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>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for November the 16th. Councilmember Pyle will introduce the invocator.

>> Councilmember Pyle: Thank you, mayor. With us today, back by popular demand, is the senior association members, and they're putting on a skit from the "Those Were the Days." This is called the Howdy Doody skit. And I invite them to come on up and give us their illustration. With us today is Mary Sheehan, who is right in front of us as we speak, Marilyn Enton and Susan Tam were the writers. The actors are Ralph Butterworth, Josie Supenchek and Jean Schwab. Take it away, Mary.

>> Thank you. We'd also like to invite you all, on Friday, for the next performance of our show. It's sort of a look-back at the past, TV shows and things from our childhood, probably not yours. But if you'd like to come, it's the Almaden community center, $5. Wonderful show! This is to start. Wouldn't it be nice to take a break from being grownups, to settle disputes we could just go Eeney, Meeney, Miney, Mow, instead of doing lots of regulations, do what our parents say is fair, say you're sorry if something is wrong and if you make a mess, clean it up. That's what Howdy Doody would do it.

>> Hello, boys and girls, do you remember the Howdy Doody Show? You know, the 1950s television show with Clara Bell, the clown, Princess Summer Fall Winter Spring, of course Howdy himself, and me, Buffalo Bob. [applause]

>> My fans! Now, do you remember the peanut gallery? Great. You were all members of the peanut gallery and you are all five years old! Now we would always start the show, I would come out and I would say, say kids, what time is it? And you would say:

>> It's Howdy Doody time.

>> Very good. Wow, you're smarter than you look. We would all sing the Howdy Doody song. So let's all sing it now: ∂∂ ∂∂ [applause]

>> That was just a little bit weak, folks. I think some of you are maybe older than five. At any rate, I know that howdy is happy to know that you're thinking about him. I have some sad news to tell you. Howdy is not doing too well. He's in a nursing home. Dutch elm disease. They say they're going to have to do some major sanding or maybe even prune a limb or two. He can sure use some cheering up. Would you like to see howdy? I don't think he heard that. Would you like to see howdy?

>> Yes.

>> Okay, well we have to find the head tree surgeon and try to get permission to -- there he is now! Hello, we're here to see howdy. Is he accepting visitors? [Honk]

>> Oh, howdy! It looks like you're having trouble getting up. Is it arthritis?

>> No, it's just a bit of root-rot. But the surgery to remove the knot in my leg was successful! At least I didn't have any termites!

>> Good thing about the they are mites! Why, it really makes me sad, seeing you like this, howdy. It wasn't that long ago, you were running for president!

>> I remember! I was the perfect presidential candidate. Useful, likable, but then my handler started jerking me around like a puppet on a string! And it didn't help when they found out that my family tree was a nut tree! With a couple of kookoo birds and a DODO still residing there. Oh!

>> Oh how times have changed, howdy. That doesn't stop some of the candidates running for office today!

>> And that's the truth, [Raspberry] [applause]

>> Mayor Reed: Thank you. Our next item is pledge of allegiance. Please all stand for the pledge. [pledge of allegiance]

>> Mayor Reed: First item of business are the orders of the day. I have a couple of requests for changes. Item 2.4 B, request for excused absences is to be dropped. We'll take up the closed session report immediately before the ceremonial items. Any other changes to the printed agenda? Motion is to approve orders of the day. All in favor, opposed, none opposed, that's approved. We will adjourn this meeting in memory of Michelle Wagner a member of the Santa visits Alviso organization for many years. Passed away on September 3rd. Councilmember Chu has some additional words.

>> Councilmember Chu: Thank you, mayor. It was with deep sadness that we learned about the unexpected passing of Michelle Wagner. Her family has honored us with being here today to join us in remembering her, and at this point I'd like to ask them all stand up, including her mom, Judy San Diego, better known as Mrs. Santa to many of our Alviso residents, and the Sunnyvale general area residents. Thank you very much for coming. Michelle Wagner was from the family of the founders of the Santa Visits Alviso Foundation. For those not familiar with the organization, Santa Visits Alviso Foundation, they take place every year since 1983, in Alviso to provide entertainment, resource fair, free meals and educational gifts to hundreds of families with young children from toddlers to teens. This is a commune organized even with the partnership of local businesses, and city of San José and the Water District as well as the county of Santa Clara, also played a very important role, in this Santa Visits Alviso event. Michelle became an integral part of District 4, actively engaged and involved in the community. Michelle was highly respected, admired, and recognized as an exceptional role within our community. She was also a volunteer leader and member of the grand foundation through her employer. Michelle had the strong desire to be of the maximum service to Santa Visits Alvisa Foundation. Volunteering on different committees and was also instrumental in getting a 10K grant in 2008 through the Silicon Valley community foundation and business object. The money she raised went directly into the Santa Visits Alviso Association Scholarship Program. Michelle's effort have touched many people's lives and have provided hope and positive motivation for those with whom she interact. She will be dearly missed by all of us. May her memory and legacy foster live on in our hearts and minds. Thank you very much for coming.

>> Mayor Reed: Thank you for being here. We thank you for Michelle's service to our community. Now going to take up the closed session report. Council met in closed session this morning one of the things we did was to appoint Dennis Hawkins as our next City Clerk. Dennis. [applause] Although it does appear that she started as a young child in the clerking business she's going to retire pretty soon. Lee Price will be retiring at the end of the year and Dennis will be stepping in ably to step in to pick writeup Lee left off very well. We're very excited to have Dennis as the next clerk. Looking forward to working with you Dennis. Anything else out of closed session report, Mr. City Attorney?

>> City Attorney Doyle: Yes, Mr. Mayor and city council, we were given authority to proceed in one matter. The substance of litigation will be disclosed once the matter is formally commenced.

>> Mayor Reed: I'll start with ceremonial items. I'd like John Stufflebean to join me at the podium for the 2010 combined giving campaign. We've got a team that's going to be down here for this. Before I turn this over to John I just want to say I've already signed up, John.

>> John Stufflebean: I just have a couple of brief words. I just wanted to take this moment to recognize the people that really make the combined giving campaign work. And these are the department coordinators. We really appreciate the work they do to bring enthusiasm to the campaign, encourage people to give and also to do the work behind the scenes, to make the campaign successful. So just want to also encourage all city employees to give. It is a challenging year but this is our opportunity to give back to our community. And again I just want to get maybe a quick round of applause for the department coordinators who make the program great. Thank you. [applause]

>> Mayor Reed: I want to thank all the departmental coordinators for doing this extra duty. It means a lot to the community. We raise a lot of money out of the employees of the City of San José even in tough times. Go online, it's easy, comes right out of the paycheck it's almost painless. Thank you all.

>>> I'd like to invite Councilmember Herrera, Councilmember Constant, and members of the Santa Clara County Alzheimer's association to join me tad podium. We're going to recognize the month of November 2010 as national Alzheimer's disease awareness month in the City of San José. Councilmember Herrera has some of the details.

>> Councilmember Herrera: Thank you, mayor. And I want to thank you thank the representatives that have joined us today from the Alzheimer's association of Northern California, Dagmar Cheldweck chief development officer, Patty Ginto, is she up here or out there taking pictures, Grace Lee, a caregiver and board member and San José resident and Jessie Sanchez, a caregiver. So today, I'm really proud to say and honored to say that we're proclaiming the month of November as Alzheimer's Awareness month in San José. Today we are shining a spotlight on the mental, physical and emotional challenges that face the over 5 million Americans and over 27,000 residents of Santa Clara County that live with this disease. On a personal note, I lost my mom a year and a half ago, after a ten-year struggle. And I know my colleague Pete Constant also lost his mother three years ago. So it's very personal to a lot of us and I'm sure there are a lot of us in this room who have relatives coping with it or friends. We're focusing the attention on the contributions of the nearly 11 million family and friends that care for them. Last year family members and friends provided 12.5 billion hours of unpaid care at a value of almost $144 billion. This is an incredible contribution. I've asked the Alzheimer's Association to join us today because they are the leading voluntary health organization in Alzheimer care support and research and the largest private nonprofit funder of Alzheimer's research. I'm happy that the City of San José is joining the Alzheimer's association and communities across the country in this national effort because this disease affects all of us. Not only are 5.3 million Americans living with Alzheimer's, as our country ages this issue becomes even more important. Between 2000 and 2006 the number of Alzheimer's disease related deaths increased by 46%. It is critical that we continue to raise awareness of this disease and continue to support research into its treatment. Hopefully, this research will lead to an end and a cure for the disease. Since 1989, the Alzheimer's association memory walks have raised $300 million to support research efforts. Last year Santa Clara County residents raised more than $318,000 at the memory walk in arena green. I challenge everyone to come out early, form teams, and it's also a lot of fun I have to say. I thank volunteers again for their efforts this year and I want to thank the members of the Alzheimer's association for alt the work they do year round to raise awareness and work for a cure for this disease. And now I

want to ask Mayor Reed on behalf of the city council to present Grace Lee of the Alzheimer's association with this proclamation. Grace is going to say a few words. Thank you.

>> Hi, on behalf of the Alzheimer's association, I thank you so much for this proclamation. My name is Grace Lee and while I serve on the board of the Alzheimer's association my experience here is very personal. I'm the face of Alzheimer's like so many of us caregivers. And this disease affects us so much. Both our individual afflicted persons, our families and our communities. My mother has Alzheimer's and she's been diagnosed for 13 years now and continues to live in San José. And it's a struggle every day to be there for her. So this is really a disease that affects families, and as a baby boomer I can't help but take note and point out to all of us that in the last 20 years by 2030, unless research does something and really comes up with some new discoveries, we're going to have double this number of people with Alzheimer's in the general population. And population of -- will increase by threefold, in Asian and Latino families. So I want to thank the city very much for this proclamation to help bring awareness to the existence of Alzheimer's and the need of the support of our community both in terms of services but also in terms of raising money. There is a fund raiser this week on Thursday at the rodeo club, country singer Brett Aldridge will be performing. We wanted to take this opportunity to make sure that people know that they're not alone in the Alzheimer's journey. The Alzheimer's association is here for us 24-7. Encourage people to call www.alz.org\norcal. We're here to help you. Thank you very much. [applause]

>> Mayor Reed: Next I'd like to invite our city's GIS professionals to join Councilmember Constant with me at the podium as we recognize November 16th as GIS day in the City of San José. Councilmember Constant will probably tell us what GIS stands for.

>> Councilmember Constant: Thank you, mayor. We have Steve Ferguson, Tim Hayes from the environmental services department, Earl Harris, also from the I.T. department, Vicki Gallardo from Public Works, and William Harmon from the Department of Transportation. GIS systems, GIS stands for graphic information systems, they're systems that capture, analyze and manage and present data linked to locations, thereby, effectively creating maps and spreading knowledge. GIS day was first celebrated in 1999 and is recognized during the third week of every November across the U.S. GIS day is a worldwide event that encourages GIS users to open their doors to

schools, businesses and the general public to showcase real word application for GIS technology. It's an opportunity for GIS users to share their knowledge and passion with others and to display the tremendous impact technology has on our lives. We come together for GIS day to create an international forum so users of this technology can demonstrate the progress our community makes by properly utilizing the capabilities of geographic technologies and how they play a powerful role in increasing geographic awareness. Now, mayor, who's going to accept that piece? Thank you.

>> Thank you very much, Councilmember Constant, Mayor Reed, members of the council. The development of GIS dates back about 30 years ago, and local government has been a very eager adopter of the technology. The reason why it's so important to local government is a vast majority of the services that we deliver day in and day out relate to some geographical point on this earth. Examples here in the city include address verification for 911 calls for when we dispatch an emergency vehicle, we issue building permits and track those permits using GIS, we design public utilities, roads, bridges, buildings, parks and airports using GIS technology. We use GIS technology in long-range planning. Therefore it plays a very important part in the delivery of government services. The group that's behind me here today represent the heroes of GIS here in the city. On behalf of this group I want to thank you for recognizing GIS day both for the owners of the GIS technology and the users of the technology here in the city. We help to make the city a better and more efficient place to deliver services. [applause]

>> Mayor Reed: I'd like to invite Councilmember Kalra and Debra Torrance to join me at the podium. As we proclaim the week of November 22nd to 27th as family week in the City of San José. Councilmember Kalra has some of the details.

>> Councilmember Kalra: Thank you, mayor. And I'm joined here or along with the mayor and Debra Torrance, who is an extremely active member of her church, of her community, of her neighborhood association, blossom valley neighborhood association, along with her husband Matt and her children, exemplify what we're doing here today, along with the mayor and council as having an opportunity to proclaim next week as family week. It's November 22nd through 27th, which, no surprise, is the week of Thanksgiving which I think we all associate as a

time that we spend with our families. And family week was something that was established back in 1968, national family week, and became formally recognized at the week of Thanksgiving in 1987, and its component of the Alliance for Children and Family civic engagement week. And really what it's about is us recognizing the importance of families not simply as a unit that we all appreciate and love, but really, the importance of families in terms of specific engagement, getting out in the community and doing positive things in the neighborhoods and in the community. And it's really an honor to have the opportunity to present a proclamation like this. So that we can continue to recognize, especially during the holidays, which is what the holidays are about, not just turkey and presents, but really it's about spending time with friends and family and also recognizing how lucky we are and that what we can do together out in the community to improve the quality of life for all of those in our neighborhoods and in our city. So mayor at this time it would be an honor if you could present this proclamation to one of our great family members, Debra Torrance. [applause]

>> I overheard somebody's conversation as I was sitting there before the meeting began and she said, relationships have their ups and downs, and isn't that true of our families? Of any relationship, sometimes those can be the most difficult. Today if I have the chance to tell all of San José, three things that would make your family stronger and happier this is what I would tell them. Since there is a smaller audience than the whole city, the first thing is speaking respectfully. So especially to those people who you live with day-to-day or those who are extended family, sometimes it's hard to speak respectfully. Sometimes that's where we let out our true emotions. But if we can remember to speak respectfully to children, elderly members of the family, moms, dads, the whole group, then you will have a happier relationship. The second thing, I would say is to take time to play together. Especially with the Thanksgiving time coming and throughout the year. Take time to do something fun! Go for a hike in the foothills or play a board game or whatever you think is fun. Do that with a member of your family. And the third thing I would say is to do some service. I know Councilmember Kalra has been working on collecting school supplies for needy families that need those throughout the year. That would be a great way to gather family, and let's collect some school supplies or working at the second harvest food bank or whatever it is that feels like good service to you. Pull along some family members. And that will strengthen your relationships. So I thank you for this proclamation and encourage you to have a good time with your family this coming week and the rest of the year. Thank you. [applause]

>> Mayor Reed: Also like to recognize a visiting delegation from Nanching, China I believe who are present today. If you would all stand, we appreciate your visit to San José, welcome to Silicon Valley, welcome to California. [applause]

>> Mayor Reed: Next item is the consent calendar. Some requests from the public to speak on the consent calendar. Before we consider the motion. David Wall. Robert Cortese, come on down. Mr. Wall, go ahead.

