krytzer: Why 50-50, and not -- I thought it was pro rata on assets.

>> For the allocation of staff?

>> Damon Krytzer: For the allocation of staff and joint databases and whatnot, right?

>> Staffing is a difficult analysis. I mean short of doing a time study --

>> What are you negotiating for?

>> Damon Krytzer: Time is money. I don't just want the expense without the time but we hear all the time it's 50-50 time now too. But I'm thinking we have a lot more money than you have so --

>> Russell Crosby: The agenda a lot of effort goes into that. The trust funds require more or less the same activities going on.

>> Damon Krytzer: It is a lot different, with the work that's done with the intention of investing a way bigger chunk into alts. We're looking at that for Federated you guys haven't approved that, okay where's our time? Like we're you know we're paying too and that's not a -- it's just an observation. And a consequence of the fact that we're looking at it a little bit differently, not a complaint, it's an observation.

>> What is NTE?

>> Not to exceed.

>> Sean Kaldor: And then this whole budget, there could be a fairly large impact of implementing measure B type alternative trusts, and terntd pension plans and the systems and software and things like that, we need a few more head count to manage all that right?

>> Surely, even last month when I presented to the board I made that caveat very clear all of those pieces are all subject to what happened at the recent ballot measure and how that's going to impact our department. Whether it's legal, actuarial, staff all of those pieces are yet to be determined.

>> Russell Crosby: And again, if you think in terms of adding staff, that's a big issue. That has to go through the city processes and the city budget and city budget controls. And it's not something that you can really do.

>> Bettina Rounds: But if we actually filled the jobs that were vacant that would make a difference too, right?

>> Russell Crosby: Of course, of course.

>> Bettina Rounds: It's not necessarily adding staff because those are approved jobs?

>> Russell Crosby: Well, no. The staff you would likely add would not be things like investment officers and the open benefits position and those things. You're going to end up with additional clerical people to do whatever.

>> Bettina Rounds: But you can play little head count games can't you?

>> Russell Crosby: No, no, this is government, civil service and unions.

>> Bettina Rounds: Didn't mean --

>> Russell Crosby: No. That's a serious concept to understand because of the union structure and civil service structure. It's by individual position not just 38 positions to use as you want. You have one of these and two of those and one oarch there and that's it.

>> Donna Busse: As far as personnel goes what you're seeing here is the actual budgeted approved permanent staff. When you are talking about special projects and things like that you can do some stuff with temporary staffing that doesn't show up on your line item. If we do this we need to have some other budgets position and have to go through the city process.

>> Bettina Rounds: But there is some flexibility.

>> Donna Busse: There is some flexibility on the budget.

>> Sean Kaldor: Is there any other question on the budget? Seeing no further questions, I ask for a motion.

>> Richard Santos: Motion to approve.

>> Sean Kaldor: Motion by trustee Santos. That includes item 3.3 moving to item 3.4. Update from Councilmember Constant, Councilmember Constant relaid to me that he covered key points he wanted to make and everyone generally aware that measure B had passed and he had no further information to provide. As I mentioned in the orders of the day, we'll do agenda items 3.5 and 3.6 at the very end. And that brings us to item 5, death notifications. We have the -- this is to note and file we have the notification of the death of Walter L. Martinelli, fire engineer, retired February 1, 1974, died Maysen, 2012, no survivor benefits. Ask for a moment --

>> Richard Santos: For a moment, I had the honor of working with him, when I was a young firefighter and he was a veteran, he worked at East San José, all the way to his 60s. He was an excellent fifther, lived to be 95. God bless him. Wonderful people.

>> Sean Kaldor: Moment of silence for engineer Martinelli. [Moment of silence]

>> Sean Kaldor: Thank you very much.

>> Richard Santos: Thank you.

>> Sean Kaldor: We'll move on to agenda item 6, committee reports, any minutes reports and recommendations starting with item 6.1, the investment committee. We have the next meeting June 13th, 2012. And we start with the report of the chair of the investment committee to receive and file.

>> Vincent Sunzeri: So the last meeting we had was May 25th. And we kicked that off with a joint meeting with Federated board. Covered the MacKay shields topic which we discussed earlier so that's not to be reviewed. We also had Alborne attend the meeting and talk about the risk metrics and how they look at addressing that on the hedge fund side. The staff didn't have a report to give regarding any specific managers, but expected to have that shortly. They did talk about the fact that they initially had approximately 18 managers that Alborne had identified for the hedge fund piece of which it was expanded out to their list of 70 managers, Carmen would prefer to see a much larger list and then start to filter it down at the 70 managers, approximately 30, 35 managers they'll actually be visiting and doing due diligence on, writing reports, and then that will come back to the board. As a matter of fact I believe both her and Heidi are traveling visiting hedge fund managers. What we discussed a couple of meetings ago, we actually switched the structure of the meetings, which is more effective. Federated met up front and then we go into joint session and then after the Police and Fire meet exclusive. Then we met with our consultant. NEPC covered what they talked about today during that meeting, they then went on to, we actually discussed our contract which the discussion was to renew the NEPC contract for another year. And we dug into asset allocation, they provided us with a few different mixes of asset allocation which we then provided input on and the intent, our meeting in June on the 13th, will be to review the asset liability study. And then, dperm if we're comfortable with the final asset mix that we're suggesting. We want to accelerate this as quickly as possible so what I would anticipate is in August our meeting at that point we should be at the board level, be able to approve the asset-liability study, approve the asset mix, and we may also be moving on to some credit opportunities that they're going to recommend that we can bring to the board to start to implement as well. So we'll see some major shifts in the plan structure during August and September as we start to implement these processes.

>> Sean Kaldor: Good. Any questions? Okay we also have the minutes from the April 26th, 2012 joint Police and Fire investment committee and Federated investment committee meeting which we'll receive and file. Item 6.2, the ad hoc governance committee Cortex phase II, we met May 18th, dealt with a number of topics we focused on really going through and addressing what the organization, what the ideal organization is mapping that out. And coming up with a report that will be consistent I think with what our vision has been. Getting towards a direct responsibility model where we have full accountability so we should have full responsibility within the staffing

structure. That report should -- we'll see what Tom actually comes up with but I would .it would go in the same direction that we have going with the mayor's and the nearing's office. That continues to move forward and I need to schedule we're trying to schedule a meeting for June. So with that, 6.3, the ad hoc personnel committee, that also met May 18th, Drew is the chair, he could not be here but he asked me just to hit on the key points. With this committee, we met with Alex Gurza and was that with the City Manager as well?

>> Bettina Rounds: Yes I was on the phone and she came.

>> Sean Kaldor: That's right, with the City Manager as well, really appreciated being able to sit down with her. We talked through a few issues. You'll see in your board packets we received our director Russell Crosby's notice that he intends to retire sometime again July 1 and September 1.

>> Russell Crosby: Uh-huh.

>> Sean Kaldor: Lucky soul good for you. Which accelerated an action item immediately we insteaded to clarify what the job description would be for the CIO and the job description for the CEO. Working under our current rules but with the vision for the future so understanding we might be working on reporting relationships what can we do today to recruit somebody. So the CIO job description we agreed we would work with the board members to come up with and in fact worked out to the investment committees and say you're best capable of drafting that job description. I know it's about work, who --

>> Marty and I.

>> Sean Kaldor: Marty and you. The City Manager's office is looking for us to write out the job description so we'll get back to them on that. The CIO, whatever exoantsdz they'll be giving us recommendation or idea for us, we'll get feedback, I think that's something I'd like to share broadly and get everyone else's opinion on. Also recognize we need to recruit, we put out in cooperation with the City Manager's office we put out a letter to just about everyone we know in the unions and the consultants financial side everywhere reaping out say that we

need to recruit somebody there may be a need for an interim person depending when we have a vacancy or a permanent person. Anybody who knows names of possibilities, filter them to Alex Gurza and we'll work to that list.