>> David Wall: We talk about the Rules and Open Government Committee first. There is a program going on in the police department that you're not aware of. It's called the Consortium for Police Leadership in Equity. They're a political group with a political agenda that has been introduced into the police department to study racism. But their main objective, their sole stated objective, is dealing with illegal aliens, predominantly, they call them Latinos, but Latinos is not a race. It's just a collection of ethnicities. I've tried to get this report which is a public record document presented to you so you can make your own decisions whether or not you like your police department resources being used in this regard. This report has been suppressed repeatedly, from the web page even though it's currently available at the office of City Clerk. But I contend that the report should be published on the web page, because it allows the citizenry easier access to it, especially those of the disabled community. The next item would be the transportation and environment committee report, they're spending a lot of money, staff time, your resources in pursuit of high speed rail. This project is rife with inefficiencies and it could be considered just a boondoggle. High speed rail will do nothing for the City of San José except cause a lot of disruption, and unnecessary expenditure of resources we don't have. The other items, the lease of the independent police officer's office space, this whole thing is a waste of money. You could put the IPA in the old City Hall for profit savings and I don't know why this is not done. As far as the storm drain program, this is too long in coming although it is welcomed. It says it's not a project, however, I don't see how you can stop trash from going into over 29,000 storm drains without it being a project. Thank you.

>> Mayor Reed: Sorry your time is up Mr. Wall. See if you can turn that now. Robert Cortese.

>> Mayor Reed, council, I wasn't paying attention, is this open forum time or are we commenting on consent items?

>> Mayor Reed: This is consent calendar. Something you wanted pulled off for the consent calendar?

>> Okay, well I just wanted to ask on 2.7, same thing that David just asked, how come we're not utilizing the old City Hall. I notice there's lots of other leases around the city, we could probably consolidate this into the old City Hall building. That's what I wanted to know, is there a report that was done figuring out the cost-benefit analysis of leasing out properties and if there was, could I have a copy?

>> Mayor Reed: This is question-and-answer period. Just comment.

>> I thought we were allowed to ask questions during consent items --

>> Mayor Reed: You can ask questions but we're not answering something. If the council wants to pull something off for discussion we'll have discussion but this is your chance to comment.

>> That was all Mayor Reed.

>> Mayor Reed: You can talk to the City Manager about the real estate report if there is one. If it's a public record we can make it available to you. We have a motion to approve the consent calendar. Are there any items on the consent calendar that the council would like to pull for discussion? All right, we have a motion to approve, all in favor, opposed, none opposed, consent calendar is approved. Item 3.1 is a report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. I have one item to report on, and that is the budget study session scheduled for Thursday and although I have commented on this in earlier reports, given the significance of the item, I just wanted to remind the council and the community of what we have planned for Thursday. As you know, at this stage the projected shortfall for fiscal year '11-12 is now at $70 million. At

Thursday's meeting we will discuss the challenges associated with organizational downsizing which has now been going on for nine years and we will be entering into our 10th year. Among other items on the agenda I will want to focus on realigning expectations for reduced capacity and some of the potential strategies to address next year's shortfall. The agenda also includes the annual summary of labor negotiations which will allow the city council to discuss and establish direction for the coming years' negotiations with all of 11 of our bargaining units. We will also present the work of the recently concluded retirement reform task force, and although we will spend some time presenting key findings to the council, I do think, given the significance of the topic, we will need another session to delve into the details and to receive direction from the council. And so we will work with the mayor's office to find a time soon to do that. We will also present the service delivery model changes that we will be evaluating prior to making any recommendations for budgetary changes associated with service delivery models. And in this regard, a number of reports have already been distributed for Thursday's meeting and are available for review on the city's Website. And so in summary, we are clearly a city government in the middle of a great reset. We are clearly an organization undergoing important transitions and I wanted to take this opportunity to remind all of our viewers and the City's various stakeholder groups of the opportunity to tune in for this very significant discussion. Thank you, mayor. That concludes my report.

>> Mayor Reed: Our next item is 3.2, it's a hearing on tax equity and fiscal responsibility act hearing the issuance of bonds by the California municipal finance authority. We do these hearings because we're required to under federal law but we're not issuing the bonds. Do we have any requests to speak on that? I have no cards from the public open this matter as far as I can see. Anybody wants to speak on that? We have to have a hearing and adopt a resolution. So anybody want to make a motion? Now would be the time. We have a motion to approve. All in favor? Opposed none opposed, that's approved. Item 3.3, our amendments to chapter 3 of the San José Municipal Code related to the City's deferred compensation plan.

>> Move to approve.

>> Mayor Reed: We have a motion to approve those changes. All in favor? Opposed none opposed, that's approved. Item 3.4, regarding supplemental retiree benefit reserves, this is an ordinance, final reading.

>> Motion to approve.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? One opposed, two opposed, so three opposed, Councilmember Kalra, Chu and Campos opposed. That passes on an 8-3 vote. Item 4.1, contract awards for neighborhood stabilization program 2 single family acquisition rehabilitation/resale program. We have a motion to approve. All in favor? Opposed, none opposed, that's approved. Item 4.2, licensing and regulating tobacco retail establishments. We'll have a presentation from city staff on that. Before we get into discussion and testimony, if anybody wishes to speak please fill out a card.

>> Joe Horwedel: Good afternoon, Mr. Mayor. Jamie Matthews and I are here to present on this ordinance. And get the presentation pulled up here real quick. There we go. Jamie.

>> Thank you, mayor and council. We're pleased today to present an opportunity for you to look at the opportunity to establish a licensing program for our tobacco retailers. Next slide, back one. As by way of background, you can see on the slide that approximately 438,000 people die from tobacco-related diseases annually. Each day 4,000 children under the age of 18 smoke their first cigarette. More than 75% of current smokers began smoking before they were 18 years old, leading to a lifetime of addiction. 70.6% of middle schoolers weren't asked any proof of age and 66%, even asked for proof of age, were still able to obtain cigarettes. The state law does expressly enable cities to adopt tobacco retail licensing regulations and up to date we have 96 cities and counties throughout the state of California that have done so. Cities with tobacco retail licensings have reduced sales to youth by a dramatic 68%. Most recently, the County of Santa Clara adopted similar regulations. Back in June, the mayor's budget message was to prepare and announce this for city council. That's why we're here relating to a potential ordinance for -- requirement to obtain a retail license for tobacco products and paraphernalia. What the ordinance components will do is require a license for all retailers of tobacco products and paraphernalia and establish an annual inspection program and associated fee which will meet cost recovery. So there will be no subsidy by the city or the General Fund. It will prohibit the sale and transfer of products to anyone under 18 years old. It will prohibit the self-service display and keep the products out of public view. It will ensure appropriate

maintenance standards, that's something that we're doing that's additional to what the county has in their ordinance, and will enable administrative citation and a process for permit revocation and for permit violations as well as an appeal process. And it would be a cost recovery program with no impact to the General Fund. So what we're asking the council to do is to provide us some direction to staff's report on licensing and regulating tobacco retail establishments and direct the City Attorney to draft an ordinance amending the San José municipal code to provide a new chapter for this license to regulate these products and retailers and to direct the City Attorney to draft a resolution amending a schedule of city fines and fees, to direct those fees so we have cost recovery, resolution associated to adopt a schedule of and to establish a fine amount for the chapter. With that we're available to answer any questions you may have and ask that staff report be accepted and direction be given.

>> Mayor Reed: I've got some requests from the public to speak but I think I'll take council questions firsts. And then we'll have the public testimony. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor, thank you for this presentation. I'm looking afford to this eventually being able to be adopted. It will probably be adopted when I've left already but the fact that we're moving forward on it is very encouraging and I thank you staff for moving as quickly as possible. I think this is an opportunity for the city to be able to as you said, it's not going to be -- it's not going to impact the General Fund. And I'm hoping that it will be able to demonstrate how we're also able to reduce the amount of tobacco that is being sold to youth under the age of 18 or that are consuming tobacco under the age of 18. One of the questions that I would like to ask is, you've probably had the opportunity to read the memo that I've put forward along with Councilmember Kalra and Chu. And I'm asking, would you be able, along with the City Attorney, to meet the deadline of bringing this back on the 30th, November 30th, with a few of the questions and direction that we're proposing in the memo?

>> City Attorney Doyle: Councilmember Campos, I think I can take that question, because the memo asks us to come back. My goal right now is to come back with an ordinance on December 14th. And as part of that we would respond to these questions. I don't -- I mean I can address many of the questions today. I don't know if there's a special reason to come back on the 30th. We have given the council some kind of guidance on prop 26, the

recent state proposition that was passed, that limits somewhat ability to collect fees, they're deemed taxes under state law but we have and we're working with staff to carefully craft whatever fees we would charge as regulatory fees that would meet within the guidelines. It would be licensing fees, cost of regulation. Now to the extent that there are enforcement fees and to the extent that council's looking to go beyond that as part of the ordinance and as part of the resolutions as Jamie Matthews indicated, we would propose fees and fines. I think the staff memo talks about first, second and third violation. We can also look at, to the extent we can capture attorney's fees for enforcement, we might want to add that to the municipal code. But beyond that that is what we would come back with and let the council decide.

>> Councilmember Campos: I think that that would be appropriate. You have answered quite a few of the questions that I had concerns about. I want to make sure that we are able to enforce this and at the same time be able to recover any of our costs. And so I think it was more of a check in on the 30th before it came back for final adoption on the 14th, is that what you said?

>> City Attorney Doyle: Yes, it is the goal to bring back the ordinance on that date.

>> Councilmember Campos: So if I have any concerns of it as an assembly member I will come to the public hearing and be able to express my concerns. But I'm confident that we all have the main goal in mind, and that is, to be able to provide something, an ordinance that would be effective for the City of San José, be cost recovery, and we will be able to enforce as well. So with that, I would move the memo that has been signed on by Councilmember Chu and Councilmember Kalra and myself and I hope that I can get a second on that. Thank you.

>> Mayor Reed: We have a motion on the floor, I need to clarify the motion if I could. I'm not -- the memo that I'm looking at refers to the November 30th return. And I think based on the discussion we just had it wouldn't be November 30th, it would be December 14th.

>> Councilmember Campos: And I'm fine with that. I think the City Attorney has stated that in the memo or the ordinance that he brings forward on the 14th, we'll be able to address as many questions and concerns and be able to be implemented if it is feasible. And then I also would like to include, mayor, staff's memo in the motion as well.

>> Mayor Reed: Okay, who had the second? Councilmember Chu had the second. Okay so we have a motion on the floor with the memo, staff recommendations and the return on December 14th. Further discussion on the motion? Councilmember Constant.

>> Councilmember Constant: I have a question for staff. Many of these items that are going to be included in our ordinance already exist in state law. Can you clarify for us which of these exist in state law and which of them do not?

>> Many of them do Councilmember Constant, you're absolutely correct, many of them are provided under state law however there is no annual --

>> We can't hear you. Sorry.

>> I'm sorry, is that better? Thank you. Many of them are provided in state law. With the exception of course of property maintenance standards and the prohibition regarding the advertisement which certainly would be local zoning, local zoning requirement. What it provides is that to cover the staff costs for us to do an annual inspection. It's not dissimilar to the offsale alcohol program, we also have a local program to make sure we provide the services at the local level to ensure that we can address that issue so it's very similar to the way that program is structured as well.

>> Councilmember Constant: Well let me tell you my concerns of this. First of all, I really worry about us continually duplicating state law and then charging the fee for enforcement. Which really is saying there's laws on the books but we don't have the resources so we're going to come up with a new program and attach a fee to it so

that we can enforce it and before you know it we're going to have a Muni code that is completely duplicative of our penal code. We have state laws that we aren't enforcing and I'm really concerned about the burden that we're going to have with this nightmare of regulations and licensing. Now I'm not advocating for the sale of tobacco because I personally don't smoke and I don't advocate that anyone smokes. But I just wonder what's next? How many new ordinances are we going to create that just increases city bureaucracy, and increases fees and burdens on our local businesses? We have heard over and over again about the fiscal situation of our city, that's predicated on the economic condition of our area. In fact we're going to have a special council meeting this week and if you look at the documents that were presented to us, many of the reasons we find ourselves in this predicament are directly a result of the economy that we have going on around us. So setting aside the debate on whether this is a good idea to duplicate state law and to create another layer of bureaucracy, just so that we can afford to enforce it, you have to ask, why now? We're in the middle of the biggest recession since the great depression, and we're creating an additional burden for our businesses. That are already faced with all these additional burdens that they have. And if we think it's that important, can we not wait at least until the economy's better? Because some of it seems inert, okay, let's just hide the tobacco products but if you ever owned a business you know it's not as simple as moving stuff. Things have to be reconfigured. You've got to reconfigure your counters, probably cut into them, you have this electrical, and pretty soon you have this big old project that isn't costing you many hundreds of dollars but several thousand. I think the timing on this is very bad and I don't think we should be putting any additional burden on any businesses in our city. And second, I'm really really concerned about are we just going to go down a path where we just start creating new license and fee programs so we can enforce things that are already illegal under state code. So it's for those reason reasons that I won't be supporting this. I think the timing is bad and I think we're setting a bad practice. What's next? Because we are basically saying you can walk into a medical marijuana dispensary and see the dope but you can't walk into a grocery store and see a pack of cigarettes. We continue to do these conflicting issues. I think it's a bad time for us to be doing it and a bad idea for us to continue to add bureaucracy.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'd like to you point out the part in this memo where it refers to hiding the tobacco products. I'm trying desperately to follow your --

>> Councilmember Constant: Okay, so if you go to page 3 of the staff memorandum, towards the bottom you have a bunch of bullet points. And it would be one two three, where is it here, fourth or fifth, I think it's the fifth, sixth bullet point that require that all tobacco products or tobacco paraphernalia be stored or kept out of public view.

>> Councilmember Pyle: I'm sorry, I must have a different memo than you.

>> Councilmember Constant: This is staff memo page 3 and there's two bullets actually, bullet 5 and bullet 6.

>> Councilmember Pyle: Okay. All right. I would find that problematic as well. But by the same token we've become so very, very lax, not only in tobacco products and not asking age, not expecting that there be some criterion associated with that sale, but we've done the same thing with alcohol. I think it's time for a wakeup call for both products. So I think that this is a -- when you look at the statistics, and you look at the number of people that are suffering with the diseases, it's just -- it's just mind boggling and we have to start somewhere. I don't -- I think this is cross-economic. And it's not -- you know, there could be some -- some medium found there between the two, of basically not showing the products, and/or not asking people for their proof of age. I think that is absolutely unacceptable for me. So I'm very much in favor of this, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I think it's clear that there's a reason why California has the lowest smoking rate in the nation, is because there have been a lot of both resources put into advertising, marketing of the dangers of smoking as well as regulations have been put in place. That being said, we certainly should be cognizant of the impacts that these types of regulations do have on businesses, particularly small businesses. And I had a question, regardless of that. First of all in regards to the suggested $450 license. Do you

know if other jurisdictions do a sliding scale, or is that something that's been contemplated in terms of the amount of product that's sold? Because clearly they have grocery stores and other large retailers that, I'm guessing, sell much more than a small you know corner store or gas station what have you. I'm just curious if you are aware of any type of ordinance from other jurisdictions that take that into account.

>> Thank you, councilmember. I'm actually unaware of any other jurisdiction that has a sliding scale, although that doesn't say that there isn't any out there. I know the county's fee is approximately the same as ours, as well. But there are some statistics I'd like to just relay, it is a policy discussion so I'm glad you're having this cross-discussion. Because from a staff standpoint, we want to implement whatever policy the council wants us to put in place. In 2002, California teens were surveyed throughout California, and they found that 58% were purchased their cigarettes at gas stations which would be considered to be a small business for the most part. 45% at liquor stores and most liquor stores are small businesses. Supermarkets and other grocery stores are only 29% of the problem. And from a cost-recovery standpoint we're looking at what it costs for an inspector to do the research, the phone calls, to set up the systems, to do the billing, to drive to the location and back, to make the inspection time, all on a time task analysis based on the cost of the inspector's time. And so any reduction or sliding scale that we would put in place would simply mean it would have to go up for certain businesses to subsidize or go down for other businesses. And so that's why the mechanism put in place is just a flat fee, because the amount of work that's put into one business versus another is quite frankly the same and it could be argued, and it was our experience at the offsale alcohol program that the small businesses took up the vast majority of time answering questions, you know, correspondence back and forth, because they didn't have the support in line like some of the larger businesses.