>> Russell Crosby: I sent that to Cal APRS and Sacrs as well.

>> Sean Kaldor: Casting as broad a net as possible. We just said there's a need for replacement and people are interested and if you have recommendation please let us know. Kind of kicked that off. The city also said, they're working on two things. First, working with their city attorney's office about how we can give evaluation feedback on staff. Actually, that's the one big issue, how we can get feedback on staff and really it's the CEO, submitting everyone, reports on CEO. They didn't give us staff members but how do we give the CEO the City Manager's office currently strealts CEO the feedback, come from the whole committee, can we at this time down and have a closed session discussion. Our preference was a closed session discussion where we could sit around and talk about things rather than have anonymous surveys and do outreach so that was the output of that. That's that. Item 6.4, ad hoc audit committee we just formed and now handed some items so my recommendations on these committees we found worked realized took the hint from Drew, trying to set up three months out, one meeting a month, get schedules worked out on that and keep that rolling along. That takes us to item 7 and I'm going to pull one item off ofsen. Item 7 many 6 A the list of committees and members.

>> David Bacigalupi: Mr. Chair, could we point 7.6 F.

>> Sean Kaldor: 7.6 F we'll pull that also. 7.6 A. Any other items to be pulled off? Okay seeing none.

>> David Bacigalupi: Move to approve the balance of the consent calendar.

>> Richard Santos: Second.

>> Sean Kaldor: Motion and second. I want to be clear that it includes approve 7.6 E which I think we discussed but didn't formally discuss. We have a motion and second. Any discussion on the motion seeing no discussion all in favor, aye any opposed seeing none opposed the motion passes unanimously. So item 7.1A, 7.6A. So we have a new board member. Which ops opens up lots of opportunities.

>> Damon Krytzer: Look at over-achiever Kaldor.

>> Sean Kaldor: I think we should remove the old committee ad hoc committee for short term solutions. I don't expect that coming back. The ad hoc disability determination process subcommittee. Let's just call that the ad hoc disability subcommittee. Realizing we've already crafted out some immediate questions for them. We said we'd reconvene with existing members. I'm going to recommend that our new trustee Mr. Mason replace me on that committee and so that's my recommendation. Anyone has disagreements? Also going to recommend Mr. Mason replace me on the audit committee. I think that's a new committee for us so we'd all be starting from scratch and it's a new process for us so you're just as well suited to that as any of us would be. Congratulations.

>> Damon Krytzer: Didn't sound like a question, did it?

>> Sean Kaldor: Vince.

>> Vincent Sunzeri: I have one request if possible. I'd love to switch with Bettina.

>> Bettina Rounds: No.

>> Vincent Sunzeri: From the disability to the governance.

>> Bettina Rounds: No, absolutely not. I'm not doing that. It's a great idea. And you're kidding me! No!

>> Vincent Sunzeri: I have some real challenges making progress when I was on that committee.

>> Bettina Rounds: Find someone else who's willing to do that. I'm not doing that.

>> Sean Kaldor: For the disability one?

>> Bettina Rounds: No.

>> Sean Kaldor: Vince, I hear what you're saying. If she's not willing to do it, is there someone else you want to -
- I think there's someone that needs to be effective I'm all for that.

>> Vincent Sunzeri: Already on there, I guess we have to question for me being an alternate, maybe Lanza can be the alternate --

>> Sean Kaldor: Want to talk about alternates. Get to the same point. I think we do have an issue with alternates, that if for example the investment committee, if the four of us meet and then the next month I can't be there and the alternate steps in and you're dealing with the same issues, and a month later you bring it to the board well five members of the board have already met on this issue. Harvey, should we get -- I mean each of these committees can meet with four instead of five. So the meetings can still move on if one person can't attend.