>> Councilmember Kalra: I appreciate that answer. So basically the cost goes to each individual retailer, regardless what kind of retailer, in terms of cost recovery. And you know, it's sad because you know that by most, the small businesses are responsible, there are some that aren't and the rest are basically having to pay the cost in some way subsidizing the fact that some of these small businesses aren't responsible. Another question has to do with the -- having the tobacco products and paraphernalia stored out of public view. My question on that one is simply towards the businesses that caters specifically, like for example you have shops, like cigar shops and so

on where people shop onsite. The purpose for going onto that site is the purpose of seeing what kind of cigars there are and enjoy the product there. And so do you know, are you keeping in consideration of that, as far as making -- there already are exceptions for those types of establishments anyway to allow them to have indoor smoking. Was there any consideration given to that type of business so that -- I mean, it's a very clear distinction from a gas station or a liquor store or grocery store that sells tobacco products.

>> Absolutely. And this would be the opportunity for council, if they chose to give that kind of direction if they wanted to exempt businesses that already prohibited those that are 18 and younger from entering the premises. State law considers that within the -- some the state law also prohibits the sale of vendees hand rolled cigarettes that are popular for India and southeast Asian countries, except in establishments that are 18 or older. So there is some recognition that there could be a difference and if any policy direction could be given to staff I'm certain we could take that back and consider it. As far as the display and availability at shops where there's -- where the children go there after school or on their way to school, again, that is a policy decision that would need to be made by council and I would encourage us to maintain some restriction on the availability and access to tobacco products if the goal is to reduce the use of smoking.

>> Councilmember Kalra: Yeah, and I don't have as much of a concern for the other retailers, I think it's the ones that clearly, the purpose for the business is for people to go in there to smoke and they're legal and it's allowed by state law. And so those establishments by state law you have to be 18 even to walk in? And so that includes cigar shops and things like that, where they allow smoking on the premises?

>> I'm looking at the city attorney.

>> City Attorney Doyle: In some cases. The important thing is you prohibit anyone under 18 from entry. So that sort of solves or addresses the issue. So when we come back I would expect we would exempt those types of businesses, only because it's not practical to do it otherwise.

>> Councilmember Kalra: Okay, yeah, that's the only thing that came to mind as far as clear distinction in the type of business that's operating as opposed to the gas stations, mini marts and liquor stores where I think there's certainly the greater concern. Clearly if someone that has that kind of establishment is letting someone in under 18 they risk losing their permits and they risk other city -- they risk other punishments from the city already and so we should have all the options before us, would be appreciated.

>> Thank you, councilmember. I just wanted to add that that is in the county's ordinance that provision that was duplicated in there, so I just wanted to add that for consideration, as well.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, I had a couple of questions. The $450 fee, is that in addition to the 150 business tax license fee?

>> Yes, it would be in addition to any business tax.

>> Councilmember Nguyen: Okay. And then my understanding is that the county received $6.9 million from the federal government a while back. What are we doing in terms of tapping into this funding source perhaps to help with outreach efforts or enforcement efforts moving forward?

>> That's a great question. They made available to the City of San José $124,000 from the American recovery and reinforcement acts. We applied for this, these funds which cover the end of both fiscal years, for the federal fiscal year so November through January, January through March. And what we have done with this money, so there would be no impact in setting up the program, one of the challenges is, we set up programs, and they are great. But they are not truly cost recovery until we start receiving funding. And we generally provide services before we provide the funding. So to prevent subsidizing, what we did was we asked for money to be able to set

up our billing system in the latter part of this calendar year. So we were successful in getting money to set up that, because otherwise that would be in some ways subsidies. And then we also had three months of inspection services to cover our staff cost until such time that we start receiving the funds from the retailers to create cost recovery, what this is, is what we were able to do is maximize the grant amount that was available to us and not subsidizing the program before it becomes cost recovery.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: City Manager.

>> City Manager Figone: Jamie let me just expand upon that question a little bit. So of the 6.9 million the county received, we're receiving about $125,000. Is there any more access to the 6.9 million for the City of San José?

>> It's unclear to me. That's -- we're notified of our availability based on maximum award for population. I know that's what they were using. I know we have a representative from the county, but I don't know if she would be able to respond to that here today. But certainly as funds become available from any source I will actively pursue them to help offset our cost.

>> Mayor Reed: Are you done, Councilmember Nguyen? Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First of all I'd like to thank Councilmember Campos for taking the lead of calling for this consideration of tobacco retail licensing program last May. Also want to thank the staff for bringing forward this recommendation today. I also wanted to thank a lot of youth advocates. They took the time and came in and talked to me and educate me on this issue. There's never a bad time to get healthy. I'm just hoping that the money that you can save by purchasing tobacco, can use in probably getting some healthy food or, even join the exercise program. And I believe by quitting smoking you can reduce your insurance premiums. So there's actually a positive economic impact to the city and to the individual families. So I'll be strongly supporting this motion. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you mayor. Understanding the policy side of the fence and having been a teenager that obtained cigarettes when I wasn't 18, I understand it. Question though, this came out during the budget process and it's been clear to me through the discussion this will have no impact on the General Fund but also appears to me this will have no net revenue impact to help the General Fund, correct?

>> Cost recovery is simply cost recovery. We can't create any additional funds in addition to it. Or else it wouldn't be cost recovery and subject to prop 26, yes. Sorry, attorney.

>> Joe Horwedel: The one caveat, we do build our staff cost into it, some internal overhead piece which some of that rolls down to pay for HR City Manager's office.

>> City Attorney Doyle: And the second caveat is, there have been instances where we have sought to enforce what we already have on the books as unfair business practices which allows fines of up to $2500 a day and we've collected some substantial fines which do go to the General Fund. This isn't designed to be a revenue generator. But to the extent that you have egregious violations, and we then collectively go out to enforce it, and that brings funds into the General Fund as penalty.

>> Councilmember Oliverio: So outside of the policy benefit which has been described earlier about keeping cigarettes away from youth, this will employ approximately how many people?

>> Two inspectors.

>> Councilmember Oliverio: And does this include chewing tobacco?

>> It currently includes all tobacco products.

>> Councilmember Oliverio: Now we -- you mentioned earlier that stirs have the ability to regulate and license tobacco but the alcohol side of the fence is more at the state level versus the city. There was a comment made of the offsale liquor license, but if you could give me a little bit of color.

>> Council did adopt a few years ago an offsale alcohol ordinance which actually allows us to do an inspection program that this one's based on, which is very similar, to ensure that the alcohol is being regulated in a way that doesn't make it available to youth as well.

>> Councilmember Oliverio: And they pay a license fee for that as well?

>> Yes, they do.

>> Councilmember Oliverio: And this thing about keeping it out of sight being that alcohol or tobacco whether you like it or don't like it is a legal product, there is no way I don't think you'd ever be able to keep alcohol out of sight based on its size and display and at the same time it seems it's a little bit I guess on one side of the fence you could see it's a kid looking at candy saying I want the particular brand of cigarette. But on the other hand, if it's a legal product, and it's behind the counter, and it's not given and the person knows that there's a regulatory body in San José ready to fine a little, I'd say I'm sympathetic to the small shop owner that has to figure out a way to go hide it and then managing how to discern what the consumer wants and -- because usually I can observe where people are yelling at the attendant, no, I want that one, the green one, and they keep yelling back and forth. So I don't know how they are going to point now, because if it's out of sight, so I have some sympathy there. So I look forward to any discussion that comes from the audience.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Jamie, the estimates about it being full cost recovery is that based on assumption that all 855 retailers will be paying the fee?

>> Yes. Correct.

>> Councilmember Liccardo: In a happy world if some retailers decide they don't want to sell smokes anymore, let's say we have 600 retailers next year. Is there some mechanism in our agreement with CPPW or the garage agreement where we can go back to them and say look we've got fewer retailers now can you compensate us for lost revenue?

>> If we had a reduction substantial reduction we would reduce staff commensurate with the reduction of service.

>> Councilmember Liccardo: Okay.

>> We would only have enough staff to provide the services needed.

>> Councilmember Liccardo: That's fair my concern is also that the General Fund's been impacted an is there -- we're getting out there in front in many ways recognizing we don't know exactly what the impacts may be. Is there anything in our grant agreement request CPPW that says that they will make us whole essentially?

>> No there isn't anything in the grant. The grant that's available to us right now is limited to $124,000. It is uncertain to me whether or not additional funds will be released, but I'll be keeping close tabs on that to ensure that if there are funds available that we will actively pursue them. But in the event that we -- that this causes businesses to decide not to sell tobacco, it becomes a business decision for them, then we would reduce staff, commensurate with the amount of staff that would be necessary for us to administer the program. So if we have to go from two inspectors to be able to administer it down to one inspector we'd do that.

>> Councilmember Liccardo: And I know there's some folks here who may be able to answer this question so you know, I'll certainly await their commentary. I guess if it's just the case that we have fewer retailers out there that's a good thing. If the case is that we've got the same number of retailers but a whole lot of them aren't paying

the fee then we're still out the money and we've still got the harm. And so I'm concerned about that and I just like to see if we can go back to them and say look we're jumping out on this how about making sure at least that our General Fund isn't going to be negatively impacted as we're trying to get this up and running?

>> Absolutely we will be monitoring very closely the payment of fees and we will be following up. We do have mechanisms to recover our fees. If people fail to pay, not only can they be fined for that or lose their ability to sell tobacco, but again, we can go after them in other ways civilly. We have a federate good record on our cost recovery program. We have very few, we have a very small percentage of individuals that choose not to pay, and we're able to motivate all of them to participate.

>> Councilmember Liccardo: Great. And with regard to the point that Councilmember Oliverio raised, I'm thinking right now of a small retailer of sales, he and his wife sell newspapers and magazines primarily in that small little shop right next to Original Joe's and the Cafe Trieste on South First Street, and that is a really, really small space. I'm not sure if it's physically possible to put smokes in a small place, where no one can see it, et cetera. And I understand that there is only a counter there and a place where you can put them behind a retailer. Is there any flexibility for us to be able to consider those unique circumstances to be able to say okay, we recognize it's not possible here, just make sure they're away from the reach of anyone under 18?

>> Absolutely. The ordinance can be written regarding that issue as the City Attorney mentioned, it can be written so that it's less restrictive or provides greater flexibility.

>> City Attorney Doyle: We can look at things like square footage.

>> Councilmember Liccardo: Okay.

>> City Attorney Doyle: Again we have to deal with the real world in the end and you know, the idea is to capture, you know, most retailers but there may be limited cases where it's impossible and so we -- that's something we'll try to address.

>> Councilmember Liccardo: Thank you, Rick, thanks very much, Jamie.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I was intrigued by the page 2 in the memo where it talks about the communities that have adopted strong tobacco retail establishment licensing ordinances. I was wondering in some of those cities have we taken a look at what the participation rate was with regard to the businesses? Some of the issues that have been brought up today about what if they don't pay and what if they don't participate and that potential impact on the General Fund. So in communities where this has been going for a while, what have we learned?

>> I can bring that information back, some additional information when it comes back, but I don't have any specific information as regards the rate of recovery for the cities. And since I've written this I had 50 California cities now we're up to 96 cities and counties. So the number of local jurisdictions that see this as a public policy priority have increased substantially. But I could do some research on that if you like but I would imagine their experience would be about what ours is so you get about 80% of people sending it in. Another 20% need a little nudge, and we end up with about 5% that we wrastle with until they finally pay.

>> Councilmember Herrera: So we think that would be the case with this new ordinance, then?

>> I would expect that to be the case, yes.

>> Councilmember Herrera: And then on the next page under the bullets, we have an item of prohibiting a person who's younger than the minimum age established by state law for the purchase or possession of tobacco products to engage in tobacco retailing. So does that mean that somebody who is clerking at a 7Eleven or some other store where there's tobacco sold somebody younger, who's got an after-school job or on the side, how

would that -- how would that work then they wouldn't be able to sell tobacco products when I can see maybe some issue there or a family member that's working for a business? Can you help me understand that one?

>> Yes, this one -- and state law also prohibits, in state law in this particular case, someone who's under the age of 18, cannot sell tobacco products.

>> Councilmember Herrera: That makes sense yeah. They have to deal with that anyway so that's part of the state law. The thing that I like about this is the fact that it's getting to the youth that are smoking, and that's one of the biggest issues. Because once someone becomes addicted at a young age, it is really tough. I think I remember remember reading statistics about the younger you become addicted to tobacco the tougher it is to kick it. So this is really focus being in on the young people and in that same paragraph back on page 2 why where it talks about decreasing the rates by 68%, in those 50 communities that have adopted it, that's pretty compelling evidence. So I mean I think if we can do something to discourage young people from taking up smoking and not become addicted that's going to have a cost-benefit to certainly the medical care that has to be provided and all of the other services that end up getting used, you know, over a lifetime with people who are addicted to smoking and just you know a whole list of things there. So I'm really supportive of doing things to prevent and to discourage around it looks like this is working it is something that's workings in other communities so I definitely think we should be looking at it here. I want to -- I'll be interested in staff coming back with some of the exceptions or some of the flexibility that we might need in this, because I'm also aware that this is a very tough time for businesses and I don't want to add to their difficulties. So I am interested in hearing what folks that are here today that might be talking about those issues as I'm trying to understand all the aspects of this issue. Thank you.

>> Mayor Reed: Staff, it's clear that we have too many kids smoking too many cigarettes. And it appears to work in other communities although it's not clear what works. I find it hard to believe that passing a loam ordinance to make people follow state law, will have any more impact than the state law already mass. It's already illegal to sell cigarettes to minors. What is there about the program that effectively keeps businesses from selling cigarettes to minors? It looks like we'll have an initial site inspection and then a compliance inspection to verify the violations have been corrected. That's not much in the way of enforcement. I know that Councilmember Campos's memo

that is part of the motion is to look at the use of potential youth decoy enforcement partnerships. I assume that means sending in underage kids to see if they can buy cigarettes. That's how we're going to find out if people are breaking the law or not. We got great code enforement officers, but they all look over the age of 18. All the ones I've seen. They're not going to fool anybody when they go in asking for cigarettes. So how do we have an effective enforcement or how do you contemplate that under this ordinance? Otherwise hey we charge them a fee we go in once a year to inspect everything is okay maybe they have to move some stuff around but it doesn't get to this point of sale which is really the weakness.

>> Thank you, Mayor Reed, for that question. We also employ about 80 regional park aides many of them under the age of 20 to help with our neighborhood cleanup program and we are going to -- we are contemplating using those for our youth decoys to be able to go in. We don't have anyone employed under the age of 18 but we do have some very young looking employees that we could utilize for this purpose. And as far as your question, your general question, so we pass a local ordinance, what does that mean why is that effective and why has it been effective in other jurisdictions? I think it really comes down to just awareness education, ongoing education and awareness of what the responsibilities are. Businesses that need to focus on this issue annually will focus on this issue. Because they know that there's a potential fine that they could be levied. There is a lot of turnover as far as a state enforcement of it. There's no state enforcement of it whatsoever with the exception of the occasional police officer. But otherwise the state does not regulate this. The county doesn't regulate this. There is no inspection so they will be getting at least 100% more service than they're receiving on an annual basis. And so the awareness itself of their responsibilities as a responsible retailer will be very well-known to the retail community and I think that in itself is reason for the success of this program.