>> Harvey Leiderman: Yes, I must say Mr. Chairmanman I've developed a Digel moment since our last board meeting with the use of alternates where you already have four members assigned to the board because of the issues you talk about it becomes a serial meeting of the a majority of the board under the Brown Act. And I've spent some time thinking bit since our last session when we were appointing alternates to some of these committees and I think we should avoid that because of that issue you end up with subject matter discussions that continue from one meeting to another. And then you have you know a majority of the board having discussed a subject that is then going to come before the full board. So I would remember from a governance standpoint, that we limit our board memberships if you want to have three and an alternate that's fine but if you're going to have four standing members then you should really not have an alternate member to a committee.

>> Bettina Rounds: In all seriousness, my background is human resources and governance. I ran HR for a unit but I didn't do disabilities. My expertise like yours in investment belongs there. I'm really not a disabilities expert.

>> Vincent Sunzeri: Simply because you're in the R HR department gives you one more notch above me on disability.

>> Bettina Rounds: Nope, that is something I had the lumery of delegating.

>> Sean Kaldor: Okay so --

>> Vincent Sunzeri: On the governance side though Sean I don't want to be drafted as an alternate because of the structural change and I'd love to be a part of that process.

>> Sean Kaldor: So as far as my own role, I mean, I don't want to do a transition, on the chair of the governance. On the personnel committee I'd be happy to let someone slide in there but we kind of got a rapport in there and we just changed out sliding Drew in there. I don't know, if --

>> Damon Krytzer: Should loop Drew into that chat about that, Drew isn't here so I don't know. I mean just saying --

>> Bettina Rounds: Drew needs to be here to defend himself.

>> David Bacigalupi: I offered him a trade and a player to be named later.

>> Bettina Rounds: As the personnel ad hoc, it strikes me that your interest is more on the personnel side than anything else, so maybe you could be a fourth on the personnel committee.

>> Sean Kaldor: Welcome to do that if you want.

>> Bettina Rounds: It doesn't seem, unless you have a burning desire to write policy with Tom, the decisions you're talking about tend to be down there.

>> Vincent Sunzeri: Right. I think on the short term I can be effective on the personnel committee. Part of my concern is the long term of Cortex phase 2. I really want to be involved in pushing that through. And it's like I've made a lot of progress in that vein already. So I would -- I'd be willing to step on the personnel committee and then -- in a more intermediate time frame, maybe coy switch with somebody on the governance side.

>> Bettina Rounds: Who is more willing.

>> Sean Kaldor: Maybe have a talk with Drew.

>> Vincent Sunzeri: That's final.

>> Sean Kaldor: We don't want you to be on the personnel committee if that's not really -- I want to add you to one for a month and then don't want to move you after a month.

>> Vincent Sunzeri: Why don't we do this, given the progress we're making on some things. Why don't you put me on personnel for now and you can decide on governance later.

>> Sean Kaldor: Okay so that does leave one person who is not on any committees. That would be you. Chairman Bacigalupi.

>> Sean Kaldor: You're on the audit?

>> David Bacigalupi: That's what I offered to trade.

>> Sean Kaldor: Thank you, perfect. So to clarify the changes to the sheet going down in order. The investment committee we're removing the alternate. Going down in order. On the governance committee we're removing the alternate. On the ad hoc committee Mr. Mason replacing me. On the personnel committee, adding Mr. Sunzeri, eliminating the ad hoc committee on short term solutions. Just gone. And then the ad hoc, becomes the ad hoc disability committee, and Mr. Mason replaces me on there, as well.

>> David Bacigalupi: Mr. Chair. Can we have these retyped and just republished?

>> Sean Kaldor: Yes, if we can have these come back next month now that we have these committee structures working. I'm trying to push things through committees empower them, make your decisions move along feel like I'd rather you ask for forgiveness making internal decisions and keep the board informed each month.

>> Vincent Sunzeri: Could I ask one more question? Damon would you like to replace me on disability?

>> Damon Krytzer: You know the answer on that one. [Laughter]

>> Vincent Sunzeri: All the more reason why you should clean that issue up for us.

>> Damon Krytzer: I appreciate the balls of asking the question.