>> Mayor Reed: The other question I have has -- goes back to some things that have already been asked about just physically being able to keep tobacco products and tobacco paraphernalia stored or kept out of public view. That would be very difficult, in some places that I've seen who are selling other things besides cigarettes of course. But I think we have to figure out during this period when you're drafting the ordinance working with people in the business, how we can make that. I don't want to see people showing up here trying to spend ten or $20,000 to remodel their store in order to come into compliance with all the headaches that go with that. But I'm not sure

how important that is to the overall statute. Or if it's really the inspections that make it work. But we do need to give you some flexibility and it needs to be built into the ordinance. Councilmember Herrera.

>> Councilmember Herrera: Yeah, my other concern is I'm thinking here too, is the decrease is impressive and I'm all for trying to divert youth from smoking in the first place or decrease it. I'm wondering though do we know because those sales decrease that they didn't just go get it somewhere else? I mean would we be setting up things that would cause less sales to our stores and they go find it somewhere else? So it is a question I have.

>> Mayor Reed: Question that probably nobody has an answer to. Probably some guesses but no answer to that one.

>> The only thing we have are the statistics that were done by the Department of Health regardings the rates of youth smoking. So those rates have dropped dramatically. Which indicates that they're not getting it somewhere else they're simply not smoking. And the --

>> Councilmember Herrera: But it is because of that ordinance though is it tied to that specific --

>> I think it's part of a number of pieces and this would be one component of it would beto the -- to reduce the availability.

>> Mayor Reed: Okay before we go through the council again I'd like to take the public testimony if we could do that now would be a good time to do it I believe. I'll call your name please come on down to the front when I call your name so you're close to the microphone. Andrew Ready, Charles Janigan, or Janigian, followed by Bob Gray.

>> Good afternoon, members, my name is Andrew Ready. I operate a retail cigar business, club Havana premium cigars at the El Paseo Shopping Center for the last 15 years. I employ three people. This legislation is not going to do anything to stop what the motive of this operation is. The state is already doing exactly the same thing. If

they can't control it just by putting another $450 tax, we're not going to be able to do it. If anybody thinks $450 of extra tax is going to stop this, they're smoking something I'm not. This is totally bogus. We've already done enough to damage the retail businesses in this area by sending everything to the Internet. Which does not create any local revenue, nor employment. And now, you're going to be putting some more people out of business. There will be a few hundred people who will be unemployed and this bureaucrat up here will have a steady paycheck. I don't get it. Thank you, I hope you reconsider this.

>> Mayor Reed: Charles Janegian, Bob Gray, followed by Donna Brown.

>> Mayor Reed, members of the council. My name is Charles Janegian. I'm president of the California Association of Retail Tobacconists and was partially instrumental in the development of the cigarette and tobacco licensing products licensing act of 2003 which addressed and answered everything that you're discussing here today. We created a one-time licensing fee for retailers of $100, at which point they fell under the umbrella and watchful eye of the Board of Equalization and law enforecement throughout the State of California. Anyone caught selling to a minor is in jeopardy of losing their license to sell at retail. Losing their license. Every one of our retailers -- and this is state law -- has to post this, at their register. Everyone has to post this at their register, which says it is unlawful to sell products to anyone under the age of 18. Most of our stores and members deal primarily with those over the age of 21. In fact, beverages and more doesn't allow anyone into the store under the age of 21. And they happen to sell cigars. If you've ever been in the store. So we're really opposing a needless ordinance that is going to be redundant to existing law at the state level. And I want to get into the economic impacts, if I can, because this is very important to you sitting on the council. I don't see an economic feasibility study on this proposal. I don't see where we've taken into consideration the money that comes to this county and to the city on the sale of cigarettes. Do you realize what the sales tax is coming into Santa Clara County from the sale of cigarettes alone? It's between 162 --

>> Mayor Reed: I'm sorry, your time is up.

>> 162 million and $194 million.

>> Mayor Reed: Your time is up. Our next speaker is Bob Gray and then followed by Donna Brown, and Bill Davis. Your time is up, sir. You've got 2 minutes. Sorry, everybody, we've got people waiting, lined up to speak. Bob Gray, Donna Brown and then Bill Davis.

>> Thank you very much for the opportunity to speak. I am a business owner in Santa Clara County. I'm not a retail tobacconist. I do smoke cigars. I go to tobacco specific shops. The shops I go to do not sell newspapers or gasoline or anything else. They're very well-managed by professionals. Whose job it is to screen not only the tobacco products and to know them, but also, to screen the clientele that come in and everyone who comes in is highly visibility, and at every single one of the shops that I visit, on a regular basis, I.D.s are checked, not mine unfortunately, but I.D.s are checked if someone looks underaged. And in answer to the earlier question about what happens to businesses when the cost of doing business goes up, at least to the consumer, I can tell you that early on, with the tobacco tax, a number of us who smoked cigars, eventually just simply went to either shops out of state, or to the Internet, to buy our tobacco. The vast majority of it. Most of us don't do that any longer. But when you begin to up the cost, to local business, that's exactly what happens to those of us who are consumers. I would like you, in considering this bill, to consider the difference between those that are specifically tobacconists and those who do this simply as a part of their overall business. Thank you.

>> Mayor Reed: Donna Brown Bill Davis Debby Morton.

>> Good afternoon, my name is Donna Brown, I'm the owner of the Mission Pipe Shop. We were established in 1962 in the original Town and Country Village and we're presently located on the Alameda. Mission Pipe Shop is a professional tobacco store catering only to adults. We do not serve nor do we want to serve children under 18 in our store. We currently sell pipe ABC lounge where adults can gather to smoke and to socialize. Our industry is an industry underfire. We are beset by very high state and federal taxes already. The initial tobacco tax drew the majority of our customers to the Internet where they pay no taxes which is a loss of a large source of revenue for the state. Any further taxation directly or through additional fees or smoking restrictions will hamper my ability to do business in the county or in the City of San José which is my right as tobacco is still a legal product. In the last

year, I have paid over $1600 in tobacco fees and licenses and I've paid a whopping $97,000 in tobacco tax to the state of California. A large portion of that supports the children's first five program in California. So I really hope that when you're considering this initiative you'll really consider the loss of revenue at this time of budget deficits and where all this money is going to come from for these social programs. Thank you very much.

>> Mayor Reed: Bill Davis, Davey Morton, Ashak Kumar.

>> Good afternoon, thank you for your time. My name is Bill Davis. I own West Coast cigars San José. I've been open for almost five years. I just want to reiterate that it's crucial to our business that customers are allowed to have access to our products and be able to help themselves. Without this our business is sure to fail. Being able to look at a cigar hold it smell it squeeze it and examine it is very important. Cigar smokers are connoisseurs, they are not just cigarette smokers or kids trying to get cigarettes. Like when you go to a grocery store, you don't just grab any fruit or any meat or any bread you check it out you make sure it's the one you want and that's what we need our customers to be able to do. I realize you're trying to prevent underage shoppers. Myself I have two children one 15 one 12. I strongly support governing the sale of tobacco products to underage children. I have been shot multiple times by the state by underage shoppers and I passed every time. We have never been cited or fined for selling to an underaged person. Because we're not a corner drugstore, we're tobacconists. We are here for the love of the leaf, the lifestyle, and the freedom to enjoy a hand-crafted cigar or pipe tobacco. So that's all I have to say, thank you.

>> Mayor Reed: Davey Morton, Ashak Kumar Emily lamb.

>> Ladies and gentlemen of the city council. My name is Debbie Morton and I'm the owner of Smokers Paradise on Union Avenue in San José. My husband and I started this business in this location in 1974. We currently employ five employees at the store. The proposed ordinance would require that all tobacco products as well as all accessories used for smoking be out of public view out of sight equals out of mind. Out of sight out of mind means my doors are closed. I cannot, as an individual, be put in a position of not allowing my customers to come in and smell their pipe tobacco, to touch their cigar, because it is a personal choice. Any woman sitting on this council

would not walk in and say, I want that bottle of perfume without ever trying it. Just doesn't happen. It also would require that I would have to darken my windows. In my store, at any one time there is normally only one employee. I am a single white female in a store in a small strip shopping center. We have a bar that's right around the corner. You darken my windows, I can't see out. Persons coming by can't see in. What if there's a problem? I'm stuck. I don't have that comfort zone. So in the summertime, and in the springtime, my doors are open. I like to see who's coming by. I have a karate studio right next to me. That karate studio is children all the time. Kids walk past going eu, eu, eu. I agree. I don't smoke, but I sell the product. I love the smell of a good pipe. I love the smell of a good cigar. Everybody should be entitled to purchase and see their own product. Thank you.

>> Mayor Reed: Ashak Kumar, Emily lam, V Wong.

>> Ladies and gentlemen my name is Ashak Kumar and I'm a 7Eleven franchisee. We have two stores. I also represent -- I'm on the board of the 7Eleven franchisee owner association representing approximately 180 stores, and some of them are definitely in the City of San José. We are very proud to be a very professional retailers of tobacco products. We check, as part of our policy, I.D. of anyone looking under the age of 30. We have a very intensive internal program when we train our employees ahead of them being let loose behind the cash register. We have an internal sting operation that an independent company comes and does a sting operation on all our employees. We have a standing regulation that, if any employee is ever cited for selling to a minor, will be immediately terminated. We cannot ring a sale of a cigarette or a tobacco product without actually entering the age or swiping the identification of the person. Given all of these tools and technologies and our attitude towards making sure that the underage customer does not avail themselves of the cigarette, is a direct result of our being very responsible retailers. And this program has proven to be 99% successful when it is followed carefully. I think this is a very ill conceived proposal which has a very convoluted relationship to 70% of the teenagers smoking and therefore it must be the time to put the retailers on the cross fire. The break in our stores I am sure there are bad apples as --

>> Mayor Reed: Sorry your time is up.

>> Well thank you so much.

>> Mayor Reed: Emily lamb, V Wong, Patsy Cortez.

>> Hi, my name is Emily lamb, I'm senior director of health care for Silicon Valley leadership group representing 325 employers in the area, and we are a strong supporter of the tobacco retail license as a means to improving employee health, increasing producting and decreasing health care cost. As many of you know bending the cost curve for skyrocketing premiums is critical to us staying competitive. Over the last ten years employer premiums have increased double, to where our employers are now paying way over $10,000 per employee for insurance costs. Mitigating the effects of tobacco is important because of the direct medical costs associated with tobacco. A recent study found that medical costs for smokers are over 50% more. Translating directly into huge costs for employers purchasing premiums. There is a reason why when you buy insurance the first thing they ask you is your age, your gender and if you smoke or not. And then, the other thing is, the last thing I wanted to point out was, why is this ordinance effective? It's effective because it has teeth. And currently, the state laws do not have any substantial consequences for retails. In fact the Board of Equalization has never penalized the state licensee for sale to a minor or any other point of sale violation and in practice is not used to enforce anything other than tax laws. So that's why we are big supporters of the local ordinance. Thank you.

>> Mayor Reed: V Wang, Patty Cortez, Kapish Goyal.

>> Good afternoon City Council. My name is V Hong and I am the Canoy-Poly C co-chair of CAT, community advocate teens of the day, a peer youth health group in Santa Clara County. And I'm here to strongly urge and also support the passion of tobacco retail license as youth, and I mainly want to pass this to curtail youth access to tobacco products. And also prevent youth addiction. The thing about youth and youth access to tobacco is that most youths use cigarettes. Not cigars, so that is the main market. And by implementing a tobacco retail license we can also implement a compliance check program because I was youth decoy in these compliance checks and with different cities, Palo Alto, Los Altos, I was sold to, and that was a year ago. I was sold to in Los Altos, I was

sold to seven times. They had the sticker, yes, but they still sold to me. I think it's important that the youth are represented here because a businesser economic burden would be youth addiction to this, become lifelong users, and then eventually, costing more with the health care insurance costs and more deaths. And also, to implement a material, it is parallel to alcohol license because tobacco only needs to pay $100 flat fee to sell for a long time. As in alcohol, there's a yearly annual fee to sell alcohol. So it should be in parallel with the alcohol and tobacco license, if that is an economic issue here. And I also through my experiences, want to add, with these ordinances to also add a middle eastern or south Asian languages because of the stores I went to and because of the tobacco retail license there are about 900 retailers in San José, in San José solely. And with that money, that revenue can be recycled in the county, and that money can be used at the city's discretion, for compliance checks, law enforcement, whatever the city wants in these harsh economic times. So I thank you for your time, and again, I strongly urge the passing of this ordinance. Thank you.

>> Mayor Reed: Patsy Cortez, Kapish Goyal, Tom Robinson.

>> Hello, my name is Patsy Ann Cortez, I'm also a co-chair of Community Advocates Tees of Today as well as one of the members of the youth advisory council for District 7 here to say that the youth advisory council in District 7 already agreed to sign a -- well they already signed a letter of support for the tobacco retail licensing in April of 2008. So we mainly supported it because it would implement good business practices which is for our overall goal which is to stop youth access to tobacco and for my own personal experience I have been sold tobacco to. I turn 18 in March. I was sold to when I was 16. Just saying that it's popularly cigarettes, not so much cigars. We can't stop where youth get the outside sources. We can't stop where it is they will receive it afterwards if it is implemented but if we have a chance to do something within our reach why not do it? And we have more deaths from smoking cigarettes, smoking tobacco than we do from alcohol and it's a proven study. That's all I have to say. Thank you for your time.

>> Mayor Reed: Kapish Goyal, Tom Robinson, Matthew Harrison.

>> Hi, My name is Kapish Goyal, I'm here on behalf of our family business that owns and operates 12 gas stations in the City of San José. We employ 98 full-time and part-time employees in the city. And really, the only -- well the major concern that we have with the ordinance and I'm sure a lot of other retailers do is that it imposes costly requirement on the retailer. You know, just to hide the display, and that's just the display in the back behind the counter, anyone in the store (inaudible) thousands of dollars, even at a kiosk, it either means that you do not sell tobacco products there anymore or it costs a significant amount of money to rearrange the way the counter works and the way the counter looks within the kiosk itself not to mention larger food marts, you would have to completely install new customer (inaudible) The other concern that we have is that obviously in addition to the cost, the actual fines that are imposed on top of the state fines, there's already state fines that exist. And those fines are a significant deterrent already. So I'm not sure what the city imposing its own fines actually will do to deter people from smoking. The other concern and this is sort of a slippery slope argument I guess, is you know, where does it end? Right now it's a requirement to hide all of the displays themselves or hide any tobacco product itself. But what about advertising, does this mean you take all advertising down from the windows? You know, how far does it go? I wonder if there are First Amendment issues with that, with requiring a retailer to hide any display and any advertisement. And what that does to the foot traffic within the stores, as well. Because especially in large food marts these types of products are significant drivers of foot traffic, and you know, at a time when our retail sales are down and down by double digits just the economy in general --

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Tom Robinson, Matthew Harrison, Janie Burkhart.

>> Mayor Reed, councilmembers, my name is Tom Robinson, I'm president of Robinson Oil. We are a fourth generation family business. Robinson Oil owns and operates 34 Rotten Robbie gas stations and convenience stores, ten of which are in San José. Today I ask that you reject this proposed retail tobacco ordinance. It is one, unnecessary, it will be costly to the city, and it will be costly and burdensome to San José retailers. As you know,

the last Congress passed very significant tobacco legislation targeting youth consumption that will both impact tobacco manufacturers and tobacco retailers. The food and drug administration, the FDA was given very broad authority over the industry to pass regulations. As we speak, the FDA is writing regulations to deal with the concerns, the issues that you are dealing with currently. It's unnecessary, I believe it's unnecessary at this time to duplicate their efforts. To the extent that you adopt more burdensome, more onerous, more costly regulations than the FDA it will hurt San José retailers. Certainly, hiding tobacco is going to be much more expensive and much more burdensome to retailers. This is not a problem to be dealt with at the local level. Especially, when it is being dealt with at the state and federal level. It will not solve your concerns. But it will hurt San José retailers. And it will likely negatively impact the city financially. Lastly I can't speak for all retailers. But if you're interested I'd love to show you share with you our training program, our sales procedures, our inspection programs that help us guarantee that we sell all age-sensitive products responsibly. Thank you.

>> Mayor Reed: Matthew Harrison, Janie Burkhart.

>> Good afternoon, my name's Matthew hair son. I've been a resident of the city about 36 years out of my 42. I now work at a cigar lounge. It's really difficult to do anything in two minutes. To get a point across. But we feel we're an adult doing an adult activity in a building that doesn't allow kids. We do not sell tobacco to kids. I think we all forgot. If you remember back when you were underage if you really really wanted something, you're going to get it no matter what. Can you do anything do you put whatever laws you put in place the kids that want to smoke cigarettes are going to get them. If you want to cut down the saturation of cigarettes in the market, which I understand, I get it, I'm for it. There's a way. Come to the tobacconists. Talk to us. Let us explain to you our ideas how to do that. Cigars and pipe tobacco it's a little separate, it's a little different. We enjoy it it's a part of life it's a lifestyle thing we encourage you to cox down and check us out before you make it this decision. It is our life and we are still flee today.

>> Mayor Reed: Janie Burkhart. Last speaker.

>> Hello, Janie Burkhart with the Santa Clara County Public Health department. I just wanted to make a couple of points in response to some things we've heard today. First I'd like to say that the Public Health department very strongly supports your work in this effort I think this is a well crafted very valuable originals. As other speakers have said including Emily lamb, this ordinance is necessary. There is not ongoing enforcement aking place from the Board of Equalization. There is only a one time fee not an annual fee. And then I just really wanted to make the point of why this is important from a Public Health standpoint. The bottom line we don't want to forget is eliminating or limiting sales of tobacco to youth to avoid new addictions and we have very strong data that shows an increase in -- an increase in enforcement, shows very sharp decrease in illegal sales. As much as 58% has been recorded in jurisdictions that have enacted this sort of legislation. I'm here if you have any questions on the legislation that -- the ordinance that the county of Santa Clara has recently passed thank you or is about to.

>> Mayor Reed: That concludes the public testimony. I know there's still some council comments and discussion before we finish this item, we'll come back for council at this point. Councilmember Constant.

>> Pete Constant: Just had a question from some of the things that came up. Have we done an analysis of the federal issues and the state fees and enforcement that have been brought up by speakers? We've had a couple of different versions of what is out there.

>> The information I have is similar to what was said by the public professionals which is the bureau of equalization, the board of equalization is primarily focused on tax issues and ensuring that they receive a one time $100 fee for that privilege. As far as enforcement goes, we have had very little enforcement by the board of equalization, if any. In relation to the federal legislation that my be pending, one of the speakers has stated that the FDA is currently writing regulations that may address or the could address many of the issues. I don't have any of the information on that on the drafting of that regulation for the level of support for the legislation that moves through process. But I know there is no federal legislation currently.

>> Pete Constant: I think what was said was the federal legislation was passed and the FDA is implementing it which is strikingly different from what you just said. I think that is something we definitely need to have clarified by

the time this comes back. Because I was worried about duplicative, but it sounds like we may be triplicative, I don't know if that is a word, but three different levels of government charging fees and enforcing at the same amount. And then my follow-up question for the City Attorney is if a government agency is charging a fee for enforcement, what are the implications if another governmental agency is establishing a fee for similar enforcement?

>> City Attorney Doyle: Well, I can address the City of San José's function here, and that is, that you know, we -- to the extent there's a state law that covers the subject, we can't do or enact a law that's inconsistent with state law. Doesn't me we can't enact something that's duplicative or consistent or maybe expands upon state law. So as an independent jurisdiction we have the authority do that. There is nothing illegal about that. What would be illegal is enacting something that is inconsistent with state law.

>> Pete Constant: From the fee standpoint if one level of government is charging the fee, for an enforcement program, can another agency establish a duplicative fee for similar enforcement?

>> City Attorney Doyle: Absolutely, it is separate enforcement, separate jurisdictions.

>> Pete Constant: And then we were told by staff that they would be using 18 year or older youth decoys which I think would pose a problem because the only way you could have a violation is if the person happened to be under 18 that was sold to. It is my understanding that youth decoys have to be supervised by peace officers. When they're doing decoy operations how would that affect the implementation of a youth decoy program?

>> City Attorney Doyle: That's something that unless staff knows, that we would have to get back to you on. I know that in the past we've used youth decoys with police officers and we have been successful in enforcing similar laws with youth decoys. I'd have to get back to you on that.

>> Pete Constant: When I was a police officer I ran some of these decoys and I know that at that point, in order to use anyone under 18, they had to be supervised, in fact, in sight of a police officer at all times. So I think that's something, because if we are proposing to fund a decoy program through code enforcement, that would be problematic.

>> Joe Horwedel: And let me clarify right now that it is not our intention to be funding a decoy program or running a decoy program out of this code enforcement licensing program. Is that we do have a number of staff that work in the department and as a part of how we go about doing our basic programs. But that clearly is really in the realm of the police department so I would agree with you Councilmember Constant that that's partly why I didn't have an answer to the memo that came out from Councilmember Campos, about the administration responsibility to decoy program because it really needs to be worked through our police department and we haven't had a chance to circle back on that piece of it yet.

>> Pete Constant: Because that would greatly change the cost recovery calculations.

>> Joe Horwedel: Well, and I don't think we're looking to build that into the cost recovery of the code enforcement program. That would be -- I think the question of prop 26 comes into that and we need to spend a lot more time understanding how that would really run and how whether that is a general benefit which would be prohibited by prop 26 or a direct cost that we could could and so we need to sort through that.

>> City Manager Figone: Yes and if I could just jump in councilmember, the memo says to have staff come back on a potential decoy program. And partnership. So that's really what we need to evaluate is what is the potential and what would it take and we did not want to hold up you know the main body of this ordinance for that evaluation. So that's you know part of the assessment that we'll bring back on December 14th.

>> Pete Constant: Okay, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. As I listen to more of the discussion on the policy issue of keeping cigarettes away from youth before they make the decision to smoking long term you know it's still the same effect of bad for our youth to have access to alcohol. Again both legal products so if I'm looking at really my viewpoint, and if I'm looking at really trying to have an effective deterrent to a store owner breaking the law to selling it to someone underage I would personally feel better with a decoy program where we would pass an ordinance, saying we can fine you for violating state law and then let's go in and put the industry on notice that you're a legal business you can sell what you sell but if you sell to minors we are going to come at some point and try to decoy it and if you get caught you are going to pay a pretty good sized fine enough to try to pay for this program but that would go much better way I feel because I think we can go about licensing and try and remind people to obey the rules. But at the end of the day, if there's no enforcement, then I think it falls short. And I don't discount the memo put forward, I don't discount the altruistic goals of trying to keep youth away from smoking. But if we're really looking at enforcement, then let's go, for lack of a better word, to pop somebody for breaking the law, as we know shoulder-tapping for alcohol or even youth that look older than they do is very prevalent for teen drinking. I know Councilmember Pyle has the memo for you know making sure parents are responsible for their kids drinking in their household but guess what the house didn't produce the alcohol. It came from a liquor store, came from a grocery store came from a gas station. So I think that's where I'd like to see us go. I don't know if I can personally -- I mean I'm personally finding it difficult to support it today. I'm not against it I just think that we would be better off actually getting actual enforcement and getting the community to respect the law, by actually making an example of liquor stores or tobacco being sold illegally to minors.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. I don't know if you know the answer to this but I know that this would not -- the recommendation to have decoys is not the first time that something like this has been done in the City of San José. I can think back almost maybe 15, 20 years ago when a couple of nonprofits actually used -- were accompanied by police officers to -- it was actually in my district District 5 and I wasn't a councilmember at that time, but they actually targeted a few liquor stores that were served -- that were selling to minors and it was very

effective. But it was the city that took the lead along with the nonprofits and I see Janie, you probably remember that organization that was very successful, and so I think the intent of the memo is to look at this along with other entities that could help us be successful as we move this policy forward. And that's what the intent of this is about to have a healthy discussion which we're having. And I'm glad about that. I think the public has brought a lot of issues to the forefront. Especially the cigar shops. So I think that as you move forward, in crafting this to come back for December 14th, that you should create a section on how to address those particular businesses, because they did bring up some issues that are pertaining specifically to their clientele. And so I would ask that you address those and you are the only department that could address those. The other thing that I wanted to ask, regarding the word that public view and public reach, I know that the health from the county, was there a reason if you could come I might want to ask you just a few questions from the county, Public Health. You mentioned that they are going to be bringing an ordinance similar to this one, to the full county for approval or -- was there a specific language or word that they used was that was -- that weighed more versus the other? I just kind of wanted to get your insight on that.

>> I confess I don't know all the ins and outs of some of the details of the language of the ordinance but I think there is a piece that refers to not having tobacco products in view. This was taken from a model ordinance from the Public Health law and policy center. I think that this is something that could be negotiable, particularly with the tobacco shops, anyone whose business is more than 80% tobacco I can see how this might be burdensome.

>> Councilmember Campos: I appreciate that. Those would be some of the things that city staff -- I appreciate that thank you. Also in the language maybe whether it's view or outreach, not able to reach the particular product, but I think that you are the experts on being able to weigh the positives around the negatives and see if we can come out with a policy that is -- strikes a balance. I think the bottom line, why we are bringing this forward, is that we want to make sure that we are looking at a lot of the aspects that I think some of the speakers that talked which were the youth, they talked about and I am impressed that you came and you spoke up for your generation. Because they recognize that this is an issue within their generation. And that we as policy makers need to address it. And I think that we would be doing a disservice to our younger generation if we don't address this issue. And I think they said it better than I could say it is that we need to address this in a strong policy. So I

look forward to being able to see what the council decides on the 14th. And with that, I would hope that we can get a majority of the council to approve this before it comes -- so that it can come back once more in December.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just have three issues I want to touch upon, one, first of all, I want to thank the youth for being here and being proactive and really trying to do something that's positive. I think it's a really great sign for all of us when we see young people stepping up in that way. And I'm hopeful that some kind of youth decoy program working with nonprofits as Councilmember Campos indicated can work in a way that's cost effective and that actually helps. We do know that these kinds of programs do have positive results. Secondly it sounds like the earlier comments and questions I had regarding the cigar lounges, what have you, there were folks who were here from that type of establishments, sounds like exceptions made at the county level because you have to be over 18 to even enter the premises. And so it sounds like that there may be some kind of exemption carved out for those specific types of establishments, just the folks from those establishments that are concerned, certainly continue to following up. And finally I just want to thank all the retailers that showed up. I don't think any of the retailers here are interested to selling to minors, and they certain -- they also expressed some concerns in terms of the hiding of the products and the kind of infrastructure and the cost that would be -- and I'm concerned about that, too. That's a real burden that we have to be extremely cognizant of. Joe, when I was on the Planning Commission, I recall an item that we had in which a drinking establishment was allowed to on certain nights be 18 and over and not serve alcohol, and one of the rules is that they had to hide all alcohol or alcohol paraphernalia what have you. And their answer to it, which staff approved of, the Planning Commission approved of, was simply putting up an attractive kind of blanket -- not blanket, but a cloth curtain type product, as opposed to having to create -- move the coolers or do something to coolers that were hidden from sight. And so I imagine that something like that would be allowable so that the burden isn't so that they'd have to actually create new cabinets or covers and all that but something as simple as that would qualify for hiding for public view. What is your thought on that?

>> Joe Horwedel: That would certainly qualify. I would go back to though I think the fundamental question that is that one of the most important features of the ordinance? And I would say probably not. That I think the keeping the product out of reach, you know the self-service I think that one is something that warrants the discussion. Just so that you don't have, you know, somebody kind of shoplifting it out. But the display piece it does present a lot of issues you know ideally you don't want to advertise but it is something that recognizing every shop is going to be very different. It is probably lower on our list of things that would be critical on the ordinance versus essential.

>> Councilmember Kalra: And in particular, places that don't have a lot of shelf space, gas stations. Councilmember Liccardo referred to one in his district, and there are places like that, we've all seen that would be particularly challenging to create some kind of physical movement, to move them into a different place or a physically physical structure to hide it, I know Councilmember Campos, certainly, appreciate her putting that forward. None of us want to create an undue burden. But I just mentioned that because that jogged my memory of that item where they simply put a cover over it in that work for that kind of product. And then Rick, on -- someone raised a question about advertisement. I don't see anything in here about that, I imagine it's because of issues that may -- First Amendment and other issues that allow for that?

>> City Attorney Doyle: It may be and there are also federal laws and maybe even state laws that deal with cigarette advertising. But again all that to the extent there are questions we'll come back on the 14th with more to come.

>> Councilmember Kalra: The discussion not just what we've had but from the o, I think it will make a better ordinance ultimately, thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Yes I would like to agree in reference to the duplications that are contained, in fact we went to the sheet that had the bullets, back to the bullets on page 3, one of those has to do with anyone being

employed that is not at the proper age. Where have I put it? Would that be a situation where some kids work in the gas station and they can kind of sell products to their friends? That type of thing?

>> Joe Horwedel: That is what the concern is about, similar with alcohol sales, is that state regulations prohibit servers under a certain age for serving alcohol, is that we're proposing a similar thing with cigarettes, that somebody who is not legal to smoke should not be allowed to sell.

>> Councilmember Pyle: It seems that the biggest problem we have is really enforcing the state law that we have. And so this is a way to help tight are that up a bit but there's no way to do this without the extra $450?

>> Joe Horwedel: The thought behind this is, the state has regulations, and as you go down those bullets a number of those are state regulations but a number of those are also city. That our feeling is when we've seen other cities by having the permit that the city can revoke it does put a local decision to, is that business performing? As you heard from one of the speakers, the State Board of Equalization does not revoke a license to sell tobacco of anybody in the State of California despite people violating the law. So it's one that it writes that enforcement to the city. Where the impacts live. Rather than at Sacramento.

>> Councilmember Pyle: And so one of the things you would want to do and I hope this could be part of the wording is to ask for definite license I.D. and some other form of I.D. so we could verify what the age is. I mean, it sounds from the two decoy gals that spoke that they were never asked for anything, is that correct? Only up yes so -- implementation of what we already have seems to be what we need to do.

>> Joe Horwedel: Yeah, is getting full enforcement of the current state laws would help greatly. And so this does put more teeth in making that happen.

>> Councilmember Pyle: So is there some way to work with the retailers? I'm conflicted, because to me this is economic development that's involved as well and I don't want to do anything to decrease that, God knows. Is there some way to work with some of the people that are objecting?