>> Give me credit.

>> Damon Krytzer: I'm giving credit, absolutely.

>> David Bacigalupi: Vince if you want off, I'll step on.

>> Sean Kaldor: Not looking for to you do it.

>> Damon Krytzer: No doubt about it. I feel the need to --

>> David Bacigalupi: I mean if you want off.

>> Bettina Rounds: Put you on all the committees just take you off of that one.

>> Vincent Sunzeri: It is for the rest of the board to agree to, Baci is willing to replace me. It changes the dynamic of the committee.

>> Doesn't matter to me.

>> Sean Kaldor: I think it's coming back with a process to recommend to all of us. We're all going to look at the process and say come on really, or great.

>> Vincent Sunzeri: Congratulations you just inherited that.

>> Bettina Rounds: But that means you can't abstain ever again. [Laughter]

>> Whether it's going to make a dins.

>> Sean Kaldor: Okay so with that being the last change and you know, Baci I think your understanding of the disability process is a great assess to doing that. Your experience with the board I think it's a very good fit so I do appreciate you doing that.

>> David Bacigalupi: I volunteered. You don't have to kiss --

>> Sean Kaldor: Okay so motion to approve 7.6A with revisions.

>> Second.

>> Sean Kaldor: All in favor, opposed, seeing none item passes unanimously. Itemsen.6 F.

>> David Bacigalupi: It's a couple of prestigious awards that our staff Russell and folks that work for Russell and work for us received, and I just didn't want it passing through under the consent calendar. And I know we don't like to take a lot of time for these things but I just wanted to say to Russell, please pass on for yourself and for everybody that does so much work that we thank you. I mean this is quite a prestigious award, couple of awards and I think you need to be recognized for it. Thank you. [applause]

>> Russell Crosby: Ist not me. I'd like to recognize Veronica and Ron, Veronica in particular shepherds this thing through. Some of her disclosures are now being used by our auditors with other inclines because she did such a good job on them. And in my interview with our audit partner just recently we identified that this is a real resource, a real asset here. I'd also like to recognize Ron as well, a lot of the tables and stab lar stuff he works on there. But Veronica really does the heavy lifting making sure this thing gets done and gets done right. Congratulations. [applause]

>> Sean Kaldor: Excellent.

>> David Bacigalupi: Move to approve 7.6 F.

>> Sean Kaldor: Motion and second. Any discussion? Seeing no discussion all those in favor, opposed, none opposed, passes unanimously. Thank you.

>> Damon Krytzer: The last is closed session right?

>> Sean Kaldor: Item 8 these are all just for information, 8.1 education programs and courses 8.2 conferences and seminars, 8.3 research papers and articles, 8.4 Cal APRS training, trustees round table doubletree hotel 2050 gateway place, San José that would be tomorrow. I would appreciate if staff would advise our new trustee about upcoming dates.

>> Russell Crosby: Already talked to him. We're going to get him dates he needs go to.

>> Sean Kaldor: Especially Stanford. You don't have to go to all of them but proposed big ones. Proposed agenda items.

>> David Bacigalupi: Mr. Chair just a couple of things. History many years ago when Dick and I were on this board and for many years, we had at least two councilmembers, sometimes more, the council has a history of taking July off in vacation. And therefore, the this board didn't meet in July. Well, we no longer have councilmembers on it and with all due respect to everybody here and Damon who unfortunately is not here to hear it everybody's putting in a lot of time here. And especially people without a vested interest. But investments don't stop in July. We know we got a bunch of disabilities and I would just suggest it's too late for this year. But I'd like to propose an agenda item for discussion and possible action, that we no longer eliminate July as a meeting month. And I just think that I've listened to the investment committee talk about how so many things are happening and they want to get things done. So I think that we should take a look at maybe meeting in July as well.

>> Sean Kaldor: Okay, we'll add that to the agenda as well.

>> David Bacigalupi: There may be staff issues but I'd add that to the discussion.