>> Joe Horwedel: Well I think the same thing we did with the offsale of alcohol programming is, we worked with the retailers about how that program would operate. We spent the first year cycling through the city educating the retailers about the requirements of state law, of the city law, so that we weren't playing gotcha with them. But after that, is we moved into active enforcement mode and so it was you know we've warned you and now we cite you. And that we hold you accountable for complying with what the law is. That's the same thought here is we want to have a program that works, it's not just, you know, layers. It's one that actually has meaningful results that the community sees a benefit from it. And that's you know and that's how we run it with the alcohol program. That's how we run it with the shopping carts, is it's really about bringing value-added to it. Being duplicative is not a good business to be in.

>> Councilmember Pyle: I agree you get much more headway by getting some agreement there than if not. The very last bullet states allow a process for license suspension and revocation for violations of state law and the proposed ordinance as well as an opportunity for hearing an appeal of an action, of the action. I thought there was a process already in place. Mean if they violate it they lose their license. It's not that civilian?

>> No, it's not that simple and there's currently -- not a provision in state law unless they take them to court to remove their license. What this allows us to do is through administrative process to -- if they are selling to minors, they're continuing to sell to minors, we'd want to you know suspend their license and they need to have a due process to be able to go through object to the actions that the city would take. So there would be a notification an intent for us to suspend, an opportunity to correct and they'd also have an opportunity to object. So that would be part of the ordinance but again we don't have the ordinance in front of us. We're just trying to get some direction so that the -- we can put all this information in an ordinance and bring it back to you on December 14th.

>> Councilmember Pyle: So great. When this comes back in December and we vote for this then whatever the result would be, would be sent to the establishments that -- I got it, okay, thank you, appreciate it.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I think there seems to be -- I'm hearing a lot of voices, they're particularly interested in really being set up with an enforcement program, decoy program. I know everybody's concerned about prop 26. And as I see prop 26 the language is pretty clear in exempting from the definition of a tax, requiring the two-thirds vote, a charge for reasonable regulatory cost, issuing licenses and permits, performing inspections audits and administrative enforcement. So this kinds of activity would still have this fee very far off from sort of that Sinclair paint type decision where you've got a tax that's paying for some series of services for -- that have widespread application. Why couldn't we simply impose a fee that would help us pay for more proactive enforcement?

>> City Attorney Doyle: I think we are being very cautious, but we certainly are going to try to come back with whatever we can comfortably do under prop 26. Prop 26 is brand-new and everybody is sort of raising issues up and down the state. We provided the council some guidance. We think we can, but we want to be very careful on what we come back.

>> Councilmember Liccardo: Okay. Thanks.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: I heard one of the speakers talk about Bevmo where they have a policy, no one under 18 is allowed in the store. I got to thinking about liquor stores that also sell cigarettes. I haven't heard any conversation about that. There is a conversation about business that is cigarettes or tobacco. I've heard conversations about smoke shops. But what about liquor stores that only sell cigarettes or liquor which nobody under the age of 18 has a reason to be in there? How are other communities handling that, with that be not inappropriate, that they would not have to conceal cigarettes and smoking paraphernalia?

>> Joe Horwedel: That certainly would be one of the types of businesses where the requirement to shield from view should be arguably waived. Being so to the extent that we keep that provision in, those would be the types of

businesses you know, if you're not supposed to be in there by yourself if you're under 18, then there's really no requirement to shield from view because you have no customers in there that aren't allowed to buy it.

>> Councilmember Chirco: That's what I hope we would key so many back. Thoughtful ordinance that dogs look at the types of businesses that do sell cigarettes. And to selectively pull out those its not reasonable to put that kind of requirement on. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Just a quick question. I just heard from one of the youth advocates, that our initial outreach in English, Spanish and Vietnamese might not be sufficient. I wonder if the staff will consider identifying two, three, more languages to be included in the initial outreach effort?

>> We traditionally send things out in three primary languages in San José, English, Spanish and Vietnamese which is an expansion of the standard of sending out English only to businesses. If there are some additional languages that you believe would be germane or specific to this, we would be open to. We are paying for translation services, so any additional costs we have in outreach will be borne by retailers. Any additional languages we're happy to include those we do as a standard intend to send out all outreach in English, Spanish and Vietnamese.

>> Councilmember Chu: Thank you, I'm asking staff to identify two or possibly three more languages that we may need to be included in the initial outreach effort. Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I had another question, about -- on page 2, in the paragraph that talks about the active programs show that youth sales decreased. When they talk about active programs, can you -- do you -- can you define that? Is that just enforcing this or -- is there something more involved?

>> Those that have -- those that thank you councilmember. Those that have an active inspection annual inspection program as well as a complaint follow-up program as well as youth decoys.

>> Councilmember Herrera: And so our program now is not going to have the youth decoy component?

>> We're going to work, we're going to reach out to our partners to make sure that we get a program that we can use and we are going to focus on those programs that have a complaint on first.

>> Councilmember Herrera: But when it says active programs youth decoy was part of why that worked why you saw those high numbers in terms of smoking cessation.

>> Right, youth decoys is a component. And so I'm not trying to say that it's not a component of it. What I'm saying is that we are going to use our resources with the county and the internal resources with the police department as well as any other nonprofits as was mentioned by other councilmember to be able to ensure that we have youth decoys available. It should be noted that the county ordinance that is written also includes, under supervision of code enforcement officers that was mentioned, that could only be under police officers, and so we'll certainly research that to make sure that we have sufficient authority to be able to provide oversight for youth decoys, as well.

>> Councilmember Herrera: Yeah, I think there -- I mean sounds like it's a very important part of whether this would be successful. How many other cities in the county are proposing this? Santa Clara? Gilroy, I mean what other cities are proposing this kind of a licensing?

>> That would be something I'd need to get back to you. I do know that the county of Santa Clara has taken a leadership role.

>> Councilmember Herrera: I'm just curious about other cities. As I'm sitting here I'm weighing different things including I really appreciate the folks that have come forward to share their concerns, as well as the youth that have spoken. You know it has -- you have to -- I'm sitting here weighing all these things and what I come up with is that for me the overriding benefit to protect our young people from the hazards of starting to smoke that overriding benefit, that if we can prevent some of those young people from taking up smoking and then not becoming addicted, because we know that they start smoking at a young age, they are likely to become addicted and then not able to stop smoking, I think that benefit overrides everything. And that means then that we're not paying for them to be treated for lung cancer when they're older and then they're not dying of it. I don't think this is the silver but at all. I think it's part of many things that we have to do, and I remember growing up and seeing kids really young in my neighborhood, and I grew up in East San José. And I don't know what, but I think there are more kids in my neighborhood than in other areas and it's one of the reasons that's making me want to support this as well. But I know that parents influence those kids too, kids who saw their parents smoke. Kids who saw their peers smoke, kids who hung out with people who smoked were more influenced. Kids who couldn't buy it at the store, and I remember kids being able to buy cigarettes at stores when I was growing up, would simply go get an adult to buy the cigarettes for them. So this is not a panacea. There is a lot more work to be done. But if it can make a difference, if we can get a program together and have some of the enforcement in the decoy program, then I think it's something we need to move forward with. That said, though, I would like to make sure that when this comes back, that everything that duplicates state law is lined out, so we can see -- laid out so we can see which bullets are ready in state law and which ones are our ordinance. I would like to see businesses exempted that where this doesn't apply and we've heard from some of those today. If there's exemptions. I would like to see flexibility in this and I'm very concerned about the requirement that the products have to be separated. I really would like to see -- I'm questioning whether that should be in this ordinance at this point. Certainly out of reach, but you know, causing that kind of a cost putting that burden on all the businesses I think really concerns me. So I'll reluctantly support, I know it is in here now but I would like to see that analyzed and maybe not go forward with the ordinance and I certainly would want to seize a very long ramp up time education you know and really working with these businesses so that we don't overly impact them. And finally I'd like to see some kind of an economic analysts. San José enacts these and Santa Clara doesn't and we just drive businesses somewhere else. I'm very concerned about that too. The overriding influence is we have to protect our young people, we have to do

everything we can so that we can have fewer smokers in the future. Because the second question they ask you -- I totally agree with Emily -- is, you know, do you smoke? Every time you go to a doctor and there's a reason for that so I'll be supporting this.

>> Mayor Reed: I think I'm going to get the last word on this. I certainly hope so given the amount of time we spent on it. I think we're just about done. But it's clear to me that we wouldn't be having this discussion if the State of California had even a modest effort to enforce state law. The absence of state enforcement means this is an area that we have to step in if we want the law enforced at all. Essentially that's why we are having to do this. Let me add my caution to areas where councilmembers have already identified I don't see us having tobacco stores where you can't display tobacco. Adult stores where only adults are allowed in, and we're worried about whether or not they're going to see tobacco products, I'm concerned about the remodeling costs and the potential thing so I think staff has heard that and will be sensitive in trying to figure out a way to make this work for people. Because it is really the other part of the ordinance that I think are the important parts to do. And so we'll get this back I presume in December. That's the motion. I think we're done talking about it so on the motion, all in favor, opposed, one two opposed, Oliverio and constant opposed that passes on a 9-2 vote. Thank you very much. Our next item 5.1 report on bids and award of contract for Watson park phase 2 improvements project. We have a motion to approve. All in favor? Opposed? None opposed, that's approved. 6.2, hearing on election and formation of maintenance district 23. Councilmember Chu is going to excuse himself because he lives somewhere near this. I'm not even sure exaggerate where it is. But I remember the last time he excused himself. All right, we have a motion to approve. This is a hearing, a special hearing on a special thing and I've got a special script that I need to follow to make sure we do it especially right. Before we get to discussing the motion or taking the testimony. So this is a public hearing and special election on a levy of special assessments within maintenance district number 23 in Berryessa. We had a meeting on September 28th regarding formation of the district. Today is to open the public hearing, and the election process on the formation of the district. We will hear from anyone who wishes to speak on it, and then entertain a motion to further let us the election -- at that (inaudible) close the public hearing after it's heard all the public comment on this item, and then we'll conduct a special election and report the results of the election. That's basically the process we'll follow. At this time we will take public comment. Anybody who

wishes to speak on this item please submit a card. I have some requests, Margaret Perry, Alan Perry, Ian Champony. Please come down.

>> Good afternoon, Mr. Mayor and councilmembers.

>> Mayor Reed: Pull the microphone down just a little bit.

>> Can you hear me?

>> Mayor Reed: Just pull it down. Oops, no harm.

>> Okay. Mr. Mayor, councilmembers, I'm here to protest the proposed tax for the median island on Berryessa road. This tax is not only unfair to the people that live on Berryessa Road, it's obscene to me. How the city can tax the few for the many, I will never know. So many people as you know, Mr. Mayor, come down Berryessa Road. It's a very, very busy road. I've lived on Berryessa Road for over 32 years. I've never sat on my front of lawn looking at the leaning tree at Berryessa. The mayor, you know Berryessa, and Mr. Chu, lives on Berryessa road who isn't here. And he should be fighting for his constituents. It seems to me the country fought for unfair taxes, are we going back? This is definitely an unfair tax. People are finding it very hard to support their families and it may be only a little bit a year to put onto our taxes. Now, for median strip we could go to a type 1 which is very minimal maintenance. I'm sure you're all going to see how this goes. If the city wins this, every road that has a median strip in San José will have to pay. And it's only the people that are living on the roads. If it was everybody paying, nobody would mind. But this is an unfair tax. It just taxes the few. And I want you to consider this once again, we hit the homeowners, we hit the middle class.

>> Mayor Reed: I'm sorry, your time is up.

>> Thank you, my time is up.

>> Mayor Reed: Alan Perry followed by Ian champony.

>> Good afternoon. This is District 4. Where is Mr. Kansen Chu, did he leave?

>> Mayor Reed: Mr. Chu can't vote on this because he's within the maintenance district.

>> I'll carry on. What I'd like to talk about is the section of the vote. That the city sent out a map and this is all the residents in there that can vote. Mainly, the residents are on frontage property parcels along Berryessa Road through roads, it's the first parcels. Courts, and the park lands here, and the commercials properties here, the guidelines. So when I was looking at this, okay, this parcel number 1 is outside the guidelines of proposition 218. The through street is North capitol avenue, and it's the second parcel in. It shouldn't be there. That is a bigger parcel and that will affect the residents' vote because the vote is considered on dollars. The other thing coming up here is, these they tell me are sub-parcels, but they still have capitol avenue addresses. And they're the second and third parcels in. They should not be included. Then you come back down here to a park lands. Anonymous, the property taxes are exempt on park lands. And yet here you are going to put an assessment on them. But the city comes in and it says oh, we'll pay you -- we'll pay your assessment fees of $6800. Now, to me that's a conflict of interest! And that they have one vote, so it looks like it is a conflict of interest. Because if the city is going to pay that, of course the county is going to vote a yes vote and that's going to go against the residents' votes. Because if you take a look at this how many residents will fill out and send that in? Probably 20%.

>> Mayor Reed: Sorry your time is up.

>> Okay.

>> Mayor Reed: Ian champony. Our next speaker is Ian champony. Sorry your time is up. We'll have some further discussion.

>> Good afternoon, Mr. Mayor, councilmembers, my name is Ian champony and I'm with the county of Santa Clara. I've been asked to speak on behalf of the county parks department which owns parcels within this maintenance district. County parks opposes the proposed maintenance district however the county's vote will ultimately be the Santa Clara County board of supervisors, every effort (inaudible) not before the Board of Supervisors, prior to the January 11th date, hearing, and we will be recommending a no vote. Thank you.

>> Mayor Reed: Thank you. That concludes the public testimony. There were a couple of questions raised in this comment period, I'd like the City Attorney to address a couple of them. First it has to do with Councilmember Chu's inability to participate in this matter, if you can explain it a little better than me.

>> City Attorney Doyle: Just so it's clear under California law Councilmember Chu cannot participate because he lives in the area. There is a conflict of interest on the advice of the City Attorney he has to recuse himself from participation.

>> Mayor Reed: Thank you. Second question either the lawyers or the engineers. Who gets to vote on this?

>> Katy Allen: Mr. Mayor, Katy Allen, Public Works director. The individuals that own property within the district, this is about changing existing type 2 landscaping, to type 1 or not. It's really the city is neutral on which ever way this vote goes and the residents that own property within the district get to decide whether or not they want to assess themselves for the continuation of type 2 landscaping.

>> Mayor Reed: So the people who would pay the tax are the ones who get to vote on the tax.

>> Katy Allen: That's correct.

>> Mayor Reed: Okay.

>> City Attorney Doyle: And can I add, there's some question about a public entity such as the county being exempt from property taxes but would be subject to the fee here. Under prop 218 all parcels including government owned parcels are subject to assessments and the county is involved.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. If I could just ask Ian a quick question. I'm interested in the county's position if you could just explain the rationale for the county's position. Thank you.

>> Thank you, Councilmember Liccardo. So the county's position is that type 1 is adequate for this type of landscaping. Currently, we have a tri-party agreement with the city and the Water District. And we've been told in city staff because the parcels that we own are the Penitencia creek park. We have a 25 year agreement that we're about three years into right now. So the city would be paying that assessment. However, if this maintenance district is created, and it goes into perpetuity, then we would assume those costs and don't feel that there's a public benefit to going to a type 2 landscape.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: As I mentioned earlier today, as just to take public comment, ultimately we'll need to take this up later. But we would allow anybody who wishes to submit their ballot, they could do that at this time and they would have until the hearing on the 11th to do that any time they can submit them to the clerk, is that correct, City Clerk? She says yes. So if anybody here wishes to submit a ballot you can do it today or any time between now and January 11th, assuming that the council continues this to January 11th. Any ballot submitted before January 11th will not be counted until the chose of the public hearing on January 11th. At which time we'll tally up the votes and figure out if the people who are going to pay it have approved it. But they do have to be submitted to the clerk by the close of the public hearing, presumably January 11th. If we could get a motion to defer this until -- or continue this hearing until January 11th, it would be in order. We have a motion on the floor, it was Councilmember Liccardo, right to January 11th to continue the hearing.

>> Councilmember Liccardo: Happily recast the motion.

>> Mayor Reed: All right the motion is to continue to January 11th. Further discussion? All in favor? Opposed? None opposed, that's approved we'll take this up jab 11th. Anybody who wishes to vote can vote up until the close of that public hearing. Do I need to note that on January 11th it will be heard in the afternoon sometime after 1:30, it will be on the afternoon agenda. That concludes that out. We'll move on to item 7.1, a public hearing on commercial solid waste recyclables and collections franchise. Motion is to approve. All in favor? Opposed? None opposed, that is approved. Now take up an item that is a joint city council-financing authority matter. That is a separate agenda item number 2, property exchange with T.O.D. Brokaw, LLC related to airport West and adjacent property. We have a motion to approve, no cards from the public. All in favor, opposed, none opposed, that's approved. We'll take up next item 5.2, funding recommendations for new park facilities. Let me just note that that was noted to be heard last on the council agenda. But we will still have Redevelopment Agency which we'll take up after this item. But was noticed last, not after 2:30. We have successfully managed to get past 2:30. So we'll take that up. I believe there will be a staff presentation.

>> Albert Balagso: Yes, mayor, Albert Balagso, Director of Parks, Recreation, and Neighborhood Services. I'm here with Matt Cano, division manager in PRNS and Johnny Pham, Deputy City Attorney, and Matt does have a short presentation that he will be presenting to you.

>> Matt Cano: Thank you, again, Matt Cano, division manager, Parks, Recreation and Neighborhood Services. I'll start with a little background. On February 9th of this year we proceeded to city council with a recommendation which was accepted to put all new park construction on hold due to the economic situation we're currently under. This resulted in 12 projects being placed on hold in February and an additional project Buena Vista park had been placed on hold since then for 13 new construction projects which are currently on hold. In April then in August of this year councilmembers Oliverio and Liccardo put forward a memo to the Rules Committee requesting that we look at a pilot program to release certain parks from hold, and to look specifically at the PDO PIO park land fees that developers pay for new housing and see if there's any alternatives that we can

use to use those fees to help maintain parks for a 20-year period. We developed a number of -- we developed five different alternatives and then we presented those alternatives to the parks commission at our October meeting. I do want to mention that the parks commission accepted staff's recommendation eventually but the parks commission was very split regarding what recommendation to move forward because they're extremely concerned about the long term integrity of our park land fees if we start talking about using them for maintenance purposes. On the next slide are the alternatives that we looked at. The first alternative is the one that was recommended by the councilmembers' memo to Rules committee. Looking at a credit to the PDO/PIO fees in exchange for the developer agreeing to maintain or contribute to the maintenance of a park for a 20-year period. We are not recommending that alternative in our staff memo today for two primary reasons. First of all we're extremely concerned about the long-term integrity of our park trust fund which is primarily intended to build new capital projects for the city. And we're concerned about using those for maintenance. Not recommending that because (inaudible) alternative is more limiting in its ability to move projects forward. At this time based on the developers that have very recently paid fees, Newhall park is the only park that we are aware of that can move forward under this alternative right now. The second alternative that we looked at and we are recommending is a three year park establishment period as part of the development project and I'll talk more about that in the next slide. The next alternative we looked at is increasing the construction and conveyance tax. The city council has looked at this the past few years and polling results show that now is not the best timing to going to the voters for that so we are not recommending that at this time. We also took a look at just eliminating the hold-on projects and moving forward with every project regardless of the General Fund impact and we looked at the alternative of keeping projects on hold. We are recommending that those alternatives not be moved forward at this time, however annually during the budget cycle and during the capital budget hearings we will probably be discussing those alternatives as we were directed to do in the February approval. And I apologize, I'm having hard -- there we go. The next slide discusses our recommended alternative -- our recommend alternative is to include a park establishment period as part of the development of every park in the city at a pilot program for one year through December 2011. The park establishment will be bid out as part of the development contract and the contractor would be required to maintain the park for a period of three years or to take care of the park for a period of three years. The benefits of this is it keep the project, keep the contractor on the hook for the project longer, better incentive for quality construction. The funding, one caveat we put in our pilot program is to make sure that if

money is moved to a project for park establishment that it cannot take away funding that would have otherwise be used for construction of another priority project. At this time, it only allows Newhall park to move forward but we feel that it provides more opportunity for other projects to move forward in the future. We are sticking with the three year park establishment so after three years if we don't find an alternative funding source the General Fund would be on the hook for any projects that move forward. On the next slide, in addition to looking at the park establishment period pilot program which is our recommendation we also took a look at existing council policies to see what policies we can take a look at to use more innovatively and expand in order to allow us greater flexibility to partner with other entities to move projects forward. First one we looked at is a prevailing wage policy. In February 2008, the city council provided direction to exempt park maintenance and prevailing wage, except in cases where a developer had -- that a developer is donating that park maintenance and they have benefited with the development application in the city in the past two years. What we're asking today and recommending is to modify and clarify how this exemption applies to developers and that it apply to all donated maintenance from developers, corporations and other entities as long as they donate that maintenance for a minimum of two years and it can applies whether or not a developer has an application on file in the city. We feel that this will allow us a much greater flexibility to move turnkey parks forward through construction and then start engaging in discussions with corporations around the city to see if they're willing to donate park maintenance for a minimum of at least two years. And again this would only apply to pure donations that did not involve city funding. The other policy we took a look at is our volunteer policy. We're not recommending any policy changes today to this, the volunteer policy. Because we feel that our existing volunteer policy approved by council already allows us the ability to look at small parks and expand our partnerships with neighborhoods so that neighborhoods could actually take on more of the day-to-day maintenance routines. In the memorandum before you we are recommending that we engage in a pilot program with Buena Vista park which is a very, very small park that we are looking at expanding in District 6. The neighborhood has already agreed to step up and enter into an informal agreement with us, to take on most of the day-to-day maintenance activities. And so we will be recommending moving that forward as long as we can establish an agreeable agreement with the neighborhood. And with that we will be happy to answer any questions you have today.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. After a flurry of provisions I think there -- everyone should have a piece of paper that has a revised recommendation on it and thank you Lee for submitting that for everyone's view. I was in some discussions with Albert in the last few hours before the meeting today to make sure that we address some current concerns I think the parks department had which I think really doesn't substantively really change the proposal. Any of these are mostly just addressing potential concerns around misinterpretations and so forth that might arise. I also attempted to incorporate some of the concerns that Councilmember Chu expressed with regard to expanding the scope of to include commodore park and to expand the amount of time and duration with which we can consider an alternative funding plan. I don't know if I've done that adequately. Of course we are in different -- I couldn't speak to Councilmember Chu because he is not in my Brown Act but hopefully this reflects an approach that will be able to enable us to go forward with multiple parks where that seems to be appropriate in the discretion of the City Manager and actually, move forward on construction. So I'd like to move this revised recommendation forward.

>> Second.

>> Mayor Reed: All right we have a motion on the floor. City Attorney.

>> City Attorney Doyle: With the councilmembers' indulgence, because I know this has various iterations. But in your revised representation number 2 where it says to wave some of the development, PDO/PIO, if we could waive the credit, the effect is the same but a waiver suggests we are reducing.

>> Councilmember Liccardo: I'd be happy to make that change.

>> Mayor Reed: Councilmember Oliverio got the second.

>> Councilmember Liccardo: It's a mad dash.

>> Mayor Reed: All right, Albert did you have something on that?

>> Albert Balagso: Yes I just have a point of clarification or a couple of them on the motion. Councilmember Liccardo, in item 1.1 on the -- when you refer to the longer-term plan, what is the duration of that or do you have a number?

>> Councilmember Liccardo: My intention in crafting that language was that we recognize of course with the General Fund projections that we have for deficits at least for the next half-decade that we're not likely to have any more park maintenance staff and we're very likely to have less. I don't pretend to know what the magic number is, seems to me if you're in negotiation and it's a true donation from a corporation or from an organization or a neighborhood group, you probably can -- you are happy to get whatever you can get and we ought to be giving you some flexibility in negotiations but with an eye towards making sure this is a more sustainable plan than simply one that kicks the can three years down the road knowing that in year 4 we're going to be looking at a field full of daffodils and weeds.

>> Albert Balagso: Okay, I had a couple other -- I apologize, please indulge me. You referenced the establishment of maintenance trust utilizing the San José parks department foundation. Are you solely tied to that as an option?

>> Councilmember Liccardo: No, I expect that whatever is the most feasible vehicle will be used by staff in their discretion. I simply suggest that because that seems to be one that we've all had very much in mind.

>> Albert Balagso: I have one final one. Your reference to accept staff's recommendation and the priorities that are established as far as the use of park funds, or PDO funds towards this maintenance trust, when we reference that the priorities in the actual recommendation that we put forward, that was only listed towards the alternative B. Are you applying this towards both alternative B and A?

>> Councilmember Liccardo: I'm not certain I understand the question. Let me clarify. I think Matt Cano characterized the proposals of Councilmember Oliverio and I using PDO for maintenance. In fact that's not what we proposed. We proposed reducing PDO fees and allowing developers to make contributions, and those dollars would be used for maintenance. Now, I know people will say that is just a matter of semantics, but it's an awfully important legal matter. We're not proposing to use PDO fees. That is proposed I think in the staff's alternative B. And so to the extent that that's a more fruitful approach to utilize both, that's fine. If alternative A is more feasible, I want to give staff the flexibility to do that.

>> Albert Balagso: Councilmember Liccardo, what I'm trying to clarify is the item of priorities of the Greenprint. That would give us the latitude to negotiate with different entities should it not be advantageous to the city to utilize credits in that fashion. As referred to in item B, if for example, if there was a park or an opportunity in a particular park, and there was the desire of an individual or developer to move towards this type of component for managing our maintain needs, then we would have to look at, in the immediate nexus area, of whether or not there was another priority already in the area that that funding should have gone to. So that was part of how we categorized the alternative B, would we also be applying this to alternative A, is my question.

>> Councilmember Liccardo: I try not to answer questions that more than ten words long because I tend to get lost and I can't say I understood that one clearly, Albert. I'm not sure that one came up in our prior conversation so --

>> Albert Balagso: I was reading -- can you look to page 7 of the agenda, item A-3 on 5.2, you exclude the reference to park land fees and construction and conveyance.

>> Councilmember Liccardo: I'm sorry, which page are you on? Page 7, alternative A, okay.

>> Albert Balagso: A part 3.

>> Councilmember Liccardo: Pilot plan is voluntary, is that the one you're referring to? Oh, I'm sorry, you are looking at the agenda. I'm sorry, forgive me. I was looking at the report.

>> Albert Balagso: Right.

>> Councilmember Liccardo: All right.

>> Albert Balagso: The reason I'm asking this is you're accepting staff's recommendations and when we wrote this, we weren't writing it in reference to alternative A but rather to B.

>> Councilmember Liccardo: Right so forgives me Al better is what's in the agenda different from what's in the memo from staff in terms of recommendation?

>> Albert Balagso: It is correct.

>> Councilmember Liccardo: It's the same thing? Okay.

>> Albert Balagso: The reason I was asking is we were only referencing alternative B so we are looking at the entire program and including that reference to priority projects to the Greenprint, in alternative A as well.

>> Councilmember Liccardo: Right. Now just to be concrete about this is this specifically in reference to commodore park? Is that why this issue is raised because I'm not understanding the context.

>> Albert Balagso: This is reference for example I'll use North San José as an example. If there's a particular project that we have online and it's predicated on the assembling of and it's a priority of the Greenprint, and it's predicated on assembling park fees from other developments within the nexus and that was a priority of the Greenprint, now if a developer wanted in a project that's in one of those -- that would be contributing towards that project, they would want to use their fees for this maintenance trust instead. In which case we would not be able

to advance the second priority. But it would give us the alternative to manage the fee structure as opposed to it would all go into this trust.

>> Councilmember Liccardo: Albert let me say this. You know the language that's used in the very first paragraph is authorize the City Manager where appropriate to advance park development. And if -- I understand that there's a Greenprint in place and that's our officially adopted approach to building parks and where it seems sensible and appropriate within the City Manager's discretion to depart from the Greenprint because there's a greater opportunity somewhere to do so, I suspect you'll do that. I don't want to be micromanaging that decision.

>> Albert Balagso: May I suggest that we just include that last line and have it apply to alternative A?

>> Councilmember Liccardo: And when you say "that last line," could you read the line?

>> Matt Cano: So what we would do is at the very end of your recommendation, number 2, where it says a minimum of ten years and then there's a period after that, we would then say, provided that -- provided that including such funding does not prevent funding the design and building of a new park trail or recreational facility identified as an existing or priority 1 project in the adopted Greenprint update.

>> Councilmember Liccardo: Okay if that's staff's great desire, I'm happy to incorporate that. Forgive me, I'm a bit confused because (inaudible) motion if the (inaudible) the recommendation in the memo and that's a problem. Because when we're reading the memo and we're trying to understand the justification and analysis it supports a recommendation that the two don't match, we've got to -- that's where there's obviously a challenge in understanding one another.

>> Albert Balagso: My apologies for the confusion. It matches in the memo but we're referring to alternative B, we did not reference alternative A and that was the concern that we had that your motion included both items.

>> Councilmember Liccardo: Okay, that's fine, I'm happy to do that.

>> Mayor Reed: And that is acceptable to the seconder yes or no?

>> Councilmember Oliverio: Just want to clarify in simple English that the reading Albert from what I'm understanding from your staff is it's a little bit more narrow view so it doesn't forgo the opportunity for parks that have ...

>> Albert Balagso: Your motion included both items.

>> Councilmember Liccardo: That's fine.

>> Mayor Reed: And that is acceptable to the seconder yes or no?

>> Councilmember Oliverio: Just wanted to clarify in simple English that the wording Albert from what I'm understanding from your staff is it's a little bit more narrow view so it doesn't forego the opportunity for parks that have different developments that pay into it when we're trying to create a larger park, for example in North San José?

>> Albert Balagso: That's correct.

>> Councilmember Oliverio: Thank you, yes.

>> Councilmember Liccardo: Thanks for clarification. It's helpful.

>> Mayor Reed: All right, motion is amended as requested by staff. Let's take some public testimony and see if they followed the discussion. I'm sure Mike Flaher did. Let's take Mike first, and then Nancy Thomas and Matthew Bright.

>> Hello, the boys have been very patient. My name is Nancy Thomas and I live in the Newhall community area and I know you've heard all the technical reasons why to built the park and not build the park and all that. But the one simple reason is the (inaudible) children that live in the community needs some green space. So please move forward with the park. Thank you.

>> Mayor Reed: Mike Flaher and thin Matthew bright.