>> Sean Kaldor: Maybe staff analysis, if it falls right on July 4th or July 3rd, we do it on the other Thursday.

>> David Bacigalupi: I don't know if the other board is going to change.

>> Sean Kaldor: For discussion.

>> Sean Kaldor: Anything else for discussion?

>> David Bacigalupi: Came up today during the disability hearing process, maybe we could defer to the disability committee but I mean it's really difficult, the meetings aren't just in a little back room with seven or eight people signature here. These meetings are televised recorded taped reviewed by lots of people. And when we do the disability applications, nowhere else is so much medical evidence revealed in an open forum. I mean it's frightening. When somebody has to talk about and we had it in cases today urinary problems and narcotic problems and stuff. I mean I am really uncomfortable exposing that to the general public.

>> Bettina Rounds: Agreed and you could you know if it were a normal situation, all of the Hipaa laws would come in and say you can't talk with any of it publicly.

>> David Bacigalupi: In history we've had cases with mental health issues HIV issues where they've requested to go to closed session and the City Attorney who was our counsel at the time said there was no problem with that.

>> Russell Crosby: Only when it's stigmatizing.

>> David Bacigalupi: What's stigmatizing, I got to tell you I'm having urinary problems? So maybe if we could refer that to the ad hoc committee before it cox back to the board I think it's something that could be looked at.

>> Russell Crosby: Maybe you could refer it to your counsel.

>> David Bacigalupi: Maybe Harvey could like to hear about it wts there are things in there Harvey that I don't believe should be discussed.

>> Sean Kaldor: Harvey should we make that an agenda item?

>> Harvey Leiderman: I'm not your disability counsel but generally in the state of California the member can request to go into closed session on those matters on a matter of personal sensitive information that's not a blown out knee or something like that. If we're going to talk about that I'd like to take a look at the Muni code again subject to make sure there's not some kind of prohibition about that, but we can talk about that at the ad hoc committee I think.

>> Richard Santos: Legal opinion about carrying medical understanding yes or no.

>> The question would be does any of the hipaa laws apply.

>> Harvey Leiderman: This isn't a hipaa discuss because we're not a hipaa business provider employee.

>> They're not coming to us for a determination.

>> You have a doctor speak going those issues. Is there not any hipaa issues with the doctor speaking at that point?

>> Harvey Leiderman: He may have but I frankly don't know.

>> Sean Kaldor: Mr. Spence.

>> On this issue having sat here watching what's going on sometimes the questions being asked for the board would have the applicant answer about personal stuff that they -- if they knew that that was what was going to happen by the questions from the board they probably would have had -- gone to closed session. I think the last gentleman was the perfect example of that was something that really wasn't part of the package but he presented

that to you because the questions were coming having worked what's going on with him. So I think it's good to look at, but I think sometimes the inquiry brings the unintended consequence of bringing that information out. That the -- unfortunately the applicant if they knew that that was really going to happen probably would have done it in another way. I've been around when Dave said there were other closed sessions. But those are spent for I'm asking for a disability for a mental problem so that would let that go that way so I'm bringing that as an observer from the outside that that has happened a lot.

>> David Bacigalupi: One other comment, we've had this board directly within the last few months we've had people break down in front of the board and I'm sure you don't want to see that thing recorded.

>> Sean Kaldor: Kids watching.

>> Bettina Rounds: I don't think it would be a problem if it's not in open public, it's recorded there are people sitting there.

>> Sean Kaldor: Remember there is no requirement that these be videotaped and broadcast on national TV or city TV which these are. You can go to your house and watch us there. There is a requirement for it to be recorded and -- or minutes, it doesn't even have to be recorded. I will make maybe two things put it on the agenda for the board and ask Harvey to come back to the board and tell us what our legal requirements are for the applicants but to ask the disability subcommittee to think about and whatever recommendation they come up with that the impact of being able to do it in a subgroup or going before a hearing board where there's just minutes taken or just an audio recording that's bracketed in front of the world, there's a benefit to doing it that way also.