>> I'm Mike Flaher I'm with the parks and recreation commission also a community leader in the Berryessa area. I want to first speak about the letter that the commission sent, and reiterate that we were concerned and didn't have advantage of some information that would have been helpful to give you a more complete recommendation from us. Also, as Matt spoke, we were split on our concerns. And that is reflected in that letter if you've had a chance to read it. I also want to commend staff on coming up with all niece different attorneys. They've been hard pressed to find a way forward. There was a subcommittee that was working on it between Planning Commission and parks commission which is a C&C recommendation. Unfortunately, that is a long term solution and may not be favorable right now. Going on with a specific thing is that the commodore park is currently not in the pilot program, as reported by staff. Is I think one of the things that plays directly to Councilmember Liccardo and Oliverio's issues in their memo. It is the poster child for a park that has been waiting for 35 years, and has not moved forward. We know why. And it's very understandable why, that we didn't have maintenance funding. But we are committed in the community to come and work with staff and council to find ways to move this forward. We don't have the advantage of having the Newhall thing and I don't want to take away anything from Newhall. It needs to be built. So we're looking at what can we do for a situation of a park that's been around a lodge time, needs funding and needs creative ways to fund it. There are things that may be in the staff recommendation that might be an impediment often moving forward to that. For instance it is not bid-ready as the item in the recommendation by staff says that only Newhall is bid-ready. But that tide up in a park that's fully funneled but hasn't gone forward and those are in the memo that says we can't go forward unless we have maintenance so you're stuck in a catch 22. What we're looking for is to support Councilmember Chu's memo and find new ways to get commodore built, use this as our measurement of the how do we find new and innovative ways to create parks in San José and get rid of the backlogs that we have now. Any questions?

>> Mayor Reed: Thank you. Our next speaker is Matthew bright. That's the last card I have.

>> Hello, my name is Matthew Bright, I'm a resident of the Newhall neighborhood, which consists of approximately 2000 people between Coleman Avenue and Park Avenue, then Interstate 80 and the Santa Clara city border. Our neighborhood is one of the most underserved to the city with a three-mile round trip walk to our nearest public green space at the municipal rose garden. Since the park construction was put on hold we've applied for grants, unfortunately unsuccessful, we have approached local businesses, worked with park staff, and reached out to the parks commission. We've also identified the potential for significant volunteerism in our neighborhood and helping to keep a future park in good repair. I'd like to thank the parks department, councilmembers Liccardo and Oliverio, and the many community members who have collaborated to bring several thoughtful and creative solutions to the table for a vote today. These recommendations and their many variations bring hope to similarly situated future park users throughout the city. So please take advantage of this opportunity to increase volunteerism, create badly needed new jobs through new park construction and to bring green space to those underserved communities in San José. Thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor I want to thank Councilmember Liccardo for incorporating some of the -- actually the goal of my memo into the new recommendation. And to the staff, by adding the sentence of provided that including such funding does not prevent funding da da da da da, would it exclude the possibility of the commodore Mayberry park to being developed? Because I know that Mayberry park commodore park is not a priority 1 park, it is you know the funding's there, it has been there for 35 years. The reason we haven't been able to move it forward is just because, you know, over the years, since I was on this council, that I was told that we have no money to maintain it. So now, we -- it seems that we find a very creative solution to reduce the PDO/PIO fee and ask the developer to contribute part of -- to contribute, you know, certain amount of money or to make it up to the full amount of PDO/PIO for the park maintenance. I would really like to -- for Mayberry commodore park for.

>> Thanks. I'm looking at under alternative 1.2 on the -- Councilmember Liccardo's recommendation, if a developer, right now I'm not aware of a developer within three quarters of a mile of Mayberry Commodore Park that is willing -- that is about to pay fees and is willing to enter into an agreement. However, adding that language would, if there was a developer there, it would prohibit us from entering into that agreement with the developer for Mayberry Commodore because we do need the money in that area to build out other greenprint priorities such as Mayberry Commodore Park. However, given that --

>> Albert Balagso: My point of clarification on the term, in alternative B, and the opportunity to come back to council is that if we were able to find a partnership, and other mechanisms to put it together, then we could craft that and bring that forward as a recommendation to council.

>> Councilmember Chu: I'm sorry, where was that stated?

>> Albert Balagso: In the item where it says developing a long item, 1.1, developing a long term -- got to have that in front of me --

>> Councilmember Chu: 1.1 of the agenda or the memo?

>> Albert Balagso: No, in the recommendation by Councilmember Liccardo. It says establishment period but only when a long term plan can be implemented for funding maintenance. The alternative we can look at is how we can look at that time scope of the project and can we recruit funds that would enable us to create a establishment fund and looking at different partnerships in the area. As I understand, and the conversations that I have had with the Superintendent Markley of Berryessa school district there is an opportunity there that we can start looking at crafting a long term relationship.

>> Councilmember Chu: Okay, thank you, mayor. If I may can I ask Mike Flaher to come down to the podium again? I have a question to ask him. I know Mike serve on the parks commission and also being a very advocate

in District 4 for parks and a community leader. So Mike, can I ask you to maybe just give us a quick history and a background of why Mayberry and Commodore Park is so important to the residents in District 4, particularly in the area?

>> Thank you, Councilmember Chu. Even though commodore park looks like just your common neighborhood park, it is in a bigger park chain. And in that it has been in a master plan for what we call reach 6 of the Penitencia creek park chain, it is one of the things that we are trying to establish as a major feature of the Penitencia, the area of where the redevelopment goes, or the flea market and we know that's a big park opportunity as well as others. But we're trying to create a necklace of parks and green space all the way from the center of San José, all the way out to Alum Rock park. We know that Alum Rock park is one of the major parks assets we have for the city. It is the oldest municipal park and there is a chain of features and parks that have been in a master plan since 1977. And unfortunately for various reasons we have not been ability to execute that master plan so we don't have the series of amenities both city-funded county-funded and Water District-funded over the last few years to present that to the city as a major feature. This park, and doing it in the --

>> Mayor Reed: Mike I'm going to have to ask you to stop. I think we got the message.

>> Okay.

>> Mayor Reed: We're not deciding commodore park here but clearly it's important to the community. Councilmember Chu, back to you. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you. I just want to throw out a few items that Newhall park number one is a unique park and it's up against the Santa Clara border, it doesn't really allow for the opportunities of those development fees to really go elsewhere to create another park so in a way I felt it was the right park for this. I wouldn't suggest this policy for parks citywide because I think it does short the aggregate total amount of acreage in parks for the future. Because if we always lop off X percentage of the fees and put them towards maintenance that's great for the short term but it's really a loss in the long term so I really don't see it as something in every

situation and I think this is the only park in my district I advocated for. For example, in Del Monte Park, I would never advocate for this policy, because I want every dollar going to expand the acreage for opportunity for a large park. So I felt a little conflicted in the memo, but in the case of Newhall it seemed the right way to go and just try it out type of thing. And clearly maintenance wasn't an issue this year or last year for me was when I started and I saw the way parks were maintained, i.e. the rose garden and other parks in San José. So I think there's the bigger solution, and I think that solution is something we may touch upon on the 18th, on Thursday, when we talk about this deficit, because there is no way I can manage to provide services today if I don't do them differently, and that option is there. With the waiving of prevailing wage in park donations in the original park memo it was in any and all parks from any and all entities. From the way I see the proposal today it does allow for developers who are going to engage in those few parks but am I to understand that it would allow any of these private entities, homeowners associations, fraternal organizations to adopt any park in San José and waive the prevailing wage, is that how I understand it?

>> Councilmember Liccardo: I'm sorry I thought the question was directed nor park staff. You're referring to your motion.

>> Councilmember Oliverio: Well I'll look both ways just to make sure we're on the same page. Let's go parks first.

>> Albert Balagso: That would be my interpretation. I would have to confirm with Councilmember Liccardo that that's what it is.

>> Councilmember Liccardo: Could you repeat the question Pierluigi?

>> Councilmember Oliverio: Sure if I would look at your recommendation since we all have the same document in front of us here. Okay, in addition, concur with staff's proposal that the prevailing wage exemption applies when maintenance services are provided solely by a donor such as homeowners association, corporations, social fraternal organization or neighborhood volunteers.

>> Councilmember Liccardo: Right.

>> Councilmember Oliverio: So would that be for any park in the City of San José?

>> Councilmember Liccardo: That is my understanding. That's the policy we passed in 2008, if I'm not mistaken.

>> Councilmember Oliverio: Well, but it didn't have the waiving of prevailing wage, so this is different, which I think is more acceptable to private organizations.

>> Albert Balagso: Correct.

>> Councilmember Oliverio: Okay, because I'll give you an example. There are areas in my district where homeowners associations, they have come to us to try to say, hey we'll adopt a park, we'll use our landscapers and augment city staff and city maintenance. But they weren't able to afford it. This would allow this as a better option.

>> Councilmember Liccardo: For a pure donation, absolutely.

>> Councilmember Oliverio: Pure donation, I think that's great it gets us closer to providing these. And then the other item on the three-year establishment, I think that's a great idea. Again, my district, Cahill park, was a park that was a turnkey park, but sadly, it wasn't constructed to the level it should have been. It failed sometime after the 90-day period. This policy would allow that to not happen. So you'd sort of be on the hook for what you build in the city, so I think that's a good thing. So again, I appreciate the cooperation. It's not the end all, be all. But I think it helps with a little bit of what we're trying to do.

>> Mayor Reed: I think that concludes the testimony. I think Albert wanted to add something about what you'll be doing internally once we get rolling on this pilot.

>> Albert Balagso: That's correct, just as Councilmember Oliverio was clarifying a lot of the items. There are a lot of pieces in here, so we need to develop an internal protocol of how we are going to apply the policy and how we're going to report that back to the city council. So we will be working with the City Manager's office in putting that together.

>> Mayor Reed: We have a motion on the floor I think we're done talking about it on the motion all in favor, post office, opposed, motion is approved. That I think concludes most of the business on the city council agenda so we'll do the open forum, as we move into the Redevelopment Agency part of the agenda. Assume there are some requests to speak under the open forum. First somebody who has waited longer than it takes to run two turkey trots, Carl Guardino to talk about running one turkey trot I believe. I think you could have walked two turkey trots.

>> Player and members of the council thank you. I actually had to stop out twice to shave while I was waiting to speak. It's an honor to be here. My name is Carl Guardino, I'm CEO of the Silicon Valley Leadership Group, and along with my wife Leslie, we're the founders and race directors of the sixth annual Applied Materials Silicon Valley turkey trot. And you have a huge trophy somewhere in City Hall, because you are the proud recipient of last year's mayor's cup community challenge. And I know you want to defend your reputation as the fittest community in the Silicon Valley. And that means Councilmember Kalra, Oliverio as the young studs on the council, we need you there. Councilmember Chu, as the seasoned and wise professional leader, we need you there. City Manager Figone, you've never looked so hairy, in my entire life. Mayor Reed, you have a hall pass visiting family. Rick Doyle, I see on the trails in Los Gatos all the time. He doesn't even run in San José. You need to get him at the turkey trot and run in San José. Vice Mayor Chirco, we need your leadership there, and Councilmember Madison, I know you are out of town. You get a hall pass. Liccardo dressed as a whoopee cushion last year, that's how much he cares about your city. But he was there willing to embarrass himself to win the councilmember award, which he did. Councilmember Herrera, we need you there as well. You get points, fortune, and glory. The VIP tent has free professional massage, your own tee shirts. I don't know what else to

give you. But we need you there. And this -- so I'm going to pass these out to councilmembers, if may, with the help of staff. Staff gets points if they go to represent you as well. And I leave this race in your capable hands. On a serious note we're expecting 15,000 people this year in the streets of Downtown San José. Councilmember Constant you came back. We need you there my friend. We're going to clear more than $350,000 for second harvest food bank the children's health initiative the housing trust of Santa Clara County, initiatives that you all support to help the needy in our region. So we hope you will join us that morning and let's make this Thanksgiving one where we're really giving thanks for others and all we have in abundance. Thank you, Mayor Reed.

>> Mayor Reed: Thank you. Mike Flaher.

>> My mom is in the crowd, she applauded.

>> Mayor Reed: Mike Flaher and Robert Cortese are the next speakers.

>> Councilmember Liccardo: Is there an opportunity for council comment, now or at the end of public comment?

>> Mayor Reed: When we get done with the open forum.

>> Mike Flaher representing myself. Today I wanted to bring attention to an issue down on Bascom avenue. My mother lives in El Parador senior housing. They found out on last Friday when they smelled the marijuana smoke coming through that they had a marijuana club next door, medicinal gardens. Unfortunately they were unaware that this was even happening. They are now very fearful what this means to them. The management company that runs their operation for the housing authority has reduced nighttime management and can't secure the doors and they fell that they were very threatened by this event. Also in the future there's another development right next door on the other side of this cannabis club. It is an assisted living center that's going up. So maybe we might have thought a little more before we approved this. But in any case they'd like to meet with the councilmember for the area and see if there's any way that we can coexist in that area. Thank you.

>> Mayor Reed: The last speaker in open forum is Robert Cortese.

>> Hello, council, and Mayor Reed, today I just wanted to bring some attention to something that's been affecting my night job for about the last ten years. And that's karaoke piracy. I belong to a trade group, I -- sorry, nervous. I belong to a trade group that advises karaoke producers on how to fight piracy and eliminate piracy. And right now in the City of San José piracy rate for karaoke venues is up to 90%. To me, this is important, because this is the owner of seven bamboo, this man here, this guy doesn't know how to go PDP on file networks or anything like that. He's owned seven bamboo since 1982. So for the last 30 years, this guy has been dutifully paying his taxes, he's been dutifully paying his entertainment licenses and whatnot. I've complained to a lot of people about this. I've complained to my cousin Dave, he got me in touch with Zoe Lofgren who kind of forwarded this to the FBI, they kind of dropped the ball on it. I don't know what else to do. To give you an idea how much this stuff cost, seven bamboo in '96 bought 3600 songs for $8,000. That comes out to $2.22 per song. If we were to try and compete with some of these guys out here that are running machines with 50,000 songs we would have to buy $111,000 worth of songs. How is this fair to this guy who is running a fair business, not pirating or not stealing anything or returning a business with stolen goods. Certainly there is something the City of San José can do with this, thank you.

>> Mayor Reed: That concludes the open forum. We will now move to the Redevelopment Agency agenda, unless Councilmember Liccardo had something. Nope. Redevelopment Agency first item is the consent calendar, any matters? Any matters to be removed? We have a motion to approve the consent calendar, all in favor, opposed, none opposed that's approved. 3.1 is a report of the executive director.

>> Harry Mavrogenes: Yes, Mr. Mayor, members of the board. I'm going to use David with the props here in a minute. We -- the agency is in receipt of the certificate of achievement for excellence in financial reporting for the ninth consecutive year for our CAFR, our comprehensive annual financial report. This is from the national government finance officers association for fiscal year 2008 and 9. I want to thank the mayor and the board for encouraging our disclosure, accountability and openness, and this -- we are only one of six of 400 Redevelopment Agencies to achieve this award and the only one in the county. The CAFR, our financial report, is

posted on the agency's Website and is widely read by our financial partners which include bond holders rating sat banks and municipal bond insurance companies. So I want to thank the finance staff for its effort there. David, do you have any -- there's the award. In addition to that the GFOA has also given distinguished budget presentation award to the agency for our 2009-10 budget. It was given for the second consecutive year to the agency and recognized us for attainment of the highest level of governmental budgeting and I thank the agency for achieving this award.

>> Mayor Reed: Thank you. A lot of work goes into getting those documents in a form that they can be award winning. It doesn't happen by accident. Item 3.2 is an amendment to the agreement with RSG for preparation of necessary studies and reports. We have a motion to approve. All in favor, opposed, none opposed that's approved. Item 8.1 is approval of amendments to the cooperation agreement for the loan of agency employees to the city.

>> Move to approve.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. I think that's the end of the business, unless staff tells me otherwise, because I ran out of room on my agenda. Must be done, so that concludes our meeting, we're adjourned.