>> Bettina Rounds: I would strongly urge the committee to take that recommendation open as a priority.

>> Sean Kaldor: Any other agenda items?

>> David Bacigalupi: No I'm through.

>> Sean Kaldor: Public comments, our member of the public, who is always patiently waiting. I do appreciate it. We will not adjourn, I will read what we're going into closed session on.

>> Harvey Leiderman: Mr. Chairman, regarding closed session, sorry to raise a technical item here, but since the posting of the agenda, specifically on 3.6, closed session on the pending litigation the San José pmentOA case filed yesterday, there were two additional cases filed yet yesterday that are similar and are part of the litigation but we have not identified them for the agenda. I would like to identify them for the agenda and I would like to ask a, suggest to the board that by a two-thirds vote we can take those matters up in closed session, as well, under the Brown Act, because they-d these are matters that came to the attention of the board after the agenda was posted and therefore we did not have an opportunity to post them. So with your permission, Mr. Chairman, I'll just identify those cases, and then ask the chair to entertain a motion to put those matters on the agenda, so we can consider them in closed session, as well. Those two other matters, two cases, one called Sapien, S-a-p-i-e-n versus City of San José, filed in Santa Clara County superior court, action 112 CV 225928, filed yesterday. And the other is the City of San José versus the San José Police Officers Association and other defendants filed in United States district court for the northern district of California, San José division case number C-1 two 02904. And with that I believe a motion to consider those matters that were not posted, would be entertained, and if the board votes by a two-thirds vote to take those up we can add those to the agenda.

>> David Bacigalupi: I make a motion to add those two items to the closed session under 3.6.

>> Sean Kaldor: We have a motion and second. Any discussion on the motion? Seeing no discussion all those in favor? Aye, any opposed? There are no nays that's seven of nine of us that's unanimous of the membership and more than two-thirds of the entire board.

>> David Bacigalupi: Mr. Chair.

>> Sean Kaldor: Yes.

>> David Bacigalupi: Yes as far as item 3.6 after advice from counsel being a member of the San José Police Officers Association still as a retiree, they have -- they allow their retirees I'm going to have to recuse myself of item 3.6. I'll be able to participate in the other litigation but not in one where I'm on both sides.

>> Sean Kaldor: Okay, so to understand 3.5 is separate, that's kind of the older case we've been working on. 3.6 there's the can existing one in hereby with the P OA one with Sapien.

>> Harvey Leiderman: Sapien yes.

>> Sean Kaldor: And the other is city versus POA. You want to recuse yourself from the one printed here and the second one?

>> Harvey Leiderman: No, we are not a party to the city action. Not a named party so his recusal would be only from the one that is posted already, the San José POA where they are a plaintiff, that have named the retirement board as a defendant.

>> Sean Kaldor: Okay. That's what you meant.

>> Obviously Mr. Chair I would have to recuse myself also as being a member of the POA.

>> Sean Kaldor: From that 3.6 printed. Okay.

>> Harvey Leiderman: So both members may attend the closed session with regard to 3.5. And the second and third items under 3.6 but not the first item under 3.6.

>> Sean Kaldor: So we'll take a five minute break we'll go into closed session we'll hear item 3.5 and then the two additional items under 3.6 and those two members who have recused themselves will step out and hear the

remaining item under 3.6. To read these items into the record item 3.5, Closed session conference with legal counsel litigation pursuant to government code section 45956.9 (a). Paul Mulholand, James Unland and Mary Follenweider, plaintiffs versus Russell Crosby, Michael Moehle, City of San José, and does 1 through 10 defendants, the board of directors of the San José Police and Fire retirement board and the board of directors of the City of San José Federated city employees retirement system, necessary parties in interest. as well as item 3.6, closed session pursuant to government code section 54956.9 (a) pending litigation, San José Police Officers Association versus City of San José and board of administration for Police and Fire department retirement plan of City of San José, Santa Clara County superior court number to be determined. File number 03880 nine. We are adjourned and a five minute break before that. [Closed session